

Intra-EU Mobility of third-country nationals

European Migration Network Study 2013



A photograph of an airport departure board. The board displays flight information for various destinations including Brussels, Paris, Frankfurt, London, and Vienna. The columns include destination, time, gate, and remarks.

Destination	Time	Gate	Remarks
BRUSSELS			
PARIS	16:00	13	EXPEC
FRANKFURT	16:15	01	DEPAR
LONDON	17:00	12	CLOSE
FRANKFURT	17:35	04	CHEC
VIENNA	17:55	02	CHEC
BRUSSELS	18:05	01	CHEC
LONDON	18:20	12	CHEC

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DISCLAIMER

This Synthesis Report has been produced by the European Migration Network (EMN), which comprises the European Commission, its service provider (ICF GHK-COWI) and EMN National Contact Points (EMN NCPs). The report does not necessarily reflect the opinions and views of the European Commission, EMN Service Provider (ICF GHK-COWI) or the EMN NCPs, nor are they bound by its conclusions. Similarly, the European Commission, ICF GHK-COWI and the EMN NCPs are in no way responsible for any use made of the information provided.

This study was part of the 2012 work programme for the EMN. The finalisation date of the study's Synthesis Report is July 2013. This is a corrected version which includes minor modifications on pages 5, 8 and 24.

EXPLANATORY NOTE

This Synthesis Report was prepared on the basis of National Contributions from 21 EMN NCPs (**Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovak Republic, Sweden and United Kingdom**) according to a Common Template developed by the EMN and followed by EMN NCPs to ensure, to the extent possible, comparability.

National Contributions were largely based on desk analysis of existing legislation and policy documents, reports, academic literature, internet resources and reports and information from national authorities. Statistics were sourced from Eurostat, national authorities plus other (national) databases. The listing of Member States in the Report results from the availability of information provided by the EMN NCPs in their National Contributions.

It is important to note that the information contained in this Report refers to the situation in the above-mentioned (Member) States up to and including 2012 and specifically the contributions from their EMN National Contact Points. More detailed information on the topics addressed here may be found in the available National Contributions and it is strongly recommended that these are consulted also.

EMN NCPs from other Member States could not, for various reasons, participate on this occasion in this Study, but have done so for other EMN activities and reports.

EXECUTIVE SUMMARY

The purpose of this EMN Focussed Study 2012 was to act as a scoping exercise to better understand the key issues and challenges in relation to the intra-EU mobility of third-country nationals in the different Member States. The aims and objectives of the Study are set out in **Section 1** of the Report. **Section 2** presents some insights into the scale and scope of intra-EU mobility of third-country nationals, based on the statistics collected for the Study. **Section 3** sets out the EU *acquis* in relation to intra-EU mobility, including for EU citizens, which served as an overall framework for the Study, and then explores the provisions in place for various categories of third-country national seeking to exercise mobility. **Section 4** examines the national rules and policies in place that apply to various specific categories of mobile third-country nationals, and compares these with the national rules that apply to third-country nationals seeking to enter and stay in the EU Member State for the first time, and the national rules that apply to mobile EU citizens. **Section 5** identifies situations where measures can be applied legally by Member States under the terms of the migration directives, but may have the potential to shape or limit the mobility of third-country nationals. A short summary and conclusions are set out in **Section 6**.

What did the study aim to do?

The study aimed, firstly, to provide an **overview of current mobility provisions** within the EU *acquis* to encourage the intra-EU mobility of third-country nationals and to explore also the national rules in place that regulate such movements. Secondly, it aimed to identify the key issues on intra-EU mobility for third-country nationals as perceived by the different Member States, in particular the **challenges/barriers** which may be affecting such mobility for reasons of work. Finally, the study aimed to ‘map’ the extent to which statistics are available on the **scale and scope** of intra-EU mobility of third-country nationals in order to characterise, to the extent possible, the current trends and patterns of mobility, for example, who is moving where and from which Member States, their reasons for mobility, their nationality and skills levels. The focus of the study is on periods of stay in the second Member State exceeding three months. Irregular movements of third-country nationals between Member States were not included in the study.

What can be concluded?

The findings of the scoping study have highlighted the **limited availability of relevant statistics** on the phenomenon of intra-EU mobility of third-country nationals, and their **variability and lack of comparability**. Intra-EU mobility of third-country nationals is an under-researched area. Given its growing importance within the EU *acquis*, with proposals to strengthen mobility for some groups, and to introduce new provisions, it is essential that the phenomenon can be effectively quantified and comprehensively understood at EU level.

In all Member States where statistics on overall movements of third-country nationals were available over a five year time period the **trend in intra-EU mobility for third-country nationals, however defined, has been upwards**. Whilst the study did not set out to measure the impact of the provisions of the migration Directives in relation to mobility, in all but one of the above Member States, the upward trend in mobility of third-country nationals was **greater than that of EU citizens**. From the limited statistics available on overall movements of third-country nationals in absolute terms, it seems clear that these remain small when compared with movements of EU citizens across Member States.

An analysis of the current provisions of the EU *acquis* suggests that, for stays exceeding three months, there is a **fundamental difference** between mobility rights for EU citizens and for mobile third-country nationals, with conditions more limited for mobile third-country nationals. Differences in the conditions for entry and stay of more than three months between mobile third-country nationals and third-country nationals arriving directly from their country of origin / another third-country appear also to be minor, despite the mobility provisions stipulated in the EU *acquis*. Although this varies across the categories of third-country nationals and Member State, it applies to

varying degrees across all of the categories examined in the study.

The EU migration Directives that provide for mobility of third-country nationals, leave **significant areas of discretion** to Member States, and therefore to national laws in shaping mobility. Member States, acting legally, can and do limit or encourage such mobility, according to their national policies and priorities, thus creating differences in rules and practice across the Member States. Member States have applied a number of measures, legally allowed by the migration Directives, that can influence intra-EU mobility or the decision of third-country nationals already present in the EU to relocate to another Member State for the purpose of employment. Most notably, **labour market restrictions** under Member States' managed migration policies often apply equally to all third-country nationals, including those whose mobility rights are provided for in the EU *acquis*, thus representing barriers to the movements of these groups.

On a practical level, burdensome **requirements for entrepreneurs and self-employed persons** can prevent mobile third-country nationals from settling in another Member State. Burdensome processes related to the **recognition of degrees and diplomas** and particularly, the associated cost, duration and documentation requirements may deter third-country nationals from moving. Other factors such as **minimum wages**, access to **social security and social services** and rights to **family reunification**, may also impact on the mobility decisions taken by third-country nationals.

This scoping study has been able to offer only **limited insights** into the scale and scope of the phenomenon of intra-EU mobility. As the EU *acquis* seeks to increase mobility provisions for certain categories of third-country nationals and to include additional categories, it is essential to improve understanding of the scale and scope of the phenomenon through more comprehensive and comparable statistics at EU level, as well as the practical application of mobility provisions at national level.

What statistics are available, and what do these tell us about intra-EU mobility for third-country nationals?

Information collected in Member States includes administrative statistics, statistics drawn from the national population census or population registries, and from research reports and studies. Member States do not in general routinely prepare migration statistics disaggregated to the categories of mobile third-country nationals provided for in the EU *acquis* differentiating between third-country nationals arriving in the Member States for the first time or via a first Member State. This accounts in part for the challenges in accessing available statistics and in ensuring comparability.

From the information available on the previous Member State of residence of third-country nationals, it is possible to make some generalisations about the countries of previous residence for third-country nationals for the nine Member States able to provide statistics over one or more years. For each Member State, there appears to be a very high degree of consistency and continuity in the top two most popular EU/EFTA previous (Member) States of residence, and a high degree of consistency in the top five. Third-country national mobile workers are also more likely to migrate from a neighbouring Member State, though not necessarily one that shares a common language. Very limited information was made available on other characteristics of mobile third-country nationals.

What provisions are made for intra-EU mobility within the EU *acquis* and for whom?

The EU *acquis* recognises that mobility rights have economic and social benefits for individuals and for Member States; reducing skills mismatches, addressing unemployment and supporting growth at EU level, and this is reflected in the rights of EU citizens and their family members to move and reside freely within the territory of the Member States. Limited mobility rights have been extended to various categories of third-country nationals: **long term residents, highly skilled workers, researchers, students and posted workers**. Proposals for new Directives will aim to extend the mobility rights of students and researchers, and introduce provisions for new categories.

What national rules shape entry and residence for mobile third-country nationals?

The significant areas of discretion left to Member States within the EU *acquis* result in variations in the mobility rights of the various **categories of mobile third-country nationals** that are covered by the EU Migration Directives: long-term residents, EU Blue Card holder, students, researchers and posted workers.

Under Directive 2003/109/EC, mobile third-country national **long-term residents** must apply for a residence permit to reside in a second Member State, whereas EU citizens need only to register their right to stay for more than three months, as their right to residence is provided for by EU law. Member States are allowed to apply additional measures to regulate the numbers of mobile third-country nationals entitled to be granted the right of residence, including the possibility of applying a labour market test, and other requirements not applicable to EU citizens, for example, compliance with integration measures. However, mobile long-term residents exercising mobility in Member States that have adopted the Directive can obtain a residence title following simplified procedures when compared to those in place for third-country nationals arriving to the EU for the first time, and the application can be made from within the territory of the second Member State without holding a visa, and in some Member States, entry is further facilitated. The type of residence permit issued to third-country national long-term residents in a second Member State may also offer more protection than that issued to third-country nationals who apply to enter and reside in the host-country directly from a third-country.

The conditions that mobile third-country national **EU Blue Card holders** must meet are also stricter than the conditions that apply to mobile EU citizens. According to Directive 2009/50/EC, the mobility provisions for EU Blue Card holders only apply once they have legally resided in a first Member State for a minimum period of eighteen months. At that point, the EU Blue Card holders may move to another Member State, but in order to do so they must apply for another EU Blue Card. In practical terms, all of the conditions set out in Article 5 of the Directive, which are determined in national legislation, must be reassessed and met in the second Member State. The mobility of EU Blue Card holders is also restricted to employment with one specific employer. However, an application for a Blue Card in a second Member State can be made from within that Member State, procedures for family reunification are more favourable and periods of residence in different Member States may also count towards fulfilment of the requirements for long-term resident status. The conditions of admission for EU Blue Card holders are again governed by the national laws in place, allowing scope for variation in the way such rules are applied in practice across the Member States, including labour market testing, and there are variations in whether the national rules for admission are applied equally to first-time or mobile EU Blue Card applicants.

Under Directive 2005/71/EC, mobile third-country national **researchers** benefit from facilitated entry and stay in a second Member State if the period of mobility does not exceed three months. However, for periods of stay exceeding three months, national discretion applies and the provisions vary significantly across Member States. Some Member States grant more favourable treatment than others for entry and residence for third-country national researchers coming to the EU for the first time. In most cases, however, the application can be made from within the territory of the second Member State. The mobility rights enjoyed by third-country national researchers are again much less favourable than those which apply to EU citizen researchers, where the mobility rules for all EU citizens apply and where the only requirement they may face is to register with the authorities if they decide to stay for a period exceeding three months. The scope of employment open to EU citizens in the second Member State remains very wide, whereas for third-country national researchers, any concessions applied are limited and specific to a research post.

For **students** from third countries coming to study in the EU for periods exceeding three months, conditions for entry and stay are set out in Directive 2004/114/EC, and the conditions for mobility are subject to strict limitations. Member States do not in general differentiate between students coming directly from a third-country for the purpose of study and those coming from another EU

Member States for stays exceeding three months. Overall, the same immigration rules were found to apply. The rules in place are considerably more stringent than those that apply to EU citizens, who fall under the general rules for citizens and may enter and reside for the purpose of study without the need for a visa or a residence permit.

Directive 96/71/EC provides for the **'posting' of employees** to perform work in the territory of a Member State other than that of their normal employment. It makes no specific provisions for mobility of third-country nationals, but, based on (Court of Justice of the European Union) case law, host Member State may not impose administrative formalities or additional conditions on lawfully employed third-country national workers posted by a service provider established in another Member State. In many Member States, third-country-national workers posted from one Member State to another need to meet fewer conditions compared to third-country nationals who are posted to a Member State directly from a third-country. However, in several Member States, there still appear to be few differences in the national rules and procedures for visa and residence requirements for mobile third-country national posted workers and for those who have entered the Member State directly from a third-country. The mobility rights of posted third-country national workers are still weaker than the mobility rights of posted workers who are EU citizens.

For those categories of third-country nationals that are not provided for in the EU *acquis*, for example, **cross-border worker, seasonal workers and workers in regulated professions**, specific national rules concerning their intra-EU mobility do not in general apply.

What measures are in place at Member State level that may limit or facilitate intra-EU mobility for third-country nationals?

A number of measures are applied legally by Member States within the boundaries of the migration Directives that can influence intra-EU mobility or the decision of third-country nationals already present in the EU to relocate to another Member State for the purpose of employment.

Most notably, **labour market restrictions** may represent a significant obstacle for third-country nationals to access labour markets in the EU beyond the Member State in which they initially resided. Some Member States have introduced specific provisions for certain categories of mobile third-country nationals, which facilitate their access to the labour market, including simplified procedures and exemptions from a work permit or exemptions from a labour market test. However, in most Member States, mobile third-country nationals do not receive any preferential treatment in comparison to newly arrived third-country nationals and are subject to obtaining a work permit under the same conditions as third-country nationals coming from outside the EU. **Labour market tests** may also operate, which ensure that preference of labour market access is given to EU/ EFTA nationals. The rates of **minimum wages** that a third-country national needs to receive to be granted residence and work permits may be another potential factor which can have a negative impact on the intra-EU mobility of third-country nationals. National discretion results in significant differences in the actual levels of minimum wages that apply, and in some cases higher-minimum wages is required for a third-country nationals.

Burdensome administrative **requirements for entrepreneurs and self-employed persons** can prevent mobile third-country nationals from settling in another Member State. Overall, Member States have not adopted specific provisions for mobile third-country nationals, thus general requirements for all third-country nationals apply. The majority of Member States have introduced requirements for certain levels of initial capital in order to grant a residence or work permit for self-employment to third-country nationals, which significantly vary in Member States. Other requirements introduced in Member States include assessment of the profitability of the business, job creation requirements, language requirements and requirements for the business activity to be in line with the national economy.

Another factor potentially shaping mobility for third-country nationals may be the **recognition of degrees and diplomas** and particularly, the cost, duration and documentation requirements

associated with the recognition. Other factors which may affect the decision of third-country national workers to relocate to another Member State include access to **social security and social services** and rights to **family members**.

1. INTRODUCTION

1.1 Aims and objectives of the study

The purpose of this EMN Focussed Study was to act as a scoping exercise to better understand the key issues and challenges that are apparent in relation to the intra-EU mobility of third-country nationals in the different Member States. It aimed to:

- provide an overview of the EU acquis and explore in particular the national rules and policy beyond the EU acquis of relevance to the intra-EU mobility of third-country nationals;
- identify the key issues on legal intra-EU mobility for third-country nationals as perceived by the different Member States, in particular the challenges/barriers which may be affecting the intra-EU mobility of third-country nationals for reasons of work;
- map the extent to which statistics are available on the scale and scope of legal intra-EU mobility of third-country nationals in order to characterise, to the extent possible, the current trends and patterns of mobility, for example, who is moving where and from which Member States, the reasons for mobility, the duration of stay, sectors of the economy mobile third-country nationals are employed in, their nationality and skills levels etc.

The study also sought to understand intra-EU mobility of third-country nationals within the framework of the EU *acquis* governing the intra-EU mobility of EU citizens, considering how national rules are different for third-country nationals and their families when compared to mobile EU citizens.

The findings of the scoping study suggest that across the Member States access to available statistics on this topic is limited, sources and the ways in which statistics are compiled are variable and therefore cannot be reliably compared. Where statistics are available over time, in most cases, these indicate increases in the movements of third-country nationals; however, such movements remain small when compared with the movements of EU citizens across Member States.

Within this context, the Study reports on the extent to which the conditions governing mobility are, within the provisions of the EU *acquis*, in practice determined by the Member States, and also highlights the impacts of various ‘barriers’ to entry that may be faced by third-country nationals seeking to exercise mobility in different Member States. The fact that the EU *acquis* provides EU mobility rights only for certain categories of third-country nationals, and therefore is able to shape only a proportion of the total movements of third-country nationals, suggests that an understanding of national rules, policies and practices in place remains critical to an overall understanding of what governs the movements of third-country nationals within the EU. Groups of third-country nationals *not* provided for in the EU *acquis* are also mapped in the study, with a view to highlighting where further action at EU level could be needed.

The Report is structured into six sections. Following this introductory Section 1, Section 2 presents, to the extent possible, an overview of the scale and scope of the phenomenon; Section 3 presents an overview of the EU *acquis* where provisions are made for third-country nationals, and highlights some significant categories of third-country nationals that are not provided for within the EU *acquis*. Section 4 then examines the national rules and procedures that apply to the categories of migrants identified in Section 3 and Section 5 explores a number of issues that also have the potential to shape the flows of intra-EU migration. A summary of the report and its main conclusions are set out in Section 6.

2. SOME INSIGHTS INTO THE SCALE AND SCOPE OF INTRA-EU MOBILITY OF THIRD-COUNTRY NATIONALS

This Section provides an overview of the available statistics at national and EU level on the number of mobile third-country nationals, recognising the limitations of available data and the difficulties in collecting it.

2.1 Overall scope, pattern and trends

There is a considerable lack of readily accessible statistics on intra-EU mobile third-country nationals which prevents a solid understanding of the overall scope and pattern of the situation at EU level. Due to the lack of relevant statistics, the focus of this section presents an overview of the statistics actually available, as a context for the limited analysis possible in relation to the actual scale, scope and patterns of mobility. A very wide range of data sources was reviewed to provide a general overview: these included administrative data, population census returns, and data from surveys. The variability in data sources and how they have been compiled means that the statistics presented in the Study cannot readily be compared across Member States.

In some cases, statistics were available for one or two years only. Six Member States have provided statistics over the time period 2007-2011; these are **Austria, Germany, Finland, Netherlands, Sweden** and **United Kingdom**. The statistics are summarised in Table 2.1 below; they are **not comparable**; some include third-country nationals arriving from EU Member States only (**Finland, Netherlands, United Kingdom**); others extend this to include also third-country nationals coming from Norway, Switzerland, Iceland and Liechtenstein (**Austria, Germany, Sweden**). Where reported, however, the numbers in absolute terms are small, and vary across Member States (for example, in **Germany**, the number was 34,932; and in **Sweden** 9,399, over the five year period).

