



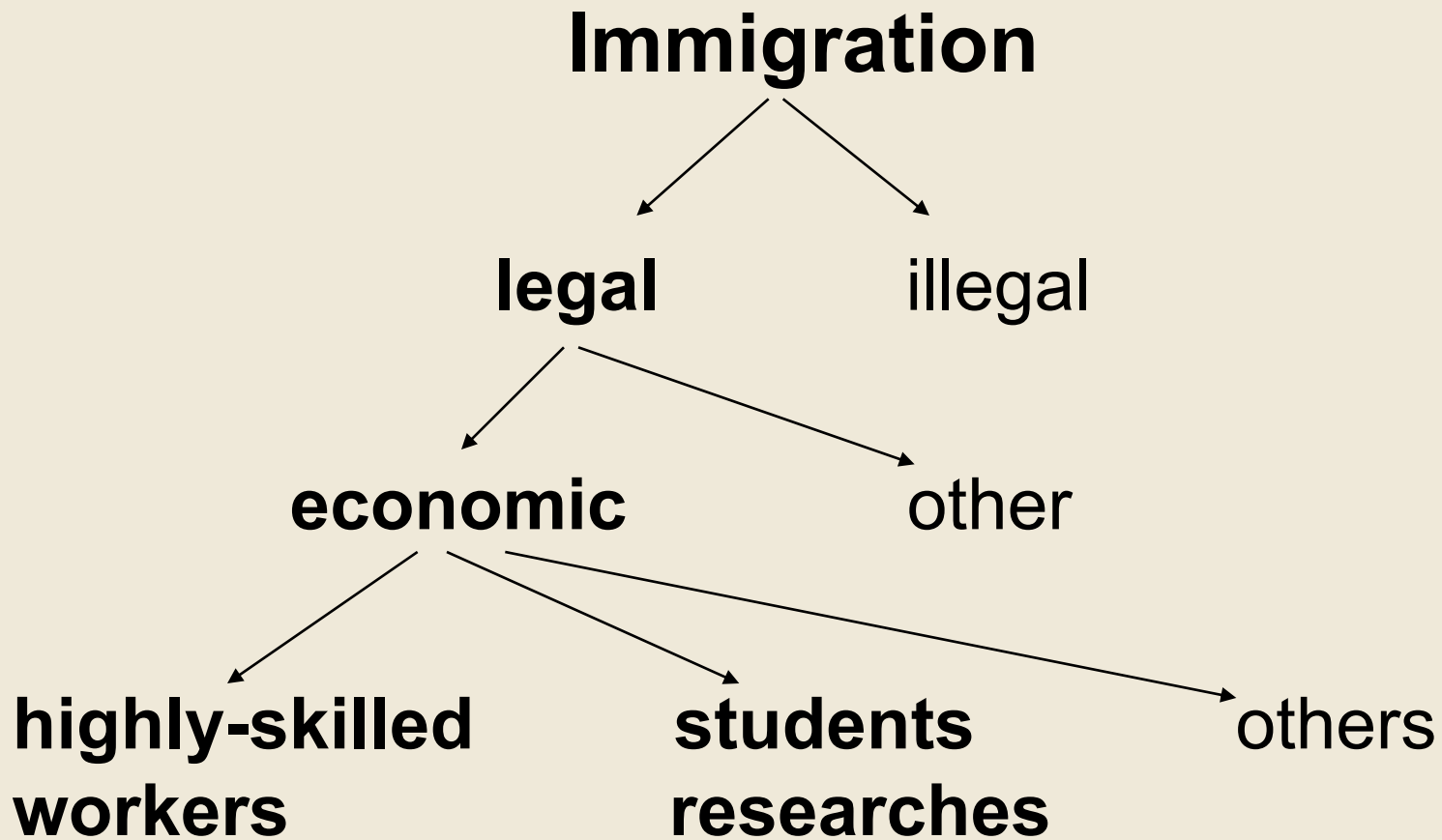
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**EU directives regulating
conditions for
highly skilled migrants
and foreign students**

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Common Immigration Policy



Situation in the EU

Principal Factors

- **1. Demographic changes **within the EU****
- **2. 3rd countries: Migration flows** for different reasons (economic, political, social) **(from outside EU)**
- Consequence: EU - Need for a common immigration policy
- Problems of Member States: immigration
 - from outside the EU
 - from other Member States

EU Demographic Changes

- **EU now:**
 - falling population
 - ageing problem
 - working-age population decline
- **Why the EU needs the highly-skilled labour force:**
 - demographic gap
 - students shy away from scientific and technical studies
 - growing demand for technicians and engineers
 - Lack not only of (any) labour force in certain professions, but mainly of the highly-skilled labour force

Solution - ?

- to cushion the impact of those factors
- to ensure economic sustainability and growth

- to revitalise the EU economy:
- calls for migrants to fill in current and future labour market needs (selected professions)
 - need to start importing more than 350.000 immigrants/year (alternatively: keep people working until they are 75)
- - not all labour migrants (unemployment)

Lisbon Strategy

- The Lisbon Strategy for Growth and Jobs
 - competitiveness of the EU
 - more effective use of the migrant workforce
- Highly-qualified migrants:
Take into account:
 - intra-EU mobility,
 - training and supporting migrants in their search for work = relieving labour force shortages in certain areas,
 - fighting the illegal immigration

Critical Situation in the EU

- Critical situation in the EU:
- from 2010 total deaths in the EU outnumber total births
- The **share of the working age population** (between 15 and 64) in the total population is expected to decrease strongly - **from 67% to 57% in 2050.**
- = fall of 52 million working age inhabitants
- (but those working immigrants will also retire and become pensioners - solution?)
- - these demographic trends will not influence all Member States to the same extent

Managing those Trends

- important: effective and harmonised way of managing those trends on the EU level
- - equal opportunities - **balance** between the rights and the obligations of the **migrants** and those of the **host societies** respectively
- Barroso: Labour migration into the EU boosts our competitiveness and economic growth
- Highly skilled working force from all over the world are welcomed in the EU

EU: Comparision with other countries

- Comparision with other countries:
- 55% of US immigrants are highly qualified, only 5% immigrants to the EU are highly qualified
- unskilled labour migration: 85% to the EU, 5% to the USA
- Attractive countries: US, CA, AU, NZ
- Principal source countries: CN, IN (language-?)

Brain drain of source countries

- Brain drain: mandatory ethical recruitment standards:
- - reduce (ban) active recruitment policies by Member States in **developing countries suffering from serious brain-drain**
- - expiry date of the EU Blue Card after a 5 year period (in order to enhance *circular migration*).
- - Africa, Eastern Europe outside the EU
- - other problems:
- 1) brain drain of certain EU countries (inside the EU - Eastern Europe)
- 2) EU > US

Road Map

- The Policy Plan on legal Migration defines a road map for the remaining period of the Hague Programme (2006-9) endorsed by the European Council in 2004
- **aim: establish common immigration and asylum policy guidelines**
- 2005: **Green Paper** on an EU approach to managing **economic migration**
- 2007: **Blue-card initiative** for highly-skilled immigrants - aim: to attract up to 20 mil. of HS workers
- 2009: Directive on highly-skilled migrants adopted

EU x Member States competence:

- **Art. 79 TFEU**
- 1. The Union shall **develop a common immigration policy** aimed at ensuring, at all stages, the **efficient management of migration flows, fair treatment of third-country nationals** residing legally in Member States, ...
- 2. The European Parliament and the Council shall adopt measures in the following areas (ordinary leg. proc.):
 - (a) **the conditions of entry and residence**, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification;
 - (b) **the definition of the rights of 3rd-country nationals** residing legally in a Member State, including the conditions governing freedom of **movement and of residence in other Member States**;
- ***5. This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.***

Role of the EU and Member States

- **Management of admission** for employment: remains within the competence of **Member States**
- Role for the **EU**: setting out guidelines + binding principles in relation to **creating a level-playing field on the management of migratory flows**
 - entry, stay and access to the labour market
 - integration of regular migrants

Directives

- result: proposal for a Framework Directive and complementary ones:
- - **conditions of entry and residence of highly-skilled workers,**
- - dtto for seasonal workers,
- - dtto for remunerated trainees,
- - procedures regulating entry and residence of intra-corporate transferees (ICT)
- - students, researchers

LEGAL ECONOMIC IMMIGRATION: PRINCIPAL DIRECTIVES

- Family reunification (general) - 2003/86
- EU long-term resident status (general) - 2003/109
- **Students - 2004/114**
- **Researches - 2005/71**
- **Highly-skilled workers - 2009/50**
- General labour immigration: still missing

General conditions for 3rd country nationals working or wishing to work in the EU: (General Labour Immigration)

- The Hague programme 2004: high importance for the legal migration including admission procedures capable of responding promptly to fluctuating demands for migrant labour in the labour market
- 2001: Proposal of a directive pursuing the following aims:
 - 1. Laying down **common criteria for admitting** third country nationals to employed activities and self-employed economic activities
 - 2. Providing **procedural and transparency safeguards**, in order to assure a high level of legal certainty and information
 - 3. Providing a **single national application procedure** leading to one combined title, encompassing **both residence and work permit** within one administrative act
 - 4. Providing **rights to third-country nationals** whilst respecting Member States' discretion **to limit economic migration**
 - 5. Providing a **flexible framework** allowing all interested parties, including Member States, to react quickly to changing economic and demographic circumstances