In all of these Member States, the trend in intra-EU mobility for third-country nationals, however defined, has been upwards; this is most marked in **Germany**, where the numbers of mobile third-country national arriving from the EU plus Norway, Switzerland, Iceland and Liechtenstein, has increased by over 200% from 3,784 in 2007 to 11,532 in 2011. In **United Kingdom**, the long-term migration of non-EU citizens whose country of last residence was the EU, migrating for all reasons appears to have increased also by some 200%, from approximately 1,000 in 2007 to 3,000 in 2011. However as these estimates are small, and the confidence intervals wide, it is not possible to suggest any differences between the estimates for recent years, nor is it possible to disaggregate the statistics further, for example, by nationality. Compared with Germany and United Kingdom, increases have been more modest in **Austria** (33.6%); **Finland** (17.1%); **Netherlands** (53.7%) and **Sweden** (30.2%).

It is important, however, to consider such trends within the overall context of intra EU mobility. From the statistics provided, when compared with the movements of EU citizens during the same time period, secondary movements of third-country nationals represent only very small proportion of the combined movements. The percentage of mobile third-country nationals when compared with the combined numbers of mobile third-country nationals plus mobile EU citizens over the five year period 2007 to 2011 was 1.8% in **Germany**, whilst in **Austria, Finland**, and **Netherlands**, it was 3.6%, 3.7% and 2.3% respectively over the same period. Whilst not comparable, these percentages give at least an indication of the specific situations identified in these Member States. In the **United Kingdom**, the percentage of mobile third-country nationals when compared with the combined numbers of mobile third-country nationals plus mobile EU citizens was 1.2%, although once again the statistics are based on estimates and must therefore be treated with caution. In **Sweden**, statistics for mobile third-country nationals and mobile EU citizens come from two different sources; the former from the population registry and the latter from the statistics on EU citizens registering their stay at the Swedish Migration Board. The two sources cannot be compared, as the underlying methodologies are different.

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In terms of trends, in most cases, the percentages of mobile third-country nationals has remained relatively constant over the five year period when compared with the percentage of mobile EU citizens overall, except in **Germany** where the rate of growth in mobility of third-country nationals has been markedly higher than for mobile EU citizens; over 200%, compared with 51.6%.

Whilst it must be restated that it is not possible to compare directly the statistics for different countries due to differences in the basis for the statistics for mobile third-country nationals that have been produced, examples for these six countries are summarised in illustration in Table 2.1 below:

Table 2.1 Reported statistics for mobile third-country nationals compared with mobile EU citizens: 2007-2011 (6 countries).

MS	Year /	2007	2008	2009	2010	2011	Total	% increase 2007 - 2011
AT	Mobile TCNs from EU plus Norway, Switzerland, Iceland and Liechtenstein	1,233	1,360	1,354	1,496	1,648	7,091	33.6%
	Mobile EU citizens	56,405	59,455	57,215	62,655	74,936	310,666	32.9%
	% of mobile TCNs compared with mobile TCN + mobile EU citizens.	2.1	2.2	2.3	2.3	2.2	2.2	
DE	Mobile TCNs from EU plus Norway, Switzerland, Iceland and Liechtenstein	3,784	4,982	6,761	7,873	11,532	34,932	204.7%
	Mobile EU citizens	331,103	323,328	331,170	376,217	501,997	1,863,815	51.6%
	% of mobile TCNs compared with mobile TCN + mobile EU citizens.	1.1	1.5	2.0	2.0	2.2	1.8	
FI	Mobile TCNs from EU	461	502	473	464	540	2,440	17.1%
	Mobile EU citizens	12,434	13,388	12,162	11,727	14,378	64,089	15.6%
	% of mobile TCNs compared with mobile TCN + mobile EU citizens.	3.6	3.6	3.7	3.8	3.6	3.7	
NL	Work-related immigration of TCN coming from other EU countries: total numbers	722	892	824	818	1,110	4,366	53.7%
	Mobile EU citizens from other EU countries	27,393	37,004	34,496	38,566	44,033	181,492	60.7%
	% of mobile TCNs compared with mobile TCN + mobile EU citizens.	2.6	2.4	2.3	2.1	2.5	2.3	
SE	Mobile TCNs from EU plus Norway, Switzerland, Iceland and Liechtenstein	1,656	1,754	1,860	1,973	2,156	9,399	30.2%
	Mobile EU citizens registering their right to stay in Sweden.	19,387	19,398	17,606	18,480	23,226	98,097	19.8%
	% of mobile TCNs compared with mobile TCN + mobile EU citizens.	n/a	n/a	n/a	n/a	n/a	n/a	
UK	<i>Estimates of long-term migration of non-EU citizens whose country of last residence was the EU, migrating for all reasons.</i>	1,000	2,000	1,000	2,000	3,000	9,000	200%
	<i>Estimates of long-term migration of EU nationals by country of last or next residence</i>	154,000	160,000	137,000	146,000	147,000	744,000	-7%
	% Mobile TCNs compared with mobile TCNs + mobile EU citizens.	0.6	1.2	0.7	1.4	2.0	1.2	

Source: Individual sources per Member State are available in the respective National Contributions.

Other Member States that were able to present statistics over varying time periods also reported increases. In **Slovak Republic**, movements of third-country nationals from other Member States

plus Norway, Switzerland, Iceland and Liechtenstein increased during the period 2006-2011 by some 34% overall, from 47 in 2006 to 63 in 2011 (although in 2007 and 2008, numbers dropped to 34 and 44 respectively). Between the years 2008 and 2011, **Poland** experienced an increase in foreigners arriving from another EU Member States for stays exceeding one year (although these figures also include mobile EU citizens), of some 17%, compared with an increase of 2.5% in EU citizens arriving in Poland directly from the country of their citizenship, and staying for more than one year.

The numbers of mobile third-country nationals in **Estonia** have been modest; during the years 2008-2012, in total 68 mobile third-country nationals were granted a residence permit in Estonia¹; no trend information was available.

In **Ireland**, there has been a decline; in 2011, 9.5 % of first time employment permits issued to third-country nationals were issued to third-country nationals resident in the EEA at time of application (143 of 1 498 permits). In 2012, this had dropped to 6.5% (110 of 1,685 permits).

In **Belgium, Cyprus, Czech Republic, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg** and **Malta**, statistics on the numbers of third-country nationals moving from another Member States are not systematically collected to provide an overview of the situation in the respective Member State over time. According to the population census conducted in **France** in 2008, 12,576 third-country nationals were living in another Member State five years previously.

2.1.1 Member State of previous residence

In general Member States do not appear to have readily available statistics on the previous Member State of residence of third-country nationals. Eight Member States (**Austria, Germany, Finland, Greece, Ireland, Poland, Slovak Republic, Sweden**) were able to provide statistics; however, statistics from **Greece** only show a partial picture of the mobility pattern, as third-country nationals for which statistics are available are only those of long-term residents originally from Albania, China and Morocco that entered via Italy and Spain. **Ireland** only provides information on the most important single country of previous residence, which was the United Kingdom. Statistics from **Poland** refer only to third-country nationals covered by the requirement to hold a work permit (there are however many categories of third-country citizens for whom this does not apply). Statistics in the **Slovak Republic** on previous residence, although available, have the limitation that they do not distinguish between work-related and other types of mobility. Furthermore, until 2011, data in the **Slovak Republic** on the country of previous residence of a third-country national has not been systematically collected and is provided optionally in the application for a residence permit. Therefore statistics collected before the year 2011 were analysed but may not provide a comprehensive overview.

That said it is possible to make some generalisations about the countries of previous residence for third-country nationals. For those Member States able to provide data over a number of years (**Austria, Germany, Finland, Poland, Slovak Republic, Sweden**) there is a very high degree of consistency and continuity in the top two most popular sending EU/EFTA countries, and a high degree of consistency in the top five. In addition, based on the small data set available, it is also possible to say that third-country nationals are likely to move to another Member State of close geographical proximity, for example, mobility to **Austria** is highest from Germany and Italy; to **Finland** from Estonia and Sweden; to **Poland** from Czech Republic and Germany; to **Slovak Republic** from Austria and Czech Republic and to **Sweden** from Germany and Denmark. In **Germany**, the most popular previous country of residence since 2009 is Italy; whilst not a near neighbour, Spain is the second most popular country of previous residence. This perhaps reflects the downturn in the economies of these Member States. Where available, the data are shown below in

¹ Source: Police and Border Guard Board Estonia

Table 2.2 below.

Table 2.2 Top 5 previous (Member) States of residence of mobile third-country nationals: selected Member States (2007-2011)

Member State of destination	Top 5 previous (Member) State of residence of mobile third-country nationals				
	2007	2008	2009	2010	2011
Austria	<i>Germany</i> <i>Italy</i> <i>Switzerland</i> <i>UK</i> <i>Spain</i>	<i>Germany</i> <i>Italy</i> <i>Spain</i> <i>Switzerland</i> <i>UK</i>	<i>Germany</i> <i>Italy</i> <i>Spain</i> <i>UK</i> <i>Switzerland</i>	<i>Germany</i> <i>Italy</i> <i>Spain</i> <i>Switzerland</i> <i>France</i>	<i>Germany</i> <i>Italy</i> <i>Spain</i> <i>Switzerland</i> <i>UK</i>
Germany	<i>N/A</i>	<i>N/A</i>	<i>Italy</i> <i>Spain</i> <i>UK</i> <i>France</i> <i>Austria</i>	<i>Italy</i> <i>Spain</i> <i>UK</i> <i>Austria</i> <i>France</i>	<i>Italy</i> <i>Spain</i> <i>France</i> <i>UK</i> <i>Austria</i>
Finland	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>Estonia</i> <i>Sweden</i> <i>Germany</i> <i>Spain</i> <i>UK</i>	<i>Estonia</i> <i>Sweden</i> <i>Germany</i> <i>Italy</i> <i>Denmark/Greece</i>
Greece	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>Italy</i> <i>Spain</i>
Ireland	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>UK</i>
Netherlands	<i>Germany</i> <i>UK</i> <i>France</i> <i>Belgium</i> <i>Italy</i>	<i>Germany / UK</i> <i>France</i> <i>Belgium</i> <i>Spain</i>	<i>UK</i> <i>Germany</i> <i>Spain</i> <i>France</i> <i>Belgium</i>	<i>Germany</i> <i>UK</i> <i>France /Spain</i> <i>Belgium</i>	<i>Germany</i> <i>UK</i> <i>Spain</i> <i>France</i> <i>Belgium</i>
Poland	<i>N/A</i>	<i>Czech Rep.</i> <i>UK</i> <i>Germany</i> <i>Spain</i> <i>IT/CH/LV</i>	<i>Czech Rep.</i> <i>Germany</i> <i>UK</i> <i>Slovak Rep.</i> <i>Spain</i>	<i>N/A</i>	<i>N/A</i>
Slovak Republic	<i>Austria</i> <i>Czech Rep</i> <i>Spain</i> <i>Italy</i> <i>BG/DE/PL</i>	<i>Austria</i> <i>Czech Rep</i> <i>Germany</i> <i>Italy</i> <i>ES/HU/SI/UK</i>	<i>Czech Rep</i> <i>Austria</i> <i>UK</i> <i>Italy</i> <i>SI / SE</i>	<i>Czech Rep</i> <i>Austria</i> <i>Hungary &</i> <i>Italy</i> <i>UK</i>	<i>Czech Rep</i> <i>Switzerland</i> <i>Austria</i> <i>Germany</i> <i>CY/HU/UK</i>
Sweden	<i>Germany</i> <i>Denmark</i> <i>UK</i> <i>Spain</i> <i>Italy</i>	<i>Germany</i> <i>Denmark</i> <i>UK</i> <i>Italy</i> <i>Spain</i>	<i>Germany</i> <i>Denmark</i> <i>UK</i> <i>Spain</i> <i>Italy</i>	<i>Denmark</i> <i>Italy</i> <i>Germany</i> <i>UK</i> <i>Norway</i>	<i>Italy</i> <i>Spain</i> <i>Denmark</i> <i>Greece</i> <i>United Kingdom</i>

Source: Individual sources per Member State are available in the respective National Contributions.

2.1.2 Skills profile

Statistics on the skills profile of third-country nationals is available only in **France**, **Netherlands** and **Poland**. In **France** more than 30.9% of intra-EU mobile third-country nationals held a graduate/postgraduate qualification, 14.5% held an advanced diploma, and 14% held no qualification prior to moving to France. In **Netherlands**, according to statistics on work-related migration from EU and EFTA countries, in the period 2007-2011, almost 44% of third-country national migrants moved for the purpose of highly qualified work, whilst in **Poland**, in the period

2008-2009, the largest number of work permits was granted to third-country nationals who worked as managers, advisors and experts. In **Sweden** statistics on skills profile is in principle available in accordance with International Standard Classification of Occupations (ISCO) but not readily available. It is not possible to draw any overarching conclusions based on the small data set available.

2.1.3 Age

Statistics available in Member States on the age groups of third-country nationals are particularly scarce. With certain limitations, age related data are available in **France** (2008 census only), **Hungary**, **Sweden** and **Slovak Republic**. In **France**, the average age of mobile third-country nationals was 32.7 years; 32.8 for men and 32.6 for women. The statistics provided by **Hungary** concerning seasonal workers in agriculture, showed that this group typically belonged to the 35–44 year-old age group, with the 25–34 and 45–54 year-olds also significantly represented. In **Slovak Republic**, indicative figures were taken from employees registered in the Social Insurance Agency from 2006-2011, which includes third-country nationals who moved to Slovak Republic; the age structure of these employees shows that more than 60% were between the ages of 25-44.

2.1.4 Sex

France, **Netherlands** and **Slovak Republic** have available statistics on mobile third-country nationals disaggregated by sex. In **France**, from the census conducted in 2008, 48% of the 12 576 intra-EU mobile third-country nationals were women and 52% were men. 70% of employed third-country nationals registered in the Social Insurance Security in the **Slovak Republic** between 2006 and 2011 were males. In the **Netherlands**, during the period 2007-2011, 67% of the mobile third-country national migrants were male and 33% female.

2.1.5 Nationality

Eleven Member States (**Austria**, **Finland**, **France**, **Germany**, **Greece**, **Hungary**, **Ireland**, **Malta**, **Netherlands**, **Poland** and **Sweden**) were able to provide information from a range of sources on the nationality of third-country nationals arriving in their Member States from other EU Member States. Judging from the statistics available in the eleven Member States based on the top three most prevalent nationalities, mobile third-country nationals within the EU are often of Indian, Chinese, Balkan or North African origin. United States' nationals are also among the most mobile non-EU nationals. Where available, the top three most popular nationalities for mobile intra-EU third-country nationals are shown below in Table 2.3.

Table 2.3 Nationality of mobile intra-EU third-country nationals

Nationality of Intra-EU mobile third-country nationals (top three countries)			
Member State	1	2	3
Austria (2011)	Serbia	Turkey	Russian Federation
Finland (2011)	Russian Federation	Not known	Somalia
France (2008)	Morocco	United States of America	Algeria
Germany (2011)	India	Turkey	Morocco
Greece (N/I)	China	Albania	Morocco
Hungary (2011)	Ukraine	China	Serbia
Ireland (2010)	India	Nigeria	China

Malta (2011)	Serbia	China	Bosnia Herzegovina
Netherlands (2011)	India	China	United States of America
Poland (2009)	Vietnam	China	India
Sweden (2011)	China	Afghanistan	India

Source: Individual sources per Member State are available in the respective National Contributions.

2.1.6 Employment situation, occupation and industry

Statistics on the employment situation as well as the occupation and/or industry for those employed are only available in **France** and to some extent in **Finland**. A 2010 estimate by Statistics Finland on the employment situation shows that about half of intra-EU mobile third-country nationals are active either as students or employed persons, 20% are unemployed and 23% are not part of the work force (this group includes e.g. housewives). In France the main occupational categories identified were: 1) manual labourers; 2) other employees; and 3) managers and skilled workers. Most of these mobile third-country nationals went to the service sector (84%) followed by manufacturing (8%), construction (7%) and other.

2.1.7 Family status

Statistics on the family status of intra-EU mobile third-country nationals are only available in **Finland**, where 53% of those who moved there in 2011 were married, while 42% were unmarried. The remaining 5% were divorced. Data on family status is also collected in Sweden, but the statistics are not readily available.

2.2 Groups of third-country nationals who are provided for by the EU acquis

At national level, in general, the basis for statistics disaggregated to differentiate between mobile third-country nationals moving from another EU Member State and those moving to Member States for the first time are not readily available. More detailed information about all of the groups discussed below is given in Annex 2.

Information sources are more comprehensive for mobile **long-term residents** than for other categories of mobile third-country nationals provided for by the EU *acquis*. Where reported, overall, the absolute numbers of mobile long-term resident moving from, one Member State to another are small; where trends can be analysed over a 4-5 year period, for example, in **Austria**, **Sweden** and **Germany**, the trend has been for the numbers of movements to rise significantly over time, although in absolute terms these still remain small overall. For EU Blue Card holders, the very recent transposition has meant that the numbers of EU Blue Cards issued are very small, between 2 and 8 only in the 8 Member States that contributed statistics for the study; given that within the provision of Directive 2009/50/EC, mobility rights are provided only after 18 months, it is unsurprising that at this stage, Member States cannot report back on the statistics associated with such secondary movements.

Statistics relating to the mobility patterns of third-country national **researchers** are again not widely available. However, where reported, for example, in **Estonia**, **Germany**, **Hungary**, and **Poland**, the numbers are very small, and mainly in single figures on an annual basis: in **Cyprus** and **Greece**, no such movements were reported at all.