General Labour Immigration - 2

- ***The Council **did not adopted** the directive.***
- The need to have common EU rules:
- a) impact of demographic decline and ageing on the economy: securing the **functioning of the internal market** and the **competitiveness** of EU enterprises
- b) ensuring that an EU economic migration policy delivers a **secure legal status and a guaranteed set of rights** to assist the integration
- c) numbers of economic migrants to be admitted: matter for the Member States - *but: consequences for other Member States also:*
 - right to travel within the Schengen area,
 - right to deliver services in other Member States,
 - right to move to other Member State once long-term residents status has been acquired
- = need for transparent and more harmonized common rules and criteria at EU level for admitting economic migrants

Directive on highly-skilled workers

- Aim of the Directive (2009/50):
- **addressing labour shortages** by fostering the admission and mobility — for the purposes of highly qualified employment — of third-country nationals for stays of more than three months,
- in order to make the Union **more attractive** to such workers from around the world and sustain its competitiveness and economic growth.
- To reach these goals, it is necessary
- to **facilitate the admission** of highly qualified workers and their families by
 - establishing a **fast-track admission procedure** and by
 - granting them **equal social and economic rights** as nationals of the host Member State in a number of areas.

Directive on highly-skilled workers

- **Interests of the Member States** (specific labour market needs and reception capacities):
 - This Directive should be without prejudice to the **competence of the Member States**
 - to maintain or to introduce **new national residence permits** for any purpose of employment
- This directive do not affects the possibility for an EU Blue Card holder to enjoy **additional rights and benefits** which may be provided by national law, and which are compatible with this Directive

Member States

- right of the Member States to determine the **volumes of admission of third-country nationals** entering their territory for the purposes of highly qualified employment
- this should include also third-country nationals who seek to remain on the territory of a Member State in order to **exercise a paid economic activity** and who are legally resident in that Member State under **other schemes**
 - such as **students having just completed their studies** or
 - **researchers** having been admitted pursuant to **Council Directive 2004/114/EC**
- regarding volumes of admission, Member States retain the possibility **not to grant residence permits for employment in general or for certain professions, economic sectors or regions.**

Subject matter of the Directive:

- determine conditions of **entry and residence** in the territory of the Member States for more than 3 months (3rd country nationals **for the purpose of highly qualified employment** + their family members)
- determine conditions **to move to another Member State**

The most important other titles for the residence in the EU:

- - authorisation to reside in a Member State on the basis of **temporary protection**
- - refugees or persons who otherwise need **international protection**
- - beneficiaries of protection in accordance with **national law, international obligations or practice of the Member State – normal working permit**
- - **researchers**, within the meaning of Directive 2005/71/EC, in order to carry out a research project
- - **family members of Union citizens** who have exercised, or are exercising, their right to free movement within the Union
- - persons who enjoy EU **long-term resident status** in a Member State in accordance with Directive 2003/109/EC and exercise their right to reside in another Member State in order to carry out an economic activity in an employed or self-employed capacity
- - persons who have been admitted as **seasonal workers**
- - third-country nationals and their family members, whatever their nationality, who, under international agreements enjoy **rights of free movement equivalent to those of Union citizens (EEA)**

MORE FAVOURABLE REGIME

- - international agreements between the EU and Member States and a 3rd country
- - international agreements between a Member State and a 3rd country
- - unilaterally by a Member State in certain aspects only

Admission conditions

- - work contract or a binding job offer
- - document attesting fulfillment of conditions for the regulated profession (if needed)
- - document attesting the relevant higher professional qualifications
- - valid travel document
- - sickness insurance
- - not to be a threat to public policy, security, health
- - the salary must not be inferior to at least 1.5 times the average salary in the Member State concerned (exceptionally 1.2 times - high demand of the profession)
- The **volume of admission (quotas)**: right of Member States

Regulated Professions

- = profession where access and exercise to it is subject to the possession of a special professional qualification
- Directive 2005/36/EC (EU+EEA+CH) on the recognition of professional qualifications

Practical Issues in Member States

- the Blue-card is issued for a concrete post
- registry of vacant posts available for potential Blue-card holders (Ministry of Labour and Social Policy)
 - the post has been vacant already for more than 30 days,
 - high qualification is required
- issuing of a Blue-card costs EUR 100