On third-country national **student** mobility, again, statistics are limited because Member States do not differentiate in their registrations between international students moving directly from an EU Member State and those arriving directly from their home country. Where statistics were available,

the numbers and proportions of mobile international students appear to be very low, for example, less than 1% in **Cyprus** between 2007/8 and 2010/11, and only 0.6-1.4% in **Hungary** during the period 2008-2011. Using statistics for student visas issued by French consulates in other Member States (predominantly in Great Britain, Spain, Italy and Germany) the number of mobile third-country national students coming to France in 2011 accounted for less than 3% of all student visas issued. In **Poland**, statistics for visa applications lodged by students from third countries in Polish consulates in other Member States (mainly in Germany and United Kingdom) accounted in for 1% of all visa applications filled by third-country nationals willing to come to Poland in 2012 for study reasons. Most applications came from citizens of India, China and Nigeria). Where trends can be identified, for example, in **Germany**, and **Netherlands**, the numbers have increased: in Germany from 30 in 2008 to 66 in 2011, and in Netherlands, from 240 to 458 during the same period. **Greece** issued no residence permits to third-country national students mobile within the EU.

Very limited statistics were available across the Member States disaggregated to the level of mobile third-country national **posted workers**; and detailed information is available in only a handful of Member States. Again, where reported, numbers are very low. In **Belgium**, from 2007-2010, the number of mobile posted third-country national workers represented only 4.7% (13 575) of the total for all EU and third-country national posted workers during the period in total) and that the numbers year on year have declined, most sharply in 2011. The number of third-country national posted workers in **Cyprus** was 46 between 2008 and 2012, representing just over 40% of the total or all posted workers including EU citizens. In **France**, 2011 figures show that there were 12,100 third-country national posted workers representing some 8% of the total for posted workers in France. In **Estonia**, from 2008-2012, 49 third-country nationals holding a residence permit in another EU Member State received a residence permit as a posted worker in Estonia; this is the largest category of mobile third-country nationals arriving in Estonia. The largest inflow was in 2011, coinciding with policy changes introducing facilitated permit requirements for this group of labour migrants.

2.3 Groups of third-country nationals who are not provided for by the EU acquis

In most Member States, statistics on the numbers of cross-border workers, seasonal workers and workers in regulated professions are not routinely differentiated from other types of migration statistics.

Only **Belgium** and **France** treat third-country national cross-border workers as a group on their own. However, in **Belgium** these figures do not differentiate between EU citizens and third-country nationals, while in **France** statistics are only available for third-country nationals residing in France, but working in another Member State (based on population census conducted in 2009). In **Hungary**, cross-border workers are surveyed only on an occasional basis, thus only a rough-and-ready estimate of commuting workers can be given, and primarily of EU citizens, in the vicinity of the border area. In Luxembourg, according to one study carried out in 2012, based on statistics provided by the General Inspectorate of Social Security, third-country national cross-border workers represent 0.7% (1,094) of the total cross-border worker population (154,200).

Statistics on **seasonal workers** are available only in **Hungary**, **Poland** and **Sweden**; however, neither country differentiates between the two categories of mobile third-country national workers. In **Latvia** and the **United Kingdom**, seasonal worker schemes for third-country nationals do not operate, so no specific statistics are available for this category of worker.

Very limited data on third-country nationals mobile within the EU and working in **regulated professions** were reported by the Member States.

Other proxy sources of statistics that can act as indicators for mobility flows for third-country nationals are described in Annex 3. However, without directly comparable statistics, it is only possible to provide descriptive examples of such flows in specific Member States, rather than a comprehensive analysis of the phenomenon across the EU.

3. THE EU ACQUIS IN RELATION TO INTRA-EU MOBILITY

This Section highlights firstly the main EU instruments that govern intra-EU mobility, highlighting key differences between the mobility rights provided in the EU *acquis* for EU citizens and third-country nationals. This is followed by a summary of other provisions within the EU *acquis* that have the possibility to impact on intra-EU mobility of third-country nationals.

In addition to the legal migration *acquis* which is in the focus of this study, holders of a long-stay visa or a residence permit from one of the 22 EU countries that are in the Schengen area, can move freely in this area for up to 3 months during a six-month period of time on the basis of their long-stay visa or residence permit and a valid travel document, and subject to the presentation of supporting documents². Bulgaria, Romania, Cyprus, Ireland and the UK are outside the borderless Schengen area; holders of a long-stay visa or a residence permit from one of these 5 countries who wish to travel to a Schengen area country, generally need to apply for a Schengen visa, and to travel to one of these countries from a Schengen area country, a separate national visa is generally required. Within the Schengen area national visas and/or residence permits can also be issued, which can also give the third-country national the right to work and, under Schengen rules, to stay in other Member States for up to 90 days in any six-month period. For stay beyond 90 days, national rules apply.

3.1 EU instruments governing intra-EU mobility for EU citizens and their family members

To understand the *acquis* in relation to intra-EU mobile third-country nationals, it is important to first understand the equivalent rights for EU citizens.

Free movement of persons within the EU is one of the four fundamental freedoms of the internal market (along with the free movement of goods, services and capital) and one of the main achievements of the European integration process. Mobility rights have economic and social benefits for the individuals concerned, and aim to reduce skills mismatches, help to address unemployment and contribute to economic growth at EU level. Originally intended only for EU workers and their families, mobility rights have gradually been extended to other groups (including through the case-law of the Court of Justice of the European Union) and now constitute one of the most important individual rights that the EU guarantees to all of its citizens and their family members regardless of their nationality. Today, mobility rights for EU citizens are understood in the context of the general principle of non-discrimination based on nationality, enshrined in the Treaty on the Functioning of the European Union (Article 18) and the Charter on Fundamental Rights of the European Union (Article 21(2)).

Directive 2004/38/EC lays down the rules for **EU citizens and their families** to exercise free movement. The rules for family members apply regardless of nationality, but the effect of the provisions are mainly for family members³ that are third-country nationals, since family members that are already EU citizens have these rights in their own capacity. Although this is an important category of potentially mobile third-country nationals, they are outside the scope of this study. These rules include

² Supporting documents include documents indicating the purpose of the journey, documents providing proof of sufficient means to cover accommodation and subsistence for the duration of the intended stay, an information enabling assessment of the applicant's intention to leave the territory of the Member State before expiry of the visa.

³ Under Directive 2004/38/EC, family members include the spouse, the registered partner, direct descendants under 21, direct ascendants of the EU citizen or the spouse, and in addition other family members who are dependent due to serious illness and duly certified long-term partners.

- a prohibition on the imposition of entry visas on EU citizens and their family members⁴;
- the right of EU citizens and their family members to reside in another Member State for a period longer than three months without having to apply for a residence permit;
- the right of EU citizens and their family members to request a document certifying their permanent residence if they have lived in the host Member State for a continuous period of five years; and
- the right of EU citizens and their family members to equal treatment with the nationals of the host Member State.

The Directive also identifies a number of limitations on the mobility rights of EU citizens, as well as areas of discretion where Member States are permitted to introduce further regulations. These include:

- For periods of residence longer than three months, the host Member State may require Union citizens to register with the relevant authorities;
- In order to be registered, the host Member State may require the presentation of a number of documents, including a valid identity card or passport (for all EU citizens); confirmation of engagement with an employer or proof of self-employment (if they are workers or self-employed persons); proof of enrolment in an accredited educational establishment (if they are students); and comprehensive sickness insurance cover as well as a declaration that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State (if they are students, or having come for any other reason other than work);
- Finally, as regards equal treatment provisions, Member States are not obliged to confer entitlement to social assistance to EU citizens during the first three months of residence, nor are they obliged, prior to acquisition of the right to permanent residence, to grant maintenance aid for studies, including vocational training, to persons other than workers, self-employed persons and their families.

3.2 EU instruments governing intra-EU mobility for third-country nationals

In contrast to citizens of the Union, who have the right to move and reside freely within the territory of the Member States (subject to the above-listed limitations), mobility rights within the EU *acquis* are only provided for certain categories of third-country nationals. Whilst third-country nationals who hold a valid residence permit or visa have the right to move freely within the Schengen area for up to three months within a six-month period, the rights in relation to taking up residence for a period exceeding three months in another Member State is covered by specific legal instruments, depending on their status, and subject to conditions in national legislation.

The legal migration Directives contain specific mobility provisions for the following categories of third-country nationals and their families:

- third-country nationals who are **long-term residents** (Directive 2003/109/EC)
- third-country national holders of an EU Blue Card in one Member (Directive 2009/50/EC) for **highly qualified employment**;
- **researchers** (Directive 2005/71/EC); and
- **students** (Directive 2004/114/EC).

⁴ Family members who are not nationals of a Member State shall only be required to have an entry visa in accordance with Regulation (EC) No 539/2001 or, where appropriate, with national law (Article 5 (2)).

A further category subject to the migration Directives is that of **posted workers**, i.e. those workers ‘posted’ by employers to perform work in the territory of a Member State other than that of their normal employment. Whilst Directive 96/71/EC makes no specific mobility provisions for posted third-country nationals, relevant case law makes clear that the host Member State may not impose administrative formalities or additional conditions on posted workers who are third-country nationals when they are lawfully employed by a service provider established in another Member State.

At the time of the Study, a proposal to modify and replace the two current Directives on Students and Researchers by a single new Directive on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing was also under negotiation⁵. The proposal, as well as aiming to improve, amongst others, provisions for intra-EU mobility for students and researchers, and to add such provisions for remunerated trainees, it aims also to additionally improve the overall protection of groups of non-EU nationals, such as au pairs, school pupils and remunerated trainees within EU legislation. The Commission plans for the new rules to take effect as of 2016.

A further proposal for a new Directive was also under negotiation in the Council and European Parliament at the time of the study, with implications for intra-EU mobility of one more category of third-country nationals: **intra-corporate transferees**.

For each of these categories of workers, the EU *acquis* specifies the conditions that must be met by third-country nationals wishing to move to an EU Member State other than the one where they first acquired an immigration status. As discussed in Section 4 below, these conditions are consistently more onerous and restricting than the above-listed conditions that EU citizens exercising their mobility rights must meet. Moreover, the mobility provisions for third-country nationals in the EU *acquis* provide Member States with more substantial areas of discretion than what Directive 2004/38/EC permits in relation to mobile EU citizens. However, these rights to intra-EU mobility were designed to give these categories of third-country nationals preferential treatment when moving from one Member State to another, compared to third-country national arriving to the EU for the first time.

3.3 Intra EU mobility for categories of third-country nationals not provided for in the EU legal migration acquis

For a number of categories of third-country nationals, including cross-border and seasonal workers, mobility rights are not covered by the current EU Directives or indeed proposals, (the proposed Seasonal Workers Directive, for example, does not include specific intra-EU mobility provisions).

Therefore, unless they are family members of EU citizens (in which case Directive 2004/38/EC applies), the rights of third-country nationals to enter and stay in a second Member State for a period of time exceeding three months, is governed by the national policies of the Member States. This concerns a large category of third-country nationals which hold national long-term resident permits, or other specific national resident permits, or national long-term visas with or without the right to work. In principle such national permits or visas are not giving its holders the right to intra-EU mobility.

It should be noted that short-term movements of third-country nationals to and/or from Member States that are not inside the Schengen area are also subject to specific requirements.

⁵ COM(2013) 151 final

3.4 Other provisions within the EU acquis that may impact on intra-EU mobility of third-country nationals

Besides the specific mobility rights provided to certain categories of third-country nationals under the EU's migration Directives described above, the EU *acquis* contains a number of additional provisions which *may* affect a migrant's decision to relocate to another Member State, and therefore may act as an incentive or disincentive to mobility. These include elements within the Directives where Member States may operate discretion, for example, access to their labour markets; access to social security rights; and the processes in place for the recognition of qualifications.

In terms of **national labour market access**, in relation to mobile third-country nationals with long-term resident status involved in an economic activity in an employed or self-employed capacity, Member States shall examine the situation of their labour market (labour market test) and give preference to Union citizens (Article 14 (2)). They are also allowed to restrict access to the labour market for the first 12 months (see Article 21(2) of Directive 2003/109) for the purposes of work. In certain cases Member States may also require third-country nationals who have long-term residence in another Member State to comply with integration conditions, in accordance with national law (Article 15(3)). For EU Blue Card holders (Directive 2009/50/EC), Member States may also still maintain limitations on the volume of admission of third-country nationals entering their territory for the purposes of highly qualified employment (Article 18).

The **social security rights of mobile third-country nationals** are regulated by Council Regulation 1231/2010. This extends EU social security coordination regulations to third-country nationals.

The migration Directives 2011/98/EU (Single Permit), 2009/50/EC (Blue Card), 2003/109/EC (Long-term Residents), 2004/114/EC (Students) and 2005/71/EC (Researchers) all provide for equal treatment in regard to the **recognition of diplomas**. This right to equal treatment makes Directive 2005/36/EU (plus later amendments on the recognition of professional qualifications) applicable to third-country nationals in two situations: when moving to a second Member State and seeking recognition for a diploma acquired outside the EU but recognised in the first Member State; and, more generally, if they have EU qualifications.

The degree to which these aspects of the EU *acquis* in practice impact on the intra-EU mobility of third-country nationals is explored in Section 5.

4. THE NATIONAL LEGISLATIVE FRAMEWORK: VISAS AND RESIDENCE PERMITS

This Section provides an overview and comparative analysis of the rules and policies adopted at national level in order to implement the EU Migration Directives and other national rules relevant to the intra-EU mobility of third-country nationals.

Specifically, it explores the national rules and procedures that apply to various specific categories of mobile third-country nationals, including those provided for within the EU Migration Directives, and other categories of workers that are not. It also examines how these national rules and procedures differ from those applied to third-country nationals seeking to enter and stay in the EU Member State for the first time, and from the national rules and procedures that apply to mobile EU citizens.

4.1 Mobility rights for third-country nationals under the EU’s Migration Directives

4.1.1 Long-term residents in another Member State

Under Directive 2003/109/EC, third-country nationals who hold long-term resident permits in one EU Member State have the right to reside for more than three months in a second Member State to exercise an economic activity, to pursue studies or for any other purpose, subject to certain conditions being met.⁶ In contrast to third-country nationals that apply to enter the EU for the first time, those holding long-term residence in another Member State can apply for a residence permit from within the territory of the second Member State and without applying for a visa. If the applicable conditions have been met, third-country national long-term residents who apply for a residence permit in a second Member State shall be issued with a renewable residence permit. When long-term residents exercise their mobility rights under Directive 2003/109/EC, their family members also have the right to accompany or join the long-term resident in the second Member State as long as the family was already constituted in the first Member State and they can present evidence they have stable and regular resources which are sufficient to maintain themselves without recourse to the social assistance of the Member State concerned.

The conditions that third-country national long-term residents must meet in order to reside in a second Member State are more onerous than the conditions that apply to EU citizens exercising their mobility rights under Directive 2004/38/EC. Firstly, third-country national long-term residents must apply for a residence permit in the second Member State, whereas, under Directive 2004/38/EC, Member States can only oblige EU citizens to register if they stay for more than 3 months: their right to residence is provided by EU law.

Secondly, Directive 2003/109/EC provides Member States with greater discretion to apply additional measures to regulate the numbers of mobile third-country nationals entitled to be granted right of residence. These areas of discretion include the possibility of applying a labour market test, where preference can be given to Union citizens, third-country nationals under Community legislation, and already legally resident third-country nationals in that Member State. Member States may also apply quotas, if this approach was in place at the time of the adoption of the Directive. Member States can also require mobile third-country national long-term residents to show evidence that they have “appropriate accommodation” in the second Member State, and to

⁶ In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, and without prejudice to Article 4 of the said Protocol, these Member States are not participating in the adoption of this Directive and are not bound by or subject to its application. (26).

comply with integration measures, as long as the third-country nationals concerned have not already been required to comply with integration conditions in the first Member State.

Member States may require the third-country national long-term residents concerned – whatever their status i.e. even if they are exercising an economic activity in an employed or self-employed capacity – to provide evidence that they have stable and regular resources to maintain themselves and their families, as well as sickness insurance. An equivalent provision in Directive 2004/38/EC, allows Member States also to require proof of “sufficient resources” and sickness insurance from mobile EU citizens who move for reasons other than taking up an economic activity.

Unsurprisingly, given the significant room for Member State discretion within the provisions of the Directive, third-country national long-term residents exercising their mobility rights for stays exceeding three months, face different rules in different Member States. However, while the national procedures are more onerous in some areas than those that apply to EU citizens, they are, to varying degrees, **more favourable** than the procedures that apply to third-country nationals applying to enter and reside in a Member State for the first time.

The majority of Member States apply a **labour market test** to third-country national long-term residents who apply for a residence permit in their Member State⁷ (see also Section 5).

Some Member States require long-term residents from another Member State to demonstrate a specific **level of resources** when they apply for a residence permit. Where applied, approaches vary from country to country: in **France**, for example, applicants must demonstrate that their “own resources” are at least at the level of the minimum wage; in **Italy**, they must demonstrate regular means of subsistence amounting to double the minimum required by law for exemption from participation in health care costs; in **Slovak Republic**, the financial resources to be proven must be at least the minimum subsistence amount per each month of stay whilst in **Poland**, the required level is based on a formula of income minus accommodation costs which must be higher than the income level granting entitlement to social assistance.

A number of Member States also require long-term residents from another Member State to demonstrate access to “**appropriate housing**” when applying for a residence permit (e.g. **France**, **Poland** (although this will be abolished under the new Act on Foreigners that will enter into force in 2014) and **Slovak Republic**).

At least four Member States impose **integration requirements** on third-country nationals with long-term resident status in another Member State that go beyond attendance at language courses (**Austria**, **Estonia**, **Germany** and **Latvia**). In **Poland**⁸, from 2014 when the new Act on Foreigners will enter into force, integration measures will be introduced where third-country nationals will be required to demonstrate a good command of Polish language.

Subject to meeting the applicable conditions, long-term residents exercising mobility in Member States that have adopted Directive 2003/109/EC can obtain a residence title following simplified procedures as compared to the procedures that would apply to third-country nationals arriving to the EU for the first time, and may apply from within the territory of the second Member State without holding a visa if an application is made within three months of entering the host country. In illustration, in **Germany**, third-country nationals who hold a long-term residence permit in another Member State and who demonstrate adequate means of subsistence and health insurance are entitled

⁷ According to the Commission’s conformity assessment exercise in respect of Directive 2003/109/EC, conducted in 2011, only nine Member States have chosen to exempt long-term residents from another Member States from the labour market test (Belgium, Cyprus, Hungary, Latvia, Poland, Portugal and Sweden). Report on the application of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents (COM(2011) 585 final) 28th September 2011.

⁸ Report on the application of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents (COM(2011) 585 final) 28th September 2011.

to a German long-term residence permit without the need for further verification that the conditions of recognising the long-term resident status were met in the first Member State. Indeed, **Germany** has transposed the EU acquis into national legislation, although third-country nationals may also immigrate under the general provisions which are outside the EU acquis and apply also for immigration from a third country. The national rules enable third-country national holders of a residence permit from another Schengen state to obtain a residence permit in Germany directly, without going through the visa process, on the basis of the decision taken in the first Member State.

In **Netherlands**, third-country nationals with long-term residence status can freely enter and apply for a residence permit, which means exemption from the requirement to hold a national Regular Provisional Residence Permit, although they must still demonstrate their residence status in the previous Member State. In **Belgium**, a facilitated process is in place which allows applications for residence to proceed immediately on arrival in Belgium, even if the required documentation is not available at the time of the application. In **Czech Republic, Cyprus, Hungary, Latvia, Poland** and **Sweden**, third-country nationals holding long-term resident permits in another Member State are exempted from the requirement to obtain a work permit for longer-term stays.

In some Member States, the type of residence permit that is issued to third-country nationals who hold a long-term resident permit in another Member State also offers the person concerned more protection than the residence permit that is issued to third-country nationals who apply to enter and reside in the host-country from a third-country. In **Cyprus**, the residence permit for holders of the long-term status in another Member State is an immigration permit, which has no time restriction, as opposed to a temporary residence permit which has a limited validity. In **Slovak Republic**, the specific permit “temporary residence of a third-country national who has the status of a long-term resident in another Member State” whilst limited, lasts for five years, and can be renewed, as long as the application for renewal is filed at the police department on the last day of the original permit validity at the latest. However, in **Poland**, an EU long-term resident, whose residence status was granted by another EU Member State, may only apply for a national visa or a specifically dedicated residence permit for a limited period of time.

The simplified procedures as compared to the procedures that apply to third-country nationals who apply for residence in the EU for the first time do not exist in **Ireland** and **United Kingdom**, Member States that are not bound by Directive 2003/109/EC. In **Ireland**, no concessions apply for third-country national long-term residents in another EU Member State, although there is some room for discretion, and when assessing a “marginal” application for a visa or residence permit, on a case-by-case basis, residence in a previous Member States *may* support the application. In **United Kingdom**, the points-based system applies to residence applications, irrespective of the long-term residence status of the third-country national in another EU Member State.

4.1.2 *Highly Qualified Workers: EU Blue Card holders*

Directive 2009/50/EC sets out the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment (i.e. EU Blue Card holders), and of their family members, for stays of more than three months in the territory of an EU Member State. **Denmark, Ireland** and **United Kingdom** are not bound by the Directive.

For new applicants for the EU Blue Card, conditions of admission are set out under Chapter II, Article 5, and include the need to satisfy national requirements in relation to evidence of highly qualified employment for at least one year, appropriate qualifications, valid travel documents, an application for a visa and / or valid residence permit, sickness insurance, and that the applicant does not pose a threat to public policy, public security or public health. Conditions for mobility are set out under Chapter V, Article 18 of the Directive (Residence in other Member States). Under its terms, third-country national Blue Card holders in one Member State may move to another Member State after 18 months of legal residence, but must apply for another EU Blue Card either while still residing in the first Member State or within one month of arrival in the second Member State, in

accordance with the procedural safeguards set out in Article 11. Conditions for the mobility of family members are set out under Article 19, which provides that family members shall be allowed to accompany the EU Blue Card holder, where mobility has been exercised in accordance with Article 18.

The conditions that mobile third-country national EU Blue Card holders must meet are again more onerous than the conditions that apply to mobile EU citizens under Directive 2004/38/EC, when they are moving to a second Member State for the purpose of highly qualified work. Mobility provisions are only available to third-country national Blue Card holders once they have legally resided in a first Member State for a minimum period of eighteen months, and in practical terms, all of the conditions set out in Article 5, which are determined in national legislation, must be reassessed and met in the second Member State. The mobility of EU Blue Card holders is also restricted to employment with one specific employer.

When compared with third-country nationals applying for an EU Blue Card for the first time, EU Blue Card holders from a first Member State exercising their mobility do enjoy a number of facilitated processes. For example, under the terms of the Directive, an application for a Blue Card in a second Member State without holding a visa can be made from within the territory of the second Member State (if made within one month), and where a family has been constituted in the first Member State, Article 19 provides that the family members shall be authorised to accompany or join the EU Blue Card holder in the second Member State. A further advantage is that EU Blue Card holders exercising mobility under Article 18 are allowed to accumulate periods of residence in different Member States, which count towards fulfilment of the requirements for long-term resident status, subject to conditions (Article 16).

Given that the conditions for admission under Article 5 are governed by the national laws in place, there is scope for variation in the way that admission rules are applied in practice across the Member States, and these discretionary elements have resulted in some variable conditions. For example, EU Blue Card holders may be subject to labour market testing when entering a second Member State e.g. in **Austria, Cyprus, Lithuania and Poland** (however many exceptions apply), and indeed, in **Cyprus**, due to the economic downturn, no EU Blue Cards have been issued at all. Whilst the Directive (Article 5 (3)) provides that gross annual salaries for EU Blue Card holders shall be at least 1.5 times the average gross annual salary in the Member State concerned, in practice, this can create significant variances between Member States. For example, in **Germany**, the rate applied equates to two-thirds of the annual earnings ceiling of the state earnings-related pension scheme, which amounts to some €44 800 per year (2012) and €34 944 in sectors with labour shortages whereas in **Austria and Poland**, 1.5 times average gross annual salary is applied, and equates to some €52 517 and approx. €15 300 per year respectively (2012).

There are also variations across Member States in whether the national rules for admission are applied equally to first-time EU Blue Card applicants and EU Blue Card holders seeking to apply for an EU Blue Card in a second Member State. Beyond the advantage conferred on EU Blue Card holders in entering a second Member State and applying for an EU Blue Card from within the territory, in a number of Member States, the conditions of admission are applied equally to third-country nationals in both of these circumstances (e.g. in **Austria, Belgium, France, Greece, Poland, Slovak Republic**). In others, where an EU Blue Card has been held in a first Member State for a period of at least 18 months, admission *may* be facilitated, for example, in **Lithuania**, where there is no requirement for mobile EU Blue Card holders to obtain a work permit, and in **Netherlands**, where an exemption is granted from the requirement to hold a Regular Provisional Residence Permit. In **Germany**, the residence titles that enable intra-EU mobility (secondary movement to Germany) now also include the EU Blue Card (section 19a, Residence Act). In **Italy**, EU Blue Card holders may obtain the issuance of an EC long-term residence permit.

On a practical level, in **Austria and Finland**, the “EU Blue Card” is not considered to be an attractive alternative to the national immigration regime for (highly) qualified third-country

nationals. In **Austria**, the requirements for obtaining it are oftentimes difficult to fulfil, as compared to the national “Red-White-Red Card” which grants more favourable conditions once obtained⁹. Family members (spouses, registered partners and minor children) of EU Blue Card holders may also receive a “Red-White-Red Card plus” where they were already living as family members of the EU Blue Card holder in the first Member State, subject to conditions (Art. 50a Settlement and Residence Act). In **Finland**, a residence permit for a person working as an ‘expert’ can be applied for within the country and the criteria for issuing the permit are not as strict as the criteria for an EU Blue Card, particularly with regard to salary.¹⁰ In **Sweden**, national legislation providing for the mobility of EU Blue Card holders in another Member States to move to Sweden and apply for an EU Blue Card from within the territory of Sweden was not in force at the time of the Study.

For EU Blue Card holders in another Member State applying to work in **Ireland** and **United Kingdom**, where the Directive is not applied, as would be expected, the conditions of admission are the same as for any third-country national applying for highly qualified employment in these Member States for the first time.

4.1.3 Researchers

Mobility provisions for researchers from third countries are governed by Article 13 of Directive 2005/71/EC¹¹. Provided the researcher stays only up to three months in the second Member State, research may be carried out on the basis of the hosting agreement concluded in the first Member State. This short-term mobility is the main advantage enjoyed by third-country nationals who are researchers in one Member State. If the duration of stay exceeds three months, then the Member State may require a new hosting agreement, subject to the fulfilment of the same conditions that third-country nationals face if they were to apply from a third-country in order to be admitted as a researcher in an EU Member State. The Directive confers two additional advantages on mobile third-country national researchers over third-country nationals who apply to be admitted as a researcher from outside of the EU. Firstly, in countries where a visa or residence permit is required for exercising mobility, it should be possible for the mobile third-country national researcher to apply for the visa or residence permit from within the territory of the Member State. Secondly, the visa or residence permit should be granted in a timely manner within a period that does not hamper the pursuit of the research.

The mobility rights enjoyed by mobile third-country national researchers under Directive 2005/71/EC are currently much less favourable than those which apply to EU citizens. There are no specific rules in place governing the mobility of researchers who are EU citizens and hence the ordinary mobility rules for EU citizens apply: they cannot be required to apply for a visa nor a residence permit in order to work as a researcher in another Member State; the only requirement they may face is to register with the authorities if they decide to stay for a period exceeding three months. Another important difference is the scope of employment open to researchers exercising mobility in the EU: when these are EU citizens, the scope remains wide, whereas for third-country national researchers, any concessions applied are limited and specific to a research post.

The pattern of national rules and procedures in relation to visa and residence permits for mobile third-country national researchers in most cases reflect the provisions of the Directive, with the exception of the **United Kingdom** and **Denmark**, which do not take part in the Directive. In **Finland**, the entry procedures established by the implementation of the Researcher Directive are not applied at all as there are alternatives provided for by the Finnish Aliens Act that are considered to be simpler and more favourable for mobile third-country national researcher.

⁹ Schuhmacher/Peyrl/Neugschwendtner: 92 et seq.

¹⁰ Finnish Aliens Act, Section 49, Subsection 1, Paragraph 5.

¹¹ Ireland takes part in Directive 2005/71/EC; Denmark and United Kingdom do not.

In relation to stay of less than three months, mobile third-country nationals may in general enter and reside in a second Member States, although restrictions may apply: in relation to applications from third-country nationals arriving from Bulgaria and Romania (for example, in **Latvia** and **France**) but also in relation to third-country nationals arriving from Ireland and United Kingdom (for example, in **Latvia**). Entry and stay are subject to the conditions applied, which include in most Member States, a hosting agreement or contract signed in the first Member State, proof of sufficient funds, satisfaction that the person does not pose a threat to public order, public security or public health etc.

The conditions that apply for stay exceeding three months include the approval of a new hosting agreement or contract (e.g. **Cyprus, Czech Republic, Germany, Estonia, France, Ireland**); as well as in some cases, a medical and criminal record checks (**Czech Republic**); proof of sufficient income and health insurance (**Estonia**); minimum qualification level (**France**). Specifically, in **Germany**, the hosting body must agree to bear any costs accruing to the state as a result of unlawful residence of the researcher, or in connection with any possible return costs, for up to six months after the end of the validity of the admission agreement. Applications for stay exceeding three months can in general be lodged by the researcher from within the hosting country, although this is not the case in **Estonia**, where the visa or residence permit application must be submitted to the Estonian foreign representation abroad.

In most Member States, the national legislation makes it clear that researchers exercising their mobility rights under Article 13 of Directive 2005/71/EC are not required to additionally obtain a work permit (e.g. **Czech Republic, Netherlands, Hungary, Italy, Poland, Sweden**). However, in several Member States (for example, **Belgium, Cyprus, Estonia, Ireland, and Latvia**) there is no explicit stipulation that researchers could work on their territory without an additional work permit if they have been issued a permit in another Member State. As noted in the Commission's conformity assessment of Directive 2005/71/EC, this could hamper intra-EU mobility of third-country national researchers by creating legal uncertainty.¹²

In several Member States (e.g. **Hungary, Lithuania**) researchers enjoy an accelerated application process. In **Germany**, third-country nationals who hold a residence title of another EU Member State for the purpose of conducting research and who intend to carry out part of the research project concerned in Germany have a legal entitlement to a national residence permit. This is also the case for **Poland** under condition where the hosting agreement concluded in the first Member State states that part of the research will be conducted in Poland.

However, in many cases, for stays exceeding three months, previous residence in another Member State appears to have almost no effect on the national rules and procedures – the third-country national must comply with the general terms of stay. This is the case in **Austria, Belgium, Cyprus, Estonia, France, Ireland, Lithuania, Sweden, Slovak Republic**). In **Austria**, there is no special provision for mobile third-country national researchers, but a special residence permit for all researchers exists ("Residence Permit – researcher") which is issued for a period of two years for the purpose of research in an Austrian institute. After the two years have elapsed, the third-country national may obtain a "Red-White-Red Card plus", providing unlimited access to the labour market. In **United Kingdom**, researchers from third-countries are accommodated within the points-based system, depending on their circumstances, and no concessions for previous residence in another EU Member State.

Overall, mobile third-country national researchers benefit from facilitated entry and stay in a second Member State if the period of mobility does not exceed three months. However, for periods of stay exceeding three months, treatment is variable, with some Member States granting more favourable

¹² Report on the application of Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research. COM(2011) 901 final, 20 December 2011, Brussels.

treatment than others for entry and residence for third-country national researchers coming to the EU for the first time, although in most (but not all) cases, the application can be made from within the territory of the second Member State.

Under the new proposals¹³ for modification to the conditions for researchers under Directive 2005/71/EC, the period for which movement to a second Member State on the basis of the hosting agreement concluded in the first Member State may be extended from 3 to 6 months, to facilitate mobility within the EU, of particular importance for researchers enrolled in joint programmes. It is also proposed that family members of researchers will also be granted enhanced mobility rights.

4.1.4 Students¹⁴

The conditions for entry and stay for students from third countries coming to the EU for the purpose of study for periods exceeding three months are set out in Directive 2004/114/EC. The conditions for mobility, i.e. for pursuing part of their studies or complementing the studies carried out in one Member State with related courses in another Member State are governed by Article 8. The provisions, however, are subject to strict limitations, and to the conditions set out in Article 6 (presenting a valid travel document, parental authorisation if a minor, sickness insurance, not representing a threat to public policy, security or health, proof of payment of an application fee) and Article 7 (acceptance by an institute of higher education, minimum resources to cover study and return, sufficient language training and evidence that study fees have been paid).

Where these conditions are satisfied (Article 8, 1(a)), and where proof is provided that the course in the second Member State is genuinely complementary (1(b)), and, where the course in the second Member State is not obligatory, that the student is taking part in a Community or bilateral exchange programme or has studied in the first Member State for less than two years, then the student *shall* be admitted by the second Member State within a period that does not hamper the pursuit of the relevant studies, whilst leaving the competent authorities sufficient time to process the application. The rules in place are considerably more stringent than those that apply to EU citizens, who, in most Member States, fall under the general rules for citizens and may enter and reside for the purpose of study without the need for a visa or a residence permit.

Denmark, Ireland and United Kingdom do not participate in the Directive; all other Member States have transposed it. Reported differences where more favourable conditions apply, include in **Belgium**, where Article 8 was not transposed, since national rules in place already granted mobile third-country national students the right to residence, subject to conditions, although the requirement of the authorities to process admission procedures within a timeframe that does not hamper the pursuit of studies was not transposed. In **Italy**, under certain conditions, stays longer than three months may be possible for mobile third-country national students without a visa, in order to continue studies already started in a first Member State, for example, as a result of participation in EU exchange programs or bilateral programs with the country of origin, or where the student has already been authorized to stay in another EU Member State for study reasons for at least two years.

In **Germany** and **Poland** under certain conditions, third-country national students who hold a residence title from another Member State for the purpose of study have a legal entitlement to the issuance of a residence permit in order to carry out part of their studies in Germany. Additionally, Polish provisions allow more favourable conditions than foreseen by Council Directive 2004/114/EC in that mobile students can continue and complete their full-time studies or doctoral studies in Poland with no restriction with regard to participation in EU or bilateral exchange programs or the length of stay in the first Member State.

¹³ COM(2013) 151 final

¹⁴ The statistics already compiled for the study Immigration of International Students to the EU may be used here.

In **Czech Republic**, for stays exceeding three months, an application must be filed at an embassy of the Czech Republic abroad, with the exception of some countries where this condition is waived, posing an additional burden to some students.

The EMN Study ‘Immigration of International Students to the EU’¹⁵ found that in terms of the documentary requirements for visa and a residence permits, Member States did not in general differentiate between students coming directly from a third-country for the purpose of study and those coming from another EU Member States for stays exceeding three months. Overall, the same immigration rules were found to apply. This finding was also confirmed through this Study, and where information was available, (**Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, France, Ireland, Latvia, Lithuania, Malta, Netherlands, Poland, Sweden, Slovak Republic**), the national rules in place for third-country national students applying to study in a second Member State for periods of over three months were found to be the same. In **Cyprus**, while the procedures that apply are reported as the same in all cases of third-country national students applying to study in Cyprus, in practice, an application coming from another Member State *may be* examined more favourably due to the fact that it has already been approved, and the authenticity of supporting documents already established.

Under the new proposal¹⁶ for modification to the conditions for students under Directive 2004/114/EC, intra-EU mobility for students (and researchers, see also Section 4.1.3) in particular for those under the Erasmus Mundus/Marie Curie programmes will be facilitated and simplified.

4.1.5 Posted workers¹⁷

Directive 96/71/EC recognises the EU internal market as a dynamic environment for the transnational provision of services, which may require the need to ‘post’ employees to perform work in the territory of a Member State other than that of their normal employment. As set out in Section 2, whilst no specific provisions for posted third-country nationals are included in the Directive, relevant case law makes clear that the host Member State may not impose administrative formalities or additional conditions on posted workers who are third-country nationals when they are lawfully employed by a service provider established in another Member State (e.g. *judgments of 9.8.1994, Vander Elst, case C-43/93, of 21.10.2004, Commission v Luxembourg, case C-445/03, and of 19.1.2006, Commission v Germany, case C-224/04. Idem judgment of 21.9.2006, Commission v Austria, case C-168/04*).

In many Member States, third-country-national workers posted from one Member State to another need to meet fewer conditions as compared to third-country nationals who are posted to a Member State from a third-country.