Grounds for refusal

- - applicant does not meet the conditions for admission
- - situation on the labour market of the Member State
- - verify whether the vacancy could not be filled by a national or a Union workforce, or a third country national lawfully resident in the EU
- - out of the quota
- - brain drain reason: a Member State may reject an application in order to ensure ethical recruitment in sectors suffering from a lack of qualified workers in the countries of origin

WITHDRAWAL OR NON-RENEWAL

- - conditions for entry and residence are no longer met
- - public policy etc...
- - the holder does not have sufficient resources to maintain himself and his family members
- - the holder applies for social assistance

EU BLUE CARD = authorisation to **reside and work**

- Standard **period of validity**: between 1 and 4 years (depends on the work contract)
- Issued by the competent **authorities of Member States** - uniform format
- "type of permit" = "EU Blue Card"
- The Blue Card entitles its holder to
 - - the **multiple entry and stay** on the territory of the Member State
 - - other rights according to the Directive:

RIGHTS - 1

- **Access to the labour market**
 - first 2 years: restricted to the exercise of employment activities under the conditions of admission
 - then: Member States may grant the persons concerned equal treatment with their nationals (change the employer)
- **Temporary unemployment:**
 - must not exceed three consecutive months or occur more than once during the validity of the Blue Card
- **Equal treatment with nationals of the Member State, as regards:**
 - working conditions, pay and dismissal
 - freedom of associations, membership of trade-unions
 - education and vocational training
 - recognition of diplomas and other professional qualifications
 - some exceptions in special cases
 - No political rights

RIGHTS - 2

- **Family membership**
- Directive 2003/86/EC (*family members of EU citizens*) shall apply with some exceptions
- Residence permit of family members depends on the Blue Card of the worker

EU long-term resident status for EU Blue Card holders

- **Long-term resident status** according to Council Directive [2003/109/EC](#) of 25 November 2003 concerning the status of third-country nationals who are long-term residents.
- Member States must recognise long-term resident status after **five years' continuous legal residence**.
 - Absences from the Member State for periods of less than six consecutive months (and not exceeding ten months in total within the five-year period) or for specific reasons provided for by national law (e.g. military service) will be regarded as not interrupting the period of residence.
- The EU Blue Card holder is allowed to **cumulate periods of residence in different Member States** in order to fulfil the requirement concerning the duration of residence.
- **The Blue Card is then substituted by the long-term residence permit (see below).**

MOVING TO ANOTHER MEMBER STATE

- The Blue Card authorises its holder to reside and work only on the territory of the **Member State that issued the Blue Card**.
- Moving to another Member State for the purpose of highly qualified employment: possible **after 18 months**.
- **Refusal** of the second Member State: the first Member State shall immediately **readmit without formalities** the BC holder and his family members.
- **Family members:**
 - the second Member State may require that the BC holder has an appropriate accommodation and sufficient resources

Blue Card – remaining problems

- **1. Social security sustainability: new young migrant workers will support the existing retired population**
- **But: in 2050 those migrants will retire!**
- **Raise the retirement age?**

- **2. Recognition of diplomas: problem within the EU, double problem in relation to third countries**

- **3. Competence within the EU: DE, AT - not only home matters, but also employment ministers must be involved**

Criticism of the highly-skilled immigrants directive

- Inadequate to meet the EU's large and growing need for high-skilled workers
- Member States unwilling to establish a truly common EU policy
- EU is unattractive - reason: fragmented nature of the European labour market
- 3rd countries nationals are not granted access to an EU-wide labour market (lack of the European dimension)

Criticism of the highly-skilled immigrants directive - 2

- **1. Concerns about national sovereignty:**
- - all Member States need additional highly qualified workers
- - no problems from the viewpoint of **integration** policy
- - **divergences** between the Member States: should be turned into an **advantage** (different languages, culture etc.)

Criticism of the highly-skilled immigrants directive - 3

- 2. Better utilize the labour-market potential of residents of immigrant origin
 - - some of immigrants are not integrated into the local labour market and society and leave the EU
 - - inadequate government integration programs
 - - lack of strategic guidance - unclear ideas of immigrants about their goals and the duration of their stay
 - - there is no common integration model (how to keep immigrants in the EU)
 - - solution: support for education and training, increase sources to EU integration programs

Criticism of the highly-skilled immigrants directive - 4

- 3. Attracting high-potential immigrants: make the EU more attractive to foreign students, who will remain in the EU after the completion of their degrees (potential labour source)
- Source:
- The Blue Card Impasse
- Three Options for EU Policy on Highly Qualified Immigrants
By Steffen Angenendt / Roderick Parkes
- <http://www.europeanunionbluecard.com/?p=135>

General Long-term Resident Status

- Directive 2003/109/EC concerning the status of 3rd country nationals who are **long-term residents**
- Background:
- Tampere European Council (1999): equitable treatment to non-EU nationals **legally resident** in the EU
- **After 5 years of continuous residence in the EU** - they should be granted a set of uniform rights that are as near as possible to those enjoyed by EU citizens.