- Third-country national workers posted from another Member State are often exempt from the requirement to have an entry visa. For example, in **France** and **Latvia**, a third-country national worker posted from another Member State within the Schengen Area does not need an entry visa, although in **France** in all cases, a residence permit for "employee of a service provider based in the EU" is issued, which is based on the satisfaction of national conditions. In **Latvia** third-country national posted workers are able to enter without a visa, although exceptions apply, for example, those coming from Bulgaria, Romania, Cyprus, Ireland and United Kingdom, and in some cases, standard procedures may also apply. Once in the

¹⁵ http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do;jsessionid=33D7752C2A14A9182DC8C624EF3CC166?entryTitle=06_Immigration%20of%20INTERNATIONAL%20STUDENTS%20to%20EU%20Member%20States

¹⁶ COM(2013) 151 final

¹⁷ Council Directive 96/71/EC

Member State, stay can be extended beyond three months through the issuance of a national long-term visa, following a standard procedure for third-country nationals.

- Third-country national workers posted from another Member State are also often exempt from the requirement to have a work permit. In **Ireland**, for instance, posted third-country nationals may apply for a “Van der Elst”¹⁸ visa, where minimum formalities are applied and the posted worker is exempted from requiring a work permit. In **Austria, Belgium, Czech Republic**¹⁹, **France, Germany, Ireland**²⁰, **Italy, Latvia, Lithuania**²¹, **Malta, Netherlands, Poland**²², **Sweden**²³, **United Kingdom** posted third-country nationals also do not need to apply for a work permit, subject to the fulfilment of certain conditions. These include: the posted third-country national worker must meet the national wage and working conditions as well as social insurance provisions (**Austria**); must have a lawful right to residence of over three months in the first Member State and must be legally authorised to work there and hold a regular employment contract (**Belgium, France, United Kingdom**); will undertake the same type of work as in the Member state of posting (**France**); will return to the country or residence (or origin) at the end of the period of posted employment (**Belgium and United Kingdom**) and where the employer is located in a country which is subject to the free movement of services and does not concern temporary agency work (**Netherlands**).

However, in some Member States, there appear to be few differences in the national rules and procedures for visa and residence requirements for mobile third-country national posted workers and for those who have entered the Member State directly from a third-country (**Cyprus, Estonia, Finland, Hungary, Poland, Malta, Netherlands, Slovak Republic**). In Greece and the United Kingdom, although some differences exist, these are not that significant. In the **United Kingdom**, for example, mobile third-country national posted workers are not subject to an economic needs test (although they are subject to labour market testing under the points-based system); and in **Greece**, entry for third-country national posted workers is not subject to quotas.

Moreover, in the majority of cases, the mobility rights of posted third-country national workers are still weaker than the mobility rights of posted workers who are EU citizens, who are never required to apply for a visa, residence permit nor a work permit. In other Member States, for example, in **Lithuania**, third-country national posted workers may also be subject to longer time limits for authorisation than posted workers who are EU citizens. In **Slovak Republic**, third-country national posted workers need to pass a number of administrative hurdles that EU citizens are exempt from, including the need to: prove their integrity, demonstrate access to accommodation, show they do not suffer from a disease that could threaten public health, and are required to pay an administrative fee. The exceptions are the **Czech Republic** and **Cyprus**, where the mobility rights of EU citizens and third-country national workers who have been posted from one Member State to another are the same.

4.2 Third-country nationals who are not provided for by the EU acquis

All other categories of third-country nationals, including holders of temporary residence permits are not covered by EU Directives or proposals. These include cross-border workers, seasonal workers,

¹⁸ Named after the Vander Elst case (9 August, 1994), which found that a host Member State may not impose administrative formalities or additional conditions on posted workers who are third-country nationals, when they are lawfully employed by a service provider established in another Member State.

¹⁹ If the posting is for less than three months.

²⁰ If the posting is for less than three months

²¹ If the posting is for less than three months.

²² However, special exemptions from the need for a work permit in Poland also apply to some workers delegated to work in Poland from a company based in a non-EU Member State.

²³ However, special exemptions from the need for a work permit in Sweden also apply to some posted workers irrespective of their previous residence status.

and workers in regulated professions, such as doctors, nurses, architects, etc. In relation to third-country nationals who are not family members of EU citizens, their right to enter and stay in a second Member State for more than three months is governed by the national policies and legislation of individual Member States, although short-term movements of third-country nationals to and/or from Member States that are not inside the Schengen area may also be subject to specific requirements.

This section of the scoping study examines the different national rules in place which govern the mobility of these groups of third-country nationals and their families. As indicated below, these groups of third-country nationals are often required to meet the same requirements in relation to residence permits and visas as would third-country nationals applying to enter the Member State for the first time, although some Member States present exceptions and allow facilitated forms of mobility. However, even in cases where facilitated mobility is allowed, the third-country nationals concerned still need to meet conditions that are more onerous than the conditions that apply to EU citizens, who only need to inform the authorities of their place of work upon arrival in the second Member State.

4.2.1 *Cross-border workers*

The majority of Member States taking part in the study do not apply specific national rules to third-country national workers who are resident in another Member State but cross the border to work in their Member State. However, one third of Member States do recognise this group of third-country nationals and have set in place national rules or practices (**Belgium, France, Germany, Italy, Luxembourg and Netherlands**). In general, the approach is that the cross-border worker must meet national requirements in relation to their mobility and employment; however, residency requirements can be satisfied on the basis of the person's residence status in the other Member State.

For example, in **Belgium** and **France**, in practice, the national rules require that a third-country national may reside in another Member State but work in these countries on the basis of the necessary entry visa, a valid residence permit (from the Member State of residence), and a valid work permit (in the employing Member State). Third-country national cross-border workers in **Ireland** are also required to hold an Irish visa and the procedure is broadly the same as for a third-country national who migrates to Ireland from a third-country for the first time. However, again, there is no need to hold an Irish residence permit. In **Luxembourg**, the procedure is also broadly the same as for an application from a third-country national to work in the Member State for the first time. In **Netherlands**, whilst a work permit is required, there is no need for the third-country national to obtain either an entry visa or a residence permit in Netherlands (subject to return at least once a week to the Member State of residence). Since 2012, this rule has also applied to a third-country national who is a family member of an EU citizen who is a resident of another Member State, and who wishes to work in Netherlands.

In some Member States, **special arrangements** apply for some categories of cross-border workers. For example, in **Germany**, a permit for such workers has been established, but with the aim of enabling German and EU citizens who live together with a third-country national who is employed in Germany as their spouse or partner in a civil partnership to exercise their rights of mobility without their spouse or partner having to give up their employment in Germany in this connection. The permit for frontier workers thus enables third-country nationals who have relocated their place of residence to another EU member state to join other members of their family to continue their employment in Germany.

4.2.2 *Seasonal workers*

For seasonal workers, in general, and in most cases, the rules and procedures in place for visas and residence permits for mobile third-country national seasonal worker are the same as for seasonal

workers coming to the EU for the first time.

Of the Member States included in the study, **Austria**, **Finland**, **Italy** and **Sweden** present exceptions. Mobile third-country nationals, who are not subject to visa requirements, legally residing in another Member State, require only a clearance certificate to enter **Austria**, after which the Public Employment Service may grant an employment permit, which entitles the worker to reside in Austria for the duration of its validity. A third-country national seasonal worker can enter **Finland** from a Member State without a national visa – the right of residence in the first Member State suffices.²⁴ This also applies in **Sweden** for stays up to three months. In **Italy**, there are no special rules in place for mobile third-country national seasonal workers; however, a special provision applies in the case of third-country nationals who hold a valid residence permit issued by an EU Member State. In such cases, the seasonal workers must only report their presence in the country, and obtain a receipt within a given timeframe, or infringement penalties apply. In **Germany**, in principle the national provisions for seasonal workers do not preclude intra-EU mobility once a seasonal worker is in Germany; however, this is subject to the national provisions in the second Member State and the labour authorities in the country of origin.

A further exception includes the case of **Belgium** (Flanders) where a local facility has been introduced for seasonal workers who hold a long-term residents status in a second Member State to address specific skills shortages for seasonal workers in Flanders. Under this arrangement, a third-country national who has acquired the status of long-term resident in another Member States, may benefit from a facilitated process, which allows exemption from labour market testing and an accelerated procedure for granting work authorization from an employer.

4.2.3 *Workers in regulated professions*

A profession is said to be regulated when access and practice is subject to the possession of a specific professional qualification. Such professionals who wish to practice their profession or provide services in a second Member State, must obtain recognition of their qualifications within that Member State; an EU regulated professions database has been established which contains lists of the regulated professions covered by Directive 2005/36/EC in each of the Member States.

Of the Member States taking part in the study, **none** have applied specific national rules to visa and residence processes for third-country nationals who are resident in one Member State and who apply to work in a regulated profession in their Member State.

Where stated, mobile third-country national professionals follow the same procedure as if they were coming directly from a non-EU country. Applicants must meet national requirements to verify that appropriate qualifications are in place for the respective profession and may be subject to labour market tests (e.g. **Germany**, **Poland**, **United Kingdom**). In **Luxembourg**, the rules on regulated professions specify that any diploma obtained in a third-country and recognised in another Member State can also be accepted in Luxembourg where the holder can prove three years of professional experience in a relevant field in the Member State that first granted the equivalence.

4.2.4 *Other categories of migrant workers*

Other categories of mobile third-country nationals where provisions for access to a visa and residence permit are made within their national rules by Member States include highly qualified workers (**Austria**, **Netherlands**), certain categories of Rhine boatmen (**Belgium**); workers with skills in recognised shortage areas (**Czech Republic**); specialised workers relocating to the head office or branch of their employer based in the Member State (**Italy**); and entrepreneurs (**Slovak**

²⁴ Aliens have the right to gainful employment without a residence permit if they arrive in the country to pick or harvest berries, fruit, specialty crops, root vegetables or other vegetables or to work on a fur farm for a maximum of three months (Finnish Aliens Act, Section 81, Subsection 1, Paragraph 4).

Republic).

The provisions that Member States have put in place for these categories of workers aim to facilitate entry and stay, however, with the exception of the Rhine boatmen, none of the categories of mobile third-country national workers have parity with EU citizens. In the **Slovak Republic**, for example, entrepreneurs arriving from a first Member State must still meet the conditions applied to third-country nationals entering from outside the EU.

A further category of highly intra-EU mobile third-country national workers is that of **road haulage workers**; the provisions of Article 5 of Regulation (EC) No 1072/2009 concerns the conditions for certification of drivers other than EU citizens and long-term resident within the meaning of Directive 2003/109/EC). This study however does not further analyse this group.

5. LIMITATIONS TO INTRA-EU MOBILITY FOR THIRD-COUNTRY NATIONALS

This Section of the Report identifies situations where measures that can be applied legally by Member States in their national legislation and policies under the terms of the migration Directives aimed at facilitating the mobility of third-country nationals, but that may have the potential to limit the mobility of third-country nationals, and explores the reasons why these have been considered necessary. These can be considered as ‘indirect’ limitations as they are distinguished from the conditions for applying for a visa and/or residence permit reviewed in Section 4 above, and include measures that may also affect the decision of a third-country national resident in one Member State to settle in a second Member State, even if all necessary (formal and administrative) conditions for acquiring a visa and/or residence permit have been met. Table 5.1 below provides an overview of the ‘limiting’ measures identified by Member States.

Table 5.1 Limitations to intra-EU mobility of third-country nationals

Limitations to Intra-EU mobility	Member States imposing the limitation
<i>Mobility limitations</i>	
Annual entry quotas ²⁵	Austria, Estonia
<i>Limitations to labour market access</i>	
Labour market testing	Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, France, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovak Republic and United Kingdom
Labour market quotas ²⁶	Greece, Hungary and Italy
Granting a work permit dependent on a particular employer	Estonia, Latvia, Lithuania, Poland and Sweden
Granting work permit only for particular professions	Luxembourg and Spain
Granting a work permit only for a particular geographical area	Spain ²⁷
<i>Limitations related to remuneration</i>	
Higher minimum wages for third-country nationals	Estonia, Latvia and Malta
Minimum wage requirements for long-term residents	Greece and Malta
Minimum wage requirements for EU Blue Card holders	All pursuant to Article 5 (3) of the EU Blue Card Directive
Minimum wage requirements for researchers	Greece
<i>Limitations for entrepreneurs and self-employed persons</i>	
Requirements for the possession of minimum level of start-up capital	Belgium, Germany, France, Ireland, Italy, Lithuania and Slovak Republic
Proof of viability and profitability of the project or business activity	Belgium, Estonia, Finland, France, Latvia, Malta and Poland

²⁵ In AT immigration of long-term residents from other Member States is governed by a quota.

²⁶ Annual entry quotas are imposed to third-country nationals for the purposes of employment.

²⁷ EMN Ad-Hoc Query No. 2013.456 on the ‘Member States’ approach towards the issue of several employers in the context of single permit’ launched by PL EMN NCP on 22nd January 2013

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Requirement for the business activity to be in line with the national economic interest	Ireland, Germany, Luxembourg, Netherlands, Poland and Slovak Republic
Requirement to meet job creation targets	Malta, Poland
Requirements for sufficient income for subsistence and cost of living for the entrepreneur	Finland, Ireland, Poland, Sweden and United Kingdom
Requirements for previous experience in the sector or the business activity	Sweden
Language proficiency requirements	Sweden ²⁸
Requirements for demonstrating the taxable income of the business activity when applying for a renewal of temporary residence permit	Slovak Republic
<i>Limitations related to the recognition of degrees and diplomas</i>	
Duration of the procedure	Belgium, Greece, Ireland and France
Cost of the procedure	Hungary
Burdensome requirements for the validation of documents	Poland
<i>Limitations related to access to social security</i>	
Restricted access to non-contributory entitlements	Ireland ²⁹ , Latvia, Lithuania, Poland
<i>Limitations related to family reunification provisions</i>	
Limitations on the permission to work for family members	France ³⁰ , Lithuania
<i>Overall lower salary levels</i>	Poland
<i>Limited availability of integration programmes</i>	Italy, Lithuania and Poland
<i>Cost of application for a residence permit</i>	Italy, Poland (with regard to students)

The section below outlines in more detail the main limitations identified. Please note that the listings of Member States are illustrative and not exhaustive.

²⁸ Swedish and/or English.

²⁹ NB the ‘habitual residence test’ applies to all.

³⁰ This limitation concerns family members of a third-country national holding the status of a long-term resident, during the first year of their stay in France.

5.1 Access to the labour market

5.1.1 Labour market testing

In all Member States included in this Report, preference of labour market access is given to EU nationals as well as EEA/EFTA³¹ nationals, pursuant to the principle of free movement of workers. Third-country nationals, whether they have arrived directly from a third-country or from another Member State for the purpose of work, may be subject to a process of labour market testing or to labour market quotas.

The purpose of a labour market assessment is to take into consideration the availability of qualified workers among national and EU/EFTA citizens and to act as a tool in managing legal migration to meet identified labour market demand. In most Member States, labour market testing remains in place for those categories of mobile third-country nationals whose mobility is provided for under the EU *acquis* (see also Section 4). Therefore, where the supply of migrant labour exceeds an identified demand for labour in the Member States, then labour market testing may also act as a limiting factor in relation to intra-EU mobility of third-country nationals.

In relation to the application of Directive 2009/50/EC (EU Blue Card), in **Greece**, for example, prior to granting labour market access to EU Blue Card holders, consideration is given to the national economy, field competences and specialties of the applicant as well as the unemployment rate of the sector. In the **Slovak Republic**, EU Blue Card holders are subject to issuance of a “*confirmation of the possibility to fill a vacancy corresponding to highly qualified employment*” which is based on examination of whether the vacancy of the highly qualified employment can be filled with a job applicant from the Slovak Republic or from other EU/EEA Member State or Switzerland.

There are some commonalities as well as variances among Member States in the **design of labour market tests** and in the conditions for granting authorisation to employment. There are also variances in how the burden of administration is managed between, for example, public authorities and employers. In most Member States, labour market testing is based on a combination of the following sets of conditions:

- Evidence that the position cannot be filled by EU/EEA/EFTA nationals (**Austria, Belgium, Cyprus, Estonia, Finland, France, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Poland, Sweden, Slovak Republic, United Kingdom**);
- That a match exists between the third-country national’s qualification and experience, and the characteristics of the job (**Belgium, France, Hungary, Malta**);
- Evidence that the employment of the third-country nationals corresponds with the needs of the labour market (**France, Lithuania and Malta**);
- Conditions related to the employer (**Ireland and Malta**).

In **Austria, Belgium, Cyprus, Estonia, Finland, France, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, Poland, Slovak Republic, United Kingdom**, a public employment authority has to verify that there are no suitable nationals of EU/EEA/EFTA Member States that could fill in the position. The employer is responsible for lodging a formal request to the authority to confirm the availability of the position and for demonstrating efforts to fill the position with national and EU/EEA workforce (**Austria, Belgium, Estonia, Hungary, Netherlands, Poland, United Kingdom**), for example, by reviewing lists of people registered in labour offices as unemployed, by

³¹ Nationals of the Member States of the European Economic Area (EEA) have the same right of freedom of movement for workers inside the EEA. In regard to EFTA, the European Union and Switzerland have concluded a bilateral agreement with the same meaning.

providing evidence that the position was publicly advertised or that the services of a state employment agency were used for a certain period of time. In **Luxembourg**, a specific commission has been created in order to analyse the specific labour market situation. In some cases, proof must be presented by the employer of the steps taken and difficulties in finding a national/EU/EEA job applicant who meets the requirements of the job offered (**Belgium, Estonia, Ireland, Sweden, United Kingdom**).

In **Estonia**, a work permit will be granted if the vacant position has not been filled within the period of three weeks by way of public competition and making use of the services of a public employment service. In **Ireland** and **Sweden**, vacancies must be advertised within the EU (for example, through the EURES portal) for varying lengths of time before employers can start recruiting a third-country national and in the **United Kingdom**, employers sponsoring the admission of a third-country worker under Tier 2 of the Points Based System are generally required to attest that they have carried out a Resident Labour Market Test, and are required to advertise the vacancy nationally through the UK's public employment service (Job Centre Plus) in addition to any other advertising of the vacancy and through EURES.

In some Member States, the **match between the third-country national's qualification and experience, and the characteristics of the job** is taken into consideration in the labour market test (**Belgium, France, Hungary, Malta**) In **Belgium**, the regional employment agency analyses the labour market in order to assess the reality of the alleged difficulties with recruitment experienced by the employer. The assessment takes into consideration a number of factors, including *inter alia*, required skills, labour shortages in the occupation, degree of urgency in making the appointment, ability to provide professional training in order to fill the post. In **Malta**, the third-country national's skill level relevant experience and overall suitability for the position in question are taken into account.

Conditions related to the employer are applicable in **Ireland** and **Malta**. In **Ireland**, the employer applying for authorisation to recruit a third-country national must also demonstrate that at least 50 per cent of the employed workforce consists of EEA/EFTA nationals and in **Malta**, the employer's history, in terms staff turnover; business investments and contractual commitments are also considered; applications to employ third-country nationals from firms that have effected redundancies in the posts in question, or in similar positions to that being applied to, in the preceding twelve months are not be considered. The **needs of the labour market** are also taken into consideration when applying the labour market test in **France, Lithuania** and **Malta**.

5.1.2 Annual entry quotas

Third-country nationals moving from one Member State to another can also be subject to **annual entry quotas** applied to third-country national labour migration (**Estonia, Greece, Hungary and Italy**). In **Austria**, for example, the immigration of long-term residents from other Member State is governed by a specific quota, which in 2012 amounted to 113 residence titles³². In **Estonia**, an annual immigration quota applying to labour migration for third-country nationals is in place which cannot exceed 0.1 per cent of the permanent population of Estonia annually; there are no concessions for third-country nationals coming from another Member State. In **Hungary**, the total number of all third-country nationals employed with a work permit and EU Blue Card is determined annually by the Minister of Economy, however, as the number of work permits that could be issued is a multiple of the number of those permits actually issued, the ceiling presents no limit to the employment of third-country nationals.

Factor other than labour market need may also shape the scale and scope of annual entry quotas. In

³² Article 49 Settlement and Residence Act

Italy, the so-called ‘Flows Decrees’ determine the annual entry quotas for third-country nationals who may enter Italy for the purpose of employment. The decrees must take into account the indicators provided by the Ministry of Labour and Social Policies on the trend of employment and unemployment rates as well as the number of non-EU foreign nationals registered as unemployed; however, they also include restrictions on the numbers of workers coming from countries which do not actively cooperate in the fight against irregular migration, or in the readmission of nationals issued with an expulsion order. In addition to quotas, some occupations are expressly reserved for Italian citizens, such as public offices related to the exercise of public and national security³³.

5.1.3 Labour market access only granted for a particular employer or professions

In some Member States, access to the labour market may be limited to particular employers or professions³⁴. In **Belgium, Estonia, Hungary, Latvia, Lithuania** and **Poland**, the work and/or residence permit is issued in conjunction with a particular employer and there is no possibility to change the employer without having to re-apply for a new work and/or residence permit. In the event of termination of employment, steps may be taken to revoke a work permit and the third-country national loses the right to stay in the Member State. In **Luxembourg** restrictions apply in respect of both the sector and the professions. In **Spain**, the work permit is granted for a single provincial geographical area and a single occupation.

5.1.4 Categories of workers exempt from Labour market testing

As well as acting as a tool to limit mobility, in some Member States, **exemptions from a labour market test** may apply to certain occupations and categories of third-country nationals in accordance with national needs and policy objectives (e.g. in **Cyprus, Estonia, Finland, France, Hungary, Lithuania, Netherlands, Poland, Slovak Republic**). Such exemptions also apply in some cases to categories of third-country nationals whose mobility is provided for under the EU *acquis* (see also section 4), and where mobility is facilitated. In particular, exemptions apply to particular highly skilled / qualified workers (e.g. in **Belgium** (where income level is also taken into account), **France, Cyprus, Finland, Poland**), or personnel in foreign companies (**Cyprus**). In **Finland, France** and **Poland**³⁵ for example, highly qualified workers holding an EU Blue Card are exempt from a labour market test.

Other categories include athletes and sportsmen (**Cyprus, Estonia, Finland, Lithuania, Netherlands**); scientists and researchers (**Estonia, Finland, Slovak Republic, Poland**); accredited journalists (**Estonia, Finland, Slovak Republic**); teachers and lecturers (**Estonia, Finland, Lithuania, Slovak Republic**); third-country nationals associated with religious activities (**Estonia, Finland, Lithuania, Slovak Republic**); third-country nationals working in performing arts institutions (**Estonia, Finland**); and religious icon painters (**Cyprus**). In **France**, specific lists of occupations have also been established for nationals of certain countries in the context of bilateral agreements.

5.2 Minimum wages

Rates of minimum remuneration are ensured in some Member States either by a fixed universal minimum wage set by law (**Cyprus, Germany, Hungary, Ireland, Latvia, Poland, United Kingdom**) or specific salaries in different occupations and industries determined on the basis of

³³ Decree of the President of the Council of Ministers no.174 of 1994

³⁴ EMN Ad-Hoc Query No. 2013.456 on the ‘Member States’ approach towards the issue of several employers in the context of single permit’ launched by PL EMN NCP on 22nd January 2013

³⁵ In Poland this however applies only to selected categories of EU Blue Card holders, i.e. performing professions which are sought after (due to situation on the local labor market, in particular taking into account the number of registered unemployed people and number of job openings registered at the labor offices).

collective labour agreements (**Belgium, Cyprus, Germany, Finland, France, Italy, Sweden**). **Germany** and **France** apply both universal minimum wages as well as standard salaries for different occupations set out by collective agreements. In **Germany**, minimum wages apply for various industry branches, including the temporary employment sector, private security services and waste management. In **France**, depending on the occupation, applicable collective agreements specify a standard salary.

In most Member States (for example, **Austria, Belgium, Cyprus, Czech Republic, Germany, Greece, Finland, France, Hungary, Ireland, Italy, Lithuania, Luxembourg, Netherlands, Poland, Sweden, Slovak Republic, United Kingdom**), the same rates of minimum wages are applicable to Union citizens and third-country nationals alike. Ensuring the same level of remuneration with EU/EE nationals provides for the equal treatment of third-country nationals, while at the same time prevents wage-dumping and undercutting salary levels of national workers.

In Estonia, Latvia and Malta higher minimum wages are set for third-country nationals in comparison to EU/EEA nationals as a restrictive mechanism on the inflow of low-skilled labour migration. In **Estonia**, salary thresholds have been introduced for the different categories of workers aiming to restrict low-skilled labour immigration. The minimum salary for third-country nationals have to be at least equal to the latest annual average wage as published by Statistics Estonia, multiplied by the coefficient 1.24 (i.e. approximately €1 060 per month) with exceptions made for some groups of labour migrants (e.g. researchers, teachers, posted workers). In **Latvia**, third-country nationals are required to receive as a minimum the average gross monthly wage for the previous year in accordance with the information published by the Central Statistics Bureau. This measure has been adopted as a result of a widespread shadow economy in Latvia with numerous cases of undeclared salary and consequently, unpaid taxes. In **Malta**, in order to obtain employment rights, third-country nationals need to receive at least twice the minimum wage throughout the validity of the employment contract.

Some Member States have adopted specific provisions on minimum wages for the following categories of mobile third-country nationals: third-country nationals with the status of long-term residents in another Member State (e.g. **Greece, Malta and Poland**); and researchers (e.g. **Belgium Greece and Poland**).

With regard to third-country nationals with the status of long-term residence in another Member State, in **Greece**, demonstration of an employment contract stating that the third-country national's income will be at least equal to the national minimum wage of an unskilled worker is a **precondition** for obtaining a residence permit for work purposes³⁶. Similarly, in **Malta and Poland**, applicants are expected to provide evidence of stable and regular resources which are sufficient to maintain themselves and any family members without recourse to the social assistance system. The minimum level required in Poland (minus accommodation costs) is €120 per month for singles or at least €90 for each family member whereas in Malta it must be equivalent to the average gross wage (in 2012, €15,620) with an addition of another twenty per cent of the average wage for each family member.

With regard to researchers, in **Greece**, the main precondition for obtaining a residence permit is to prove stable and regular financial resources at least of €900 per month, exclusive of any social benefits.

For EU Blue Card holders, provisions for minimum salary levels are prescribed in Article 5 (3) of Directive 2009/50/EC as at least 1.5 times the average gross annual salary in the Member State concerned, although this can be lower (at least 1.2 times gross annual salary) for employment in professions which are in particular need of third-country national workers and which belong to the

³⁶ Article 13 of P.D. 150/2006

major groups 1 and 2 of ISCO (Article 5(5)).

5.3 Conditions for self-employment

Member States have established a number of conditions for entry and residence of self-employed third-country nationals, which include requirements for sufficient funds; profitability requirements; requirements for the business activity to correspond with the national economic interest; job creation requirements as well as additional requirements, such as sufficient income for subsistence and language skills.

Such conditions apply also to mobile third-country nationals when exercising their mobility, and can take several forms. With regard to **requirements for appropriate funds**, the majority of Member States have provisions in place requiring third-country nationals applying for residence permits for the purpose of self-employment to demonstrate a set amount of funds (**Belgium, Germany, Estonia, France, Greece, Ireland, Italy, Latvia, Lithuania, Poland, Sweden, Slovak Republic, United Kingdom**). The amount of funds required varies significantly from one Member State to another. In **Estonia**, a sole proprietor is required to have the capital in the amount of at least €16,000, while in **Greece** this capital amounts to €60,000. In **Ireland**, a new more flexible system was introduced in 2012, which requires a financial backing of €75,000 and a number of additional criteria. In **Lithuania**, initial capital held by the third-country national entrepreneur must be no less than LTL 50,000 (about €14,500). In the **UK**, third-country nationals must have access to at least £200,000 (about €233 550) to fund their business activity. This threshold is lowered to £50,000 (about €58 400) if they have funding from a registered venture capitalist firm, UK Government Department, or a seed funding competition recognised by UK Trade & Investment. In **Belgium** and **Latvia**, the third-country national is required to be in possession of financial resources proportional to the project to be viable but no minimum amount of funds is prescribed in legislation.

In addition to a fixed amount of capital funds, several Member States undertake **assessment of the viability and profitability of the project or business activity** to be undertaken by the third-country national. (**Austria, Belgium, Estonia, Finland, France, Latvia, Malta and Poland**) In **Belgium** and **Poland**, a case-by-case assessment is made taking into account the specific nature and the characteristics typical of each project. One of the conditions in **Estonia** for granting residence permit on self-employment basis is the submission of a business plan. In **Finland**, the Centre for Economic Development, Transport and the Environment assesses the profitability of the business and the adequacy of income derived from it on the basis of various information such as a business plan, binding preliminary agreements and financing. Similarly, in **France** applicants must present proof of economic feasibility and profitability of their project. In **Latvia**, the third-country national applicants submit a business plan to be examined by a sworn auditor. In **Poland**, the third-country national applicant must demonstrate, for example, the legal basis of activity, its object and size, possible income and losses, confirmed by relevant documents filed to a tax office or a certificate issued by the tax office.

Several Member States (**Germany, Luxembourg, Netherlands and Poland**) require the business activity of the third-country nationals to be in line with the **national economic interest**. In **Germany**, an economic interest or regional demand and an expected positive effect of the business on the economy are required for issuance of a residence permit for the purpose of self-employment. In **Luxembourg**, the planned activity has to correspond to the economic interest of the country. In **Netherlands**, it is required that the business activity of the third-country national serves an essential Dutch economic purpose and in order to assess this condition, the opinion of different ministries is sought and is based on points system. In **Poland**, the applicant needs to demonstrate that the economic activity is beneficial to the national economy and contributes to the growth of investments, technology transfer, introducing beneficial innovations or creating new jobs for Polish citizens.

Requirements for **job creation targets** have not been identified in the majority of national

contributions. In **Malta**, to qualify for a residence permit with a self-employed status, a third-country national must be committed to recruit at least three EEA/EFTA nationals within eighteen months of the establishment.

Additional requirements for granting a residence permit to third-country nationals for the purpose of self-employment are in place in several Member States. In **Finland, Poland, Sweden and the United Kingdom**, the third-country national applicant has to demonstrate sufficient income to cover the cost of living. In **Sweden**, the migrant needs to be able to demonstrate solid experience in the sector and should also have previous experience in running own business in addition to sufficient Swedish and/or English language skills. In the **Slovak Republic** along with every application for renewal of a temporary residence permit for the purpose of conducting business the applicant has to be able to demonstrate taxable income from business activities for the previous tax period.

In comparison to third-country nationals, mobile EU citizens have the right to relocate to another Member State for the purpose of self-employment with no restrictions, pursuant to Article 7(a) of Directive 2004/38/EC.

5.4 Recognition of degrees, diplomas and qualifications

Directive 2005/36/EC on the recognition of professional qualifications in the context of the abolition of barriers to free movement, provides that Member States ‘does not create obstacles’ to the procedure whereby the competent authority declares that a certificate for a professional qualification obtained outside the EU is legally identical with a certificate obtained nationally, in line, however, with the relevant national rules.

The right to equal treatment for third-country workers with regard to the recognition of their qualifications, in accordance with the relevant national rules, is also reinforced under several other Directives, including 2011/98/EU on the Single Permit, 2003/109/EC in relation to third-country national long-term residents, and 2005/71/EC for third-country nationals admitted for the purpose of scientific research. In general, diplomas issued by foreign bodies are recognised by a national competent authority, with specific requirements for the regulated professions. However, there is no automatic EU-wide recognition of academic diplomas, instead Member States determine their own requirements for recognition of academic qualifications obtained elsewhere.

Article 3 of Directive 2011/98/EU provides for the facilitation of intra-EU mobility of third-country nationals by stating that evidence of formal qualifications issued by a third-country shall be regarded as evidence of such if the holder has three years' experience in the profession concerned on the territory of the Member State where evidence of the formal qualifications were recognised, where certified also by that Member State, subject to conditions. In practice, under national rules, conditions do apply, and mobile third-country nationals may be subject to the same provisions as newly arrived third-country nationals.

Specific provisions recognising the diplomas of mobile third-country nationals include in cases when the qualification was obtained in another EU/EEA State (**Austria, Czech Republic, Finland, Hungary, Italy, Luxembourg, Poland, Slovak Republic**). In the **Czech Republic, Finland, Luxembourg and Poland** national legislation on the recognition of professional qualifications³⁷ applies to long-term residents of another EU country, but where the qualification was obtained in another EU Member State. In **Hungary**, in addition to long-term residents, other categories of third-country nationals who are subject to the same provisions as EU citizens include: third-country nationals with residence permit issued for the purpose of research; EU Blue Card holders and

³⁷ Czech Republic - Act on Recognition of Professional Qualifications, No.18/2004 Coll.
Finland – Finnish Act on the Recognition of Professional Qualifications (1093/2007)

family members with free movement and residence rights.³⁸ In **Poland** and **the Slovak Republic**; qualifications attained in so called sectorial professions in another Member State obtained by third-country nationals are automatically recognised if certain conditions are met.

The recognition of degrees and diplomas may present a barrier for the intra-EU mobility of third-country nationals, in terms of the **duration of the procedure (Belgium, Greece, Ireland)**, **cost of the procedure (Hungary)** and **burdensome requirements for the validation of documents (Poland)**. These obstacles may also be experienced by EU citizens where their qualifications were obtained either in another EU/EEA country or in a third-country where the case-by-case, individual assessment of each application requires a series of documents that make the recognition procedure burdensome, both for applicants and for competent authorities. The document requirements under the general system can have a negative impact on the cost and length of the recognition procedures.³⁹

The **duration of the procedure can vary too** in different Member States. (**Belgium, Greece, Ireland, France**) In **Belgium**, the procedure in the French and the Flemish Community lasts on average for 4 to 5 months, while in the German-speaking Community the procedure lasts for 2 weeks. A plan to revise the system has been introduced in Flanders, which aims to reduce the duration of the procedure to two months. In **Ireland**, the time for processing foreign qualifications is estimated to be 12 weeks. In **Greece**, the recognition procedures are seen as inefficient as significant delays are common regardless of the status of residence or the nationality of the applicant.

Applicants may also incur a **cost** for the recognition of their diplomas; in **Belgium**, the procedure in the French Community amounts to €174 or €124 for nationals from countries which benefit from public aid for development acknowledged by the OECD, and is free of charge in the German-speaking Community and in the Flemish Community. However, the Flemish Community plans to introduce fees from September 2013.⁴⁰ In **Hungary**, fees for recognition of diplomas include the cost of the procedure and additional expenses that may be incurred. The fee is defined in legislation and is adjusted to the lowest minimum wage. In **France**, the cost to formally recognise a certificate for a qualification obtained abroad is €70. In **Sweden**, the procedure is free of charge.

With regard to the **documentation requirements for recognition**, in **Belgium**, such requirements include proof of a number of aspects related to the educational institution, including the conditions for acceptance, the structure and content of the course, references and characteristics of the institution and requirements for a final thesis.

In **Poland**, certificates must be legalised by a responsible Polish authority in the country where the diploma was issued which can result in the third-country national having to return to the country where the diploma was issued. There are additional obstacles to recognition of diplomas in Poland, and it is not possible to have formal validation of certain certificates. Moreover, a long list of regulated professions, currently set at 380, also hinders taking up work in Poland, however, a process of facilitating access to some of the professions is currently underway.

5.5 Access to social security and social services⁴¹

Restricted access to social security and social services may influence the decision of third-country

³⁸ Section (2) Article 28 of the Recognition Act

³⁹ European Commission (2011) Evaluation of the Professional Qualifications Directive (Directive 2005/36/EC); Available at: http://ec.europa.eu/internal_market/qualifications/docs/news/20110706-evaluation-directive-200536ec_en.pdf

⁴⁰ The proposed amounts are €90 to acknowledge a level or a secondary-level diploma and €180 for complete equivalence. An emergency procedure is also proposed which would cost €500 and takes approximately 2 weeks.

⁴¹ A separate EMN study is being prepared on the issue of access to social security for third-country nationals.

nationals residing in an EU Member State to migrate to another Member State. The small amount of social security entitlements may also affect the decision of a third-country national to move to another Member State, as acknowledged in some Member States (**Estonia, Latvia, Lithuania and Poland**).