Long-term resident status

- Long-term resident status: **after 5 years of continuous legal residence**
- **obligatory conditions:**
 - stable resources sufficient to live without recourse to the social assistance system
 - sickness insurance
 - further conditions (facultative for Member States): e.g. sufficient knowledge of the national language
- **refusal:** public policy, public security
- **document:** permanent residence permit (standard for all EU countries)

Rights - 1

- **equal treatment with nationals (economic and social rights)**
 - access to employment
 - education and vocational training
 - welfare benefits (retirement pensions, sickness insurance)
 - social assistance (health care)
 - freedom of association

Rights - 2

- Enhanced protection against **expulsion** (public policy, public security)
- Right of residence in the **other EU countries** exceeding 3 months - conditions:
 - exercise of an economic activity,
 - pursuit of studies or vocational training,
 - other purposes
- **Family members:** the family must have been formed in the first EU country (or before)

Students from 3rd Countries

- Directive 2004/114/EC on the **conditions of admission of 3rd-country nationals for the purposes of studies**, pupil exchange, unremunerated training or voluntary service
- This Directive is to harmonise national legislation relating to the **conditions of admission** of third-country nationals

Introduction

- **Objective: to promote Europe as a world centre of excellence for studies and vocational training**
- key factor in that strategy
- - approximation of the Member States' national legislation on conditions of entry and residence of students
- This Directive determines the rules concerning the **procedures for admitting third country nationals** to the territory of the Member States for a period exceeding three months for the purposes of **studies** etc.

Categories of third-country nationals

- **students (higher education);**
- school-pupils;
- unremunerated trainees;
- voluntary workers (volunteers).

Admission of students

- The admission of students primarily concerns higher education as that is the level at which **international mobility is most common.**
- **Specific conditions for admission**
 - availability of adequate **financial resources** and
 - **admission to an educational establishment,** participation in a pupil exchange scheme etc. (not before)
- Excluded from the scope of the Directive: persons covered by other directives

Admission conditions in detail

- **The Directive determines the basic conditions for admitting third-country nationals for the purpose of study:**
- the applicant must have been **accepted by an establishment** of higher education;
- the applicant must have **sufficient resources** to cover his/her subsistence, study and return travel costs;
- the applicant must have sufficient knowledge of the **language** of the course to be followed (a flexible condition left to the discretion of the Member States);
- prior payment of the fees charged by the establishment (a flexible condition left to the discretion of the Member States).

Admission – other conditions

- Admission of a third-country national already admitted as a student in another Member State, the Directive establishes a **right to be admitted to another Member State** where he or she wishes to **pursue his (her) studies**.
- To ensure that third-country nationals do not **abuse** their student status by excessively prolonging their stay in the EU, the additional course of study must be **adequately related to the studies already completed**.

Period of validity of residence permits

- students: a residence permit is issued to the student for a period of **at least one year** and **renewable** if the holder continues to meet the conditions. Where the duration of the course of study is less than one year, the permit is valid for the duration of the course

Rights of third-country students

- students shall be entitled to be **employed** and
- may be entitled to exercise **self-employed economic activity**
- access to economic activities for the first year of residence may be **restricted** by the host Member State.

Researchers

- Directive **2005/71/EC** sets out a *specific procedure* for admitting third country nationals for the **purposes of scientific research**
- + two recommendations addressed to Member States with a view to **facilitating the admission** and issuing of **visas** to researchers from third countries.
- Their purpose is
 - to contribute to the Lisbon objectives of making Europe the most competitive and knowledge-based economy of the world,
 - by fostering the admission and mobility of third country researchers in order to enhance Union's attractiveness for researchers from around the world and
 - to boost EU position as an international centre for research.

Researchers - 2

- The Directive provides for a **fast track procedure for the admission** of researchers.
- Delivery of a **residence permit** to a researcher will automatically imply the **right to work** without an “economic needs test” to be carried out.
- - immigration authorities of the host country will deliver a residence permit in an **accelerated procedure**.
- - Holders of such residence permit enjoy equal treatment with nationals in a number of areas, for example social security or working conditions.

Researchers - 3

- - Once such permit is granted, the researcher will also be **free to move** within most Member States (Schengen countries & Ireland) to carry out the research project.
- Member States are encouraged to allow third country researchers who are already legal present in a Member State to **submit applications