As EU competences in the field of social security are limited to the coordination of social security systems, Member States have a wide degree of discretion when determining for third-country nationals as well as EU citizens entitlements to social security. As stipulated in Article 11 of Directive 2003/109/EC, third-country nationals who hold long-term residence shall however enjoy the same treatment as EU nationals with regard to social security and social protection. Directive 2011/98/EC (single permit) furthermore gives third-country nationals covered by that Directive equal rights compared to EU nationals to all branches of social security as set out in Regulation (EC) No 883/2004. Regulation (EC) No 1231/2010, which extends the EU's social security coordination regulations to third-country nationals legally resident in the territory of the EU, who have moved between one Member State and another, and their family members as set out in Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009.⁴²

In most Member States, third-country nationals in employment are eligible to social benefits where the entitlements are based on social insurance i.e are contributory (**Austria, Cyprus, Czech Republic, Estonia, Finland, Italy, Latvia, Luxembourg, Malta, Sweden, Slovak Republic, Poland, United Kingdom**). In general, contributory entitlements are based on insurance schemes with **compulsory cover** for employed persons (**Austria, Belgium, Cyprus, Estonia, Finland, Slovak Republic, Poland**). Eligibility to social benefits which are paid irrespective of the social insurance contributions varies in different Member States (*non-contributory entitlements*). In **Latvia**, third-country nationals are not eligible to non-contributory benefits, while in **Sweden** third-country nationals are entitled to non-contributory benefits, when they stay, or can be expected to stay, in the country for one year or longer.

Specific eligibility conditions are set in **Ireland**, where a Habitual Residence Condition scheme has been introduced for access to social security, which is based on a number of criteria, including *inter alia* the length and continuity of applicant's residence in Ireland; the nature and pattern of employment the applicant's main centre of interest as well as further intention to live in Ireland.

Special provisions for **mobile third-country nationals** are applicable in some Member States. In the **Czech Republic**, long-term residents of another EU Member State are entitled to a number of welfare benefits⁴³, which are not granted to other third-country nationals. In **Finland**, third-country nationals moving from other Member States are treated similarly with EU citizens in the sense that they can get access to certain social security benefits on the basis of work without being considered as residents. In **Italy**, long-term residents on another EU Member State are entitled to health, education and some social benefits as all as access to goods and services, such as public housing. In **Poland**, long-term residents in another EU country are entitled to welfare benefits, granted e.g. in case of poverty, homelessness, disability, unemployment, prolonged illness, after receiving a residence permit for a specific period of time in Poland.

5.6 Other restrictions

The right to **family reunification** is a factor at play which can influence the decision of a mobile third-country national to move to another Member State. The 'EU Blue Card' Directive (2009/50/EC) provides beneficial treatment for family members of EU Blue Card holders. Mobility rights of family members of third-country nationals EU Blue Card holders are outlined in Article 19

⁴² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:344:001:003:EN:PDF>

⁴³ These include pension supplementary insurance with state contribution, sickness insurance, assistance in financial need and state welfare support

of the Directive. EU Blue Card holders have the right to be accompanied by their family members without using the family reunification procedure under Directive 2003/86/EC when the family members have regularly resided with the applicant in the first Member State. (Article 19(1)).

Other factors which can influence the intra-EU mobility of third-country nationals include: overall salary levels (**Poland**); availability of integration programmes (**Italy and Poland**); cost of application for a residence permit (**Italy**).

6. SUMMARY AND CONCLUSIONS

The findings of the scoping study have highlighted the **limited availability** of relevant statistics on the phenomenon of intra-EU mobility of third-country nationals, its variability and lack of comparability. Intra-EU mobility of third-country nationals is an under-researched area of study, and given its growing importance within the EU *acquis*, with proposals to strengthen mobility for some existing groups, and to introduce new ones, it is essential that it can be effectively quantified and comprehensively understood at EU level.

Where statistics on overall movements of third-country nationals were available over a five year time period, in all of these Member States, the **trend in intra-EU mobility for third-country nationals, however defined, has been upwards**. Whilst the study did not set out to measure the impact of the provisions of the migration Directives in relation to mobility, in all but one of the above Member States, the upward trend in mobility of third-country nationals was greater than that of EU citizens. Overall, however, from the limited statistics available on overall movements of third-country nationals, in absolute terms this remains limited when compared with the movements of EU citizens between Member States.

An analysis of the current provisions of the EU *acquis*, suggests that, for stays exceeding three months, there seems to be a **fundamental difference** between mobility rights for EU citizens and for mobile third-country nationals, with conditions more onerous for mobile third-country nationals. Differences in entry and stay of more than three months between mobile third-country nationals and third-country nationals arriving directly from their country of origin appear also to be quite limited, despite the mobility provisions available. Although this varies across category and Member State, it applies to varying degrees across all of the categories examined in the study.

The EU legal migration Directives that provide for mobility of third-country nationals, themselves leave **significant areas of discretion to Member States**, and therefore to national laws in shaping mobility. Member States, acting legally, can, and do, limit or encourage such mobility, according to their national policies and priorities, creating differences in rules and practice across the Member States. A number of measures are applied legally by Member States within the provisions of the migration Directives that can influence intra-EU mobility or the decision of third-country nationals already present in the EU to relocate to another Member State for the purpose of employment. Most notably, **labour market restrictions** under Member States' managed migration policies shape the flows of all third-country nationals, but may apply equally to those categories of third-country nationals whose mobility rights are provided for in the EU *acquis* and represent barriers to the movements of these groups.

On a practical level, burdensome **requirements for entrepreneurs and self-employed persons** can prevent mobile third-country nationals for settling in another Member State, and burdensome processes in the **recognition of degrees and diplomas** and particularly, the cost, duration and documentation requirements associated with the recognition, may, on a practical level, contribute to shaping flows of mobile third-country nationals. Other factors such as **minimum wages**, access to **social security and social services** and rights to **family reunification**, may also have the potential to impact on the mobility decisions taken by third-country nationals.

This scoping study has been able to offer only limited insights into the scale and scope of the phenomenon of intra-EU mobility. As the EU *acquis* seeks to increase mobility provisions for existing categories of third-country nationals and seeks to include additional categories, it is essential to **improve understanding** of the scale and scope of the phenomenon through more comprehensive and comparable data at EU level, as well as the practical application of mobility provisions at national level.

ANNEX 1: EU INSTRUMENTS GOVERNING INTRA-EU MOBILITY, INCLUDING PROPOSALS

EU Instruments governing intra-EU mobility, including proposals

EU Directive	Key mobility provisions
<i>Mobility rules relating to citizens of the Union, and their family members</i>	
Free movement (Directive 2004/38/EC)	Directive 2004/38/EC ('free movement') sets out the rights of citizens of the Union and their family members, whatever their nationality, to move and reside freely within the territory of the Member States.
<i>Mobility rules relating to third-country nationals under the Migration Directives</i>	
Long-term residents <i>Directive 2003/109/EC</i>	Third-country nationals who have acquired the status of long-term residents in one EU Member State can move to another Member State and apply for a residence permit within three months of their arrival in the other Member State. Mobility rights are covered by Chapter III of the Directive, subject to certain conditions.
<i>EU Blue Card holders</i> <i>Directive 2009/50/EC</i>	Third-country nationals with highly qualified employment (i.e. holders of an EU Blue Card in one Member State) may move to another Member State after 18 months of residence, but must apply for another EU Blue Card within one month of their arrival in the second Member State. Mobility rights are covered by Chapter V of the Directive. Member States also retain limitations on the volume of EU Blue Card holders (see also Table 2).
<i>Researchers</i> <i>Directive 2005/71/EC</i>	For researchers from third countries, mobility provisions are governed by Article 13 of the Directive. Where the researcher stays for up to three months in the second Member State, research may be carried out on the basis of a hosting agreement concluded in the first Member State, providing certain conditions are met. If the researcher stays longer than three months, Member States may require a new hosting agreement, subject to conditions. Where visa and residence requirements need to be met, the Directive provides that these should be granted in a timely manner and from within the territory of the second Member State.
<i>Students</i> <i>Directive 2004/114/EC</i>	For students from third countries, the conditions of pursuing part of their studies or complementing the studies carried out in the first Member State with related courses in another Member State is governed by Article 8 of Directive 2004/114/EC. Mobility provisions do not cover other groups of third-country nationals covered optionally by the Directive (school pupils, volunteers, unremunerated trainees).
<i>Posted third-country workers</i> <i>Directive 96/71/EC</i>	For workers who are "posted" by a service provider for the purposes of cross-border provision of services, certain minimum employment related rights are set out in the Directive, which does not contain specific provision for posted third-country nationals. However, relevant case law ⁴⁴ makes clear that the host Member State may not impose administrative formalities or additional

⁴⁴ Judgments of 9.8.1994, Vander Elst, case C-43/93, of 21.10.2004, Commission v Luxembourg, case C-445/03, and of 19.1.2006, Commission v Germany, case C-224/04. Idem judgment of 21.9.2006, Commission v Austria, case C-168/04)

	conditions on posted workers who are third-country nationals when lawfully employed by a service provider established in another Member State; the host Member State has the right, however, to check that these conditions are complied with in the Member State where the service provider is established.
<i>Proposals for new categories of workers</i>	
Intra-corporate transfers <i>COM (2010) 378</i>	For intra-corporate transfers (COM (2010) 378), the proposal foresees geographical mobility for intra-corporate transferees in accordance with Mode 4 of the World Trade Organisation's General Agreement on Trade in Services (GATS). Under the proposed Directive, intra-corporate transferees would be allowed to work in different entities of the same transnational corporation located in different Member States. According to the proposed Directive, this category of third-country national would be able to reside and work in another Member State on the basis of a residence permit obtained in the first Member State, as long as the duration of a transfer does not exceed twelve months.
Seasonal workers <i>COM (2010) 379</i>	Proposals for seasonal workers aim to offer <i>inter alia</i> new social protection measures to seasonal workers, to regulate short term and temporary migration, and to tackle irregular migration. However, the proposed Directive does not include provisions for intra-EU mobility and therefore is less relevant for the purpose of this Study.
Proposal for a recast Directive on students and researchers <i>COM (2013) 151</i>	The two current Directives on Students and Researchers will be modified and replaced by a single new Directive which will improve procedural guarantees; intra-EU mobility and transfer of skills and knowledge; access to the labour market; and extended protection of groups of non-EU nationals, such as au pairs, school pupils and remunerated trainees, some of which are only optionally covered by the existing EU legislation. The Commission plans for the new rules to take effect as of 2016.

ANNEX 2: RESULTS OF MAPPING OF AVAILABLE STATISTICS ON INTRA-EU MOBILITY OF THIRD-COUNTRY NATIONALS: PATTERNS AND TRENDS

Long-term residents coming from another Member State

Statistics are available in 13 Member States on the number of long-term resident third-country nationals coming from another Member State; however, the time periods over which the statistics have been provided are variable, making a year on year comparative analysis problematic. In addition, Member States have used varying measure to report back on the flows of third-country national long-term residents, in some cases providing statistics on the numbers of applications received, and in other cases, on the basis of applications accepted.

The available statistics are summarised below in Tables A2.1a and b.

Table A2.1a: Long-term residents arriving from another EU Member State (applications)

	2007	2008	2009	2010	2011	2012
Cyprus	1					
Hungary	N/A	2	3	3	6	3
Malta	0	0	0	0	0	0
Poland	6	3	9	8	3	9

Source: Individual sources per Member State are available in the respective National Contributions.

Table A2.1b: Long-term residents arriving from another EU Member States (residence titles issued)

	2007	2008	2009	2010	2011	2012 ⁴⁵
Austria (Residence titles issued)	16	27	27	45	59	N/A
Belgium (Positive applications)	N/A	N/A	N/A	N/A	71	N/A
Estonia (Residence permits issued)	N/A	1	2	4	3	N/A
Finland (Residence permits issued)	N/A	N/A	N/A	N/A	56	98
France (Residence permits approved)	N/A	N/A	3463	3296	3257	N/A
Germany (Residence permits issued)	N/A	52	108	230	516	N/A
Greece	5					
Latvia (Residence permits issued)	1					
Poland (Residence permits issued)	5	2	6	3	3	6
Sweden (Residence permits issued)	166	87	133	216	445	N/A

Source: Individual sources per Member State are available in the respective National Contributions.

According to statistics from the **Cyprus** Civil Registry and Migration Department, between 2007 and 2012 there was only one application for an immigration permit from a holder of the long-term status in

⁴⁵ For most MS N/A at the time of finalisation of the national report

another Member State. In **Hungary**, the statistics for applicants show a decrease, and there have been no applications in **Malta** for long-term residence status from intra-EU third-country nationals since 2006. In **Poland** the numbers of applications have fluctuated between 2007 and 2012, but remain very low.

Time series statistics for long-term residents arriving in Member States are provided over a five year period only in **Austria**, **Poland** and **Sweden**. In **Austria** and **Sweden** there have been significant increases in the number of long-term third-country national residents who have moved from other EU Member State, although overall, the figures remain small. In **Germany**, statistics from 2008-2011 show even greater increases in the numbers – increasing 10-fold – however again, the overall numbers are small. **France** has reported much higher numbers of mobile long-term residents moving to France over the period 2009 to 2011; however these have shown a decrease over the period, from 3 463 to 3 257.

In **Estonia** the number of residence permits granted to long-term resident third-country nationals were less than 5 per year from 2008-2011. Only five persons are reported to have moved to **Greece**. The figure is similarly low in **Finland**, where only one residence permit has been issued, in 2012.

Statistics for mobile long-term residents were reported as unavailable in **Ireland**, **Italy**, **Lithuania**, **Luxembourg**, **Netherlands**, **Slovak Republic** and **United Kingdom**. In **Czech Republic**, no information on long-term residents was provided; however, some statistics were available on residence permits issued to residents of other Member States. These were, in 2010, 5 (1 for the purpose of business, 4 for family reasons) and 2011: 9 (8 employment / business; 1 studies).

The statistics in most of the Member States above do not in general indicate citizenship, the Member State of previous residence, skills profile, demographic and occupational profile or family status. Statistics are only available on the kind of residence title granted to long-term residents and in some cases, the purpose of stay. Where information was provided on citizenship, long-term residents moving to **Greece** were found to hold citizenship in Albania (1), China (3) and Morocco (1), to **Hungary**, citizens from Serbia were well represented; to **France**, in 2011, citizenship was predominantly (55%) from countries in Africa (30% Morocco) and from Asia (35%) and to **Poland**, the most popular countries of citizenship were Vietnam, China and Ukraine.

EU Blue Card holders⁴⁶

The transposition of Directive 2009/50/EC took place recently in most Member States and thus, at the time of the Study, very few EU Blue Cards had been issued. The latest available statistics are reported below in Table A2.2.

Table A2.2: Summary of EU Blue Cards issued

Member State	Status of EU Blue Card application / issuance
Finland	8 EU Blue Cards issued (to November 2012)
Hungary	5 EU Blue Cards applications; 2 issued (to 31 st October 2012)
Latvia	8 EU Blue Cards issued (2011)
Netherlands	2 EU Blue Cards issued (2011)

Source: Individual sources per Member State are available in the respective National Contributions.

In **Austria**, **France**, **Lithuania**, **Luxembourg** and **Sweden**, statistics are not yet available. In **Czech Republic**, **Germany** and **Poland**, available statistics on the EU Blue Card do not permit a distinction to be made between those issued to intra-EU mobile third-country nationals and those entering from outside the EU. In **Belgium**, **Cyprus**, **Greece**, no applications have been received at the time of finalisation of the national reports, and in **Estonia**, **Greece**, **Malta** and **Slovak Republic**

⁴⁶ Data from Belgium, Cyprus, Estonia, Greece, Latvia, Hungary, Malta, Netherlands, Poland, Slovakia and Finland

no EU Blue Cards have been issued. The EU Blue Card Directive was not adopted by **Ireland, Denmark and United Kingdom**.

Given that the EU Blue Card has been only recently implemented in Member States and that the mobility provisions within the Directive Member States apply only after a period of 18 months residence in the first Member State, EMN NCPs have provided information on the total numbers of Blue Cards issued, and have not differentiated between those issued to third-country nationals arriving from a first Member State and those arriving directly from a third-country.

Researchers

Limited statistics on mobile researchers is only available in certain Member States; this is because in many Member States, the registrations do not make it possible to differentiate between third-country national researchers coming from another Member state and those arriving directly from a third-country. Where statistics are available, the number of residence titles issued for third-country national researchers moving to a second Member States appear to be very low.

From 2008 to 2012, **Estonia** granted nine resident permits to mobile third-country national researcher in total.

The number of residence permits granted in **Germany** to researchers mobile within the EU in 2009 and 2011 was four; during the same period, the number of third-country national researchers resident in Germany who had moved from another Member State was 10. This may not however, reflect the actual situation in Germany, where the statistics relate only to research work in relation to one and the same project, and thus are not applicable to situations where transfer takes place to several projects in the host institute in Germany.

In **Hungary**, from 2008 to 2012, out of some 232 applications from researchers from third countries, only 1 to 4 researchers annually indicated another EU Member State as their previous place of residence. Among the Member States of origin for researcher indicated in the past 5 years were Britain, Czech Republic, Finland, France, Germany, Spain and Italy.

In **Poland**, between 2007 and 2012, only four third-country nationals holding an EU “researcher” status issued by another EU Member State applied for a residence permit for the purpose of implementing part of a research project. All of the applicants received positive decisions, and three of them remained in Poland for a longer period (one was granted Polish citizenship).

Whilst **Latvia** issued 16 temporary residence permits to researchers between 2008 and 2011 and in **Lithuania** 29 temporary residents permits were issued to researchers between 2008 and 2012, again, data is not collected to differentiate mobile third-country national researchers from other EU Member States.

In **Cyprus**, no applications were submitted from third-country national researchers in another Member State to move to Cyprus as researchers and **Greece** has not issued any residence permits for EU researchers.

In **Austria, Belgium, Czech Republic, Finland, France, Luxembourg, Netherlands, Slovak Republic and United Kingdom**, either no statistics are available for this category of mobile researcher, or it is not possible to disaggregate statistics for mobile third-country national researchers from researchers arriving directly from a third-country, or they are incomplete/only give a partial view.

Students⁴⁷

Member States in general do not produce statistics for international students disaggregated by whether the international student came directly from a third-country or from another EU Member State. Where statistics are available, the number and share of mobile international students appear to be very low, but where trends can be identified, numbers have been reported as rising.

Cyprus disaggregated EU students and non-EU students in higher education; it is estimated that between 2007/8 and 2010/11, some 150 third-country national students moved to Cyprus from another Member State, less than 1% of all non-EU Higher Education students studying in Cyprus. In **Hungary**, during the period 2008–2011, 0.6–1.4% of third-country national applicants to study in the Member State are estimated to have indicated another Member States as their previous residence period.

In **Germany** statistics were available from 2008 to 2011, showing increases in the rate of intra-EU migration of international students from other Member States, from 30 in 2008 to 66 in 2011, although ‘peaking’ at 80 in 2010. The number of third-country nationals resident in Germany as students holding EU residence titles has also increased, from 36 in 2008 to 135 in 2011. In **Netherlands** statistics were available from 2007 to 2011; showing a significant increase from 196 to 458 during this period.

In **France**, statistics do not differentiate between international students coming to the Member State from a third-country directly, or from another Member State. However, depending on the Member State of former residence, the number of **student visas** issued by French consulates abroad can be determined. In 2011, some 1,926 student visas were issued by French consulates in other Member States (predominantly in Great Britain, Spain, Italy and Germany) and the number of requests has constantly risen since 2008. Of the 68,658 student visas issued in total in 2011, the number of mobile third-country national students coming to France represents less than 3% of all student visas issued.

In **Poland**, student visa applications lodged by third-country nationals in Polish consulates in other Member States (e.g. in Germany and the UK) accounted in 2012 for only 1% of all visa applications filled by third-country nationals coming to Poland for study reasons. This represented a slight decrease in the number of applications from the previous year.

Greece issued no residence permits to third-country national students mobile within the EU.

Statistics differentiating mobile third-country national students from all international students were not available in **Austria, Belgium, Czech Republic, Estonia, Finland, Latvia, Lithuania, Luxembourg, Malta, Slovak Republic, Sweden and United Kingdom.**

Posted workers

Very limited statistics were available across the Member States disaggregated to the level of posted workers; and detailed information is available in only a handful of Member States.

In **Belgium**, over the period 2007–2010, the number of posted third-country national workers was 13 575, representing about 4.7% of the total for all EU and third-country national posted workers during the period. The available statistics show that the number of third-country national posted workers declined from 4,590 in 2008 to 3,758 in 2010. In 2011 it sharply decreased even further to 1,691. The decline mirrors the trend in all posted workers to Belgium during this period and is attributed to the financial and economic crisis. Most posted workers moved to Belgium from the Netherlands (27%), followed by Poland (17%), Germany (11%), France (11%) and Romania (7%).

⁴⁷ The statistics already compiled for the study Immigration of International Students to the EU may be used here.

In terms of nationality, the top three countries were Turkey (30.2% of all posted workers), Croatia (6.2%) and Morocco (5.8%). About 70% of the workers posted to Belgium were between 25 and 50 years of age.

The number of third-country national posted workers in **Cyprus** was 46 between 2008 and 2012, representing just over 40% of the total or all posted workers including EU citizens. The numbers of posted workers dropped to just one (third-country national) worker in the years 2008 and 2009, suggesting a link to the economic downturn.

In **Estonia**, from 2008-2012, 49 third-country nationals holding a residence permit in another EU Member State received a residence permit as a posted worker in Estonia; this is the largest category of mobile third-country nationals arriving in Estonia. The largest inflow, which was in 2011, when 38 mobile posted workers received a residence permit, can be linked to policy changes which introduced easier residence permit requirements for this group of labour migrants. Salary criteria and labour market tests do not apply to posted workers in Estonia, resulting in wider use by employers of this migration channel.

In **France**, 2011 figures show that there were 12,100 third-country national posted workers representing some 8% of the total for posted workers in France. In terms of nationality, a significant number of Russian, Belarusian and Ukrainian nationals are included; a second group consists of South American workers, often posted by Portuguese and Spanish companies. Overall, posted workers appear to be employed mainly in the construction and public sector (38%), temporary employment agencies (30%) and industry (17%); 82% are manual workers with managers representing some 2.6%.

In **Greece** there were 42 posted workers, predominantly from India, and in **Slovak Republic**, in 2011, there were 54 posted workers, representing a significant increase since 2006, when just 4 posted workers were reported.⁴⁸

Statistics disaggregated for posted workers were not available in **Austria, Czech Republic, Finland, Germany, Hungary, Latvia, Lithuania, Luxembourg, Ireland, Italy, Malta, Netherlands, Poland, Sweden** and **United Kingdom**.

Groups of third-country nationals who are not provided for by the EU *acquis*:

Cross-border workers

In most Member States, cross-border workers are not differentiated in the statistics. Only **Belgium** and **France** treat third-country national cross-border workers as a group on their own. However, in **Belgium** these figures do not differentiate between EU citizens and Third-country Nationals, while in **France** statistics are only available for third-country nationals residing in France, but working in another Member State (based on population census conducted in 2009).

The number of third-country national cross-border works living in **Belgium** and working in other Member States in 2011 was 82,921 while those who were living abroad and working in Belgium were 48,509. Of these, almost 70% were found to be male, and were living predominantly in France (38 799), Netherlands, (7 835), Germany (1 413) and Luxembourg (462). In **Hungary**, cross-border workers are surveyed only on an occasional basis, thus only a rough-and-ready estimate of commuting workers can be given, and primarily of EU citizens, in the vicinity of the border area.

Statistics on cross-border workers were not available in **Austria**⁴⁹, **Cyprus, Czech Republic, Estonia, France** (although data is provided on cross-border workers resident on France and

⁴⁸ These numbers refer to all posted workers, regardless of the country from which they were posted to Slovakia.

⁴⁹ In the case of Austria, statistics are available but not disaggregated by country of residence and nationality.

working in other Member States), **Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Sweden and United Kingdom**, in general, because Member States do not disaggregate their statistics in relation to this group of third-country national workers.

Seasonal workers

Member States do not disaggregate statistics to differentiate the numbers of third-country national seasonal workers coming to their Member States directly from a third-country from mobile third-country national seasonal worker coming from a first Member State. In **Latvia** and the **United Kingdom**, seasonal worker schemes do not operate for third-country nationals, so no specific statistics are available for this category of worker.

Workers in regulated professions

Very limited statistics on third-country nationals mobile within the EU and working in regulated professions were reported by the Member States. Malta registered 370 nurses and midwives between 2008 and 2012 from third countries and 33 in other professions complementary to medicine, while one person has been awarded a warrant as expert. Other Member States did not provide any data on workers in regulated professions.

ANNEX 3: OTHER/PROXY SOURCES OF STATISTICS THAT COULD PROVIDE INDICATIONS OF PATTERNS AND TRENDS

This Annex presents proxy sources of information to indicate any general patterns and trends in mobility, recognising that most proxy sources of statistics will only capture a portion of the mobile third-country nationals concerned and therefore cannot provide indications of the scale of total mobility among third-country nationals with any degree of accuracy.

Regarding possible proxy data sources and figures listed below, an overall observation is that the available statistics are limited. A general issue affecting the usability of existing statistics is that previous country of residence is not recorded. Hence, the usability of the proxy indicators to build an overview of the situation across the Member States is limited.

Number of applications for the recognition of diplomas/certificates acquired in another Member State

Statistics for applications for the recognition of diplomas / certificates are only to a limited extent available. The below examples illustrate the limitations also observed for the Member States providing some statistics on the issue.

For example, in **Sweden**, The Council for Higher Education collects and regularly publishes statistics on the recognition of foreign degrees. The available data, however, are not collected on the basis of the nationality (citizenship) of the persons applying for recognition. Instead, the statistics of the Council for Higher Education only include information of the countries in which the respective foreign qualifications have been acquired. Previous country of residence is not included in the statistics. These limitations are also observed in **Austria, Belgium and France**.

In **Poland**, only selected education offices have access to a wider range of information on the applicants. Of the eight education offices (out of 16) which had more detailed data in this area, for the period 2008–2012, only two recorded cases of a validation application submitted by a third-country national providing certificates obtained in another (EU/EFTA) Member State – in total nine such applications were submitted. Furthermore, the information provided by education offices indicates that most foreigners applying for certificate validation graduated in their country of origin.

Also in **Germany**, educational and vocational qualifications from abroad are recognised on a decentralised basis by a diverse array of bodies and authorities. As statistical information on the recognition of vocational qualifications has only been compiled centrally since the Recognition Act entered into force in Germany on 1 April 2012, no findings are available as yet.

Number of visitor visa applications by third-country nationals who are resident in another EU Member State

The number of visitor visa applications by third-country nationals who are resident in another Member State prior to entry were provided by **Belgium, Cyprus, Czech Republic, France, Ireland, Poland, and United Kingdom**. Statistics provided over several years were only given by **Belgium, France and United Kingdom**. However, the available figures indicate very large variations in the numbers of visa applications by mobile third-country nationals in the Member States. For example, whereas French diplomatic posts in other Member States issued 83 947 visas in 2011, only 40 and 63 visa applications, respectively, were lodged at diplomatic posts of **Czech Republic and Slovak Republic**.⁵⁰ It is not possible to identify any overall trends as such on the

⁵⁰ In the case of Slovakia, the figure refers to all visa applications, not only those lodged from another EU Member State.

basis of these statistics, although both Belgium, Czech Republic and United Kingdom have witnessed an upward trend during the period, however, with the United Kingdom recording a marked downturn in numbers in 2011.

The table below summarises the available statistics.

Table A3.1 Number of visa applications by third-country nationals resident in another EU Member State

Member State	2008	2009	2010	2011	2012
Belgium ⁵¹	692	797	932	1 054	
Cyprus				2 290	
Czech Republic			9	32	40
France ⁵²	88 824	80 169	72 085	81 445	78 058
Ireland			13 403	13 830	14 393
Poland				7 046	5 853
United Kingdom ⁵³ visas issued for purpose of work	2 940	2 980	3 320	2 560	

Source: Individual sources per Member State are available in the respective National Contributions.

The purpose of stay also varies between the Member States. In **Belgium**, family reunification was the most frequent purpose for mobile third-country nationals to apply for a visa from another Member States (followed by study and employment). In **Czech Republic**, remunerated activities were the most frequent ground; in **France**, only about 6 % of the visas were issued for professional reasons; in **Ireland**, visits were the most frequent purpose followed by business; and in **Poland**, economic activity and work were the most prevalent. In the **United Kingdom**, in 2011 around 2,600 visa applications were made by non-EU nationals resident in the EU for the purposes of work. Of those Member States that contributed this data, the EU country with the highest number of visa applications from third-country nationals was France and nationals making up the highest number of third-country nationals applying for UK visas within the EU in 2011 (290) were from India. When looking at all reasons, including as visitors, non-EU nationals applying from within the EU made up around 4% of the 2.6 million visa applicants in 2011.

Number of social security registrations⁵⁴ by third-country nationals who were resident in another Member State before arrival

Only two Member States have available statistics on the number of social security registrations

⁵¹ Issued long-term visas

⁵² Visas issued

⁵³ All UK figures quoted have been derived from management information and therefore provisional and subject to change. This information has not been quality assured under National Statistics protocols. Figures refer to main applicants and dependants. Data refer to non-EU nationality applications created on the UKBA's Central Reference System (CRS) between January 2008 and December 2011. Figures are rounded to the nearest 10.

⁵⁴ A social security registration is normally required on arrival in a Member State before access to employment can be granted.

which may be indicative of the intra-EU mobility of third-country nationals, as previous country of residence is often not registered.

In **Belgium**, statistics are available for posted workers (see section 4.2.1.5).

In **Czech Republic**, statistics are based on registrations of participation in the social security insurance of an employee abroad through the employer. This concerns the last foreign insurance authority, supplied when the employer registers an employee covered by a social security insurance system (or medical or casualty insurance) abroad. Another piece of information is the current foreign insurance authority for an employee who has ceased to be subject to the Czech legislation on social security insurance and become subject to foreign legislation. Information on the current foreign insurance authority is also obtained in the case of a contractual employee officially employed abroad according to the registered office of the foreign employer. However, this information is not readily available as basis for statistics.

Information about previous country of residence contained in the latest population census

Several Member States collect data on previous country of residence in the latest population census. However, in the cases of **Czech Republic, Estonia, Germany, Greece, Malta, Poland and Slovak Republic** the data is not yet publicly available. The precise format of the census questions posed varies from country to country, making the comparability of the resulting statistics problematic.

The latest 2011 census in **Poland** contains questions for third-country nationals related to e.g. the period of stay in another EU Member State before coming to Poland and about the purpose for coming to Poland. The latest census in **Ireland** (2011) and **France** (2008) also contains questions which may be used as indicators of mobility. The census in Ireland contains question about the place of residence one year prior to the census, while the census in France asked about the place of residence five years prior to the census. The statistics from the Irish census indicate low mobility, as it recorded that just 0.6% of non-EU nationals usually resident in Ireland lived elsewhere in the EU27 one year previously, with 0.25 % living in the UK. For data from the French census, see the relevant section in chapter 4.1 of this report.

Information about the motivations of third-country nationals who apply for citizenship in the Member State

In a study from **France**, a large majority of those questioned in the context of the ELIPA study (82%) wished to obtain French nationality at a later date, primarily because they considered that 'their life is in France'. The study found little evidence that third-country nationals wished to exercise mobility.

ANNEX 4: STATISTICS AVAILABLE ON THE FLOWS OF EU NATIONALS IN THE LAST 5 YEARS IN ORDER TO PROVIDE A COMPARISON WITH THE FLOWS OF THIRD-COUNTRY NATIONALS

Overview of data available (including available years)

Overall there are more available statistics on the flows of EU citizens, but still there are variances in the data sources between the Member States. Due to the varying types of data available for EU nationals and third-country nationals, the possibilities for comparison are limited. The available statistics for EU citizens reported as part of this scoping exercise for the purpose of comparing intra-EU mobility of third-country nationals and EU citizens are presented in the table below. Statistics provided have been included in Table 2.1 of this Report.

Table A4.1 Availability of statistics on flows of EU nationals

Member State	Data	Year
Austria	EU/EFTA citizens who moved to/from Austria by group of country of previous residence Top ten EU/EFTA MS from/to which EU/EFTA nationals moved to/from Austria Top ten EU/EFTA nationalities of citizens moving from/to EU/EFTA MS to/from Austria Number of registration certificates by purpose issued to EU/EFTA citizens Number of documents certifying permanent residence issued to EU/EFTA citizens	2007-2011 2011
Belgium	Immigration flow of EU nationals (EU12/EU15)	2006-2010
Cyprus	Long-term immigrants (EU nationals) by previous residence within/outside the EU Long-term immigrants by previous country of residence	2011 2004-2008
Estonia	Immigration by previous country of residence (but not by nationality) Immigration by nationality (but not by previous country of residence) Permanent residence rights to EU citizens EU citizens residing in Estonia	2007-2011 2007-2011 2008-2012 2011
Finland	Intra-EU mobility Country of previous residence and nationality Estimated occupational profile Estimated marital status	2007-2011 2010-2011 2010 2011
Germany	Immigration of EU citizens from other Member States	2007-2011
Greece	Registration certificate holders and permanent residence status holders by citizenship	2008-2012
Hungary	Applications for registration certificate by purpose of stay	2008-2012 (Oct.)
Ireland	Migration flows by nationality and country of origin	2006-2012

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Italy	Emigration/immigration by nationality (EU-nonEU) <i>It is not possible to distinguish between persons coming from other MS and third-countries</i>	2006-2010
Latvia	First-time issued registration certificates to EU citizens by purpose	2008-2011
Lithuania	EU citizens and family members in Lithuania Entry of EU citizens and family members by grounds Top 5 citizenships of EU citizens and family members	2009-2012 2011-2012
Malta	Immigration by previous country of residence (but not by nationality) Immigration by nationality (but not by previous country of residence) Immigration by age group	2009-2011 2009-2010 2008-2010
The Netherlands	Work-related immigration, top 5 nationalities Intra-EU immigration by age group Work-related immigration, country of previous residence Countries of destination, emigration	2007-2011
Poland	Applications for the issue of a certificate of registering the residence, by citizenship, age group, sex and reason for registration	Poland
Sweden	EU/EEA citizens who moved to/from Sweden by citizenship and country of previous residence Registrations of EU citizens' right to stay	2007-2011
Slovak Republic	Workers from EU/EEA and Switzerland on the labour market: <ul style="list-style-type: none"> • By education • By work activity • By top 5 country of origin 	2006-2011
United Kingdom	Long-term migration of EU nationals by country of last or next residence Estimates of EU migrants coming to the UK for work Long-Term migration of EU nationals for work related reasons	2006-2011

The nationality / country of previous residence of mobile EU citizens

The statistics permit a somewhat sporadic overview of nationality and previous country of residence of mobile EU citizens. The top 5 countries of nationality and country of previous residence is presented in the table below. The table lists the Member States with available data.

Table A4.2 Most frequent nationality / country of residence of mobile EU citizens

Member State	Nationality, EU Citizens	Country of previous residence: EU Citizens	Country of previous residence: TCNs
Austria	Germany Romania Hungary Poland Slovakia	Germany Romania Hungary Poland Slovakia	Germany Italy Spain Switzerland United Kingdom
Estonia ⁵⁵	Finland Latvia Lithuania Germany Sweden		
Finland	Estonia	Estonia	Estonia
Germany		Poland Romania Bulgaria Hungary Italy	Italy Spain France United kingdom Austria
Ireland ⁵⁶		United Kingdom Poland Lithuania France Spain	United Kingdom France Germany Spain Latvia
Netherlands		Poland Germany Bulgaria UK Spain	Germany United Kingdom France Belgium Spain
Poland	Germany ⁵⁷ Italy France United Kingdom Spain		Czech Republic ⁵⁸ United Kingdom Germany Spain Slovak Republic
Slovak Republic		Romania ⁵⁹ Czech Republic Poland Hungary	Czech Republic Austria Italy Hungary

⁵⁵ Permanent residence rights issued to EU citizens in Estonia, 2008-2012

⁵⁶ Figures from 2011 Census

⁵⁷ Number of EU citizens who submitted applications for the issue of a certificate of registering the residence in 2008–2012

⁵⁸ Work permits granted to third-country nationals between 2008-2009, by country of previous residence

⁵⁹ The figures refer to 'country of origin'.

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		France	United Kingdom
Sweden	Poland Denmark Finland Germany Romania		Italy Spain Denmark Greece United Kingdom

The table shows, as could be expected, that neighbouring Member States and Member States with large populations are well represented among the most common countries of nationality or previous residence of mobile EU citizens. The same applies to the previous countries of residence of mobile third-country nationals, although the mobility patterns to some extent differ with more countries of previous residence pointing to a less regional mobility flow within the EU. Again, it should be noted that the numbers of mobile third-country nationals are, where statistics are available, much lower than for EU citizens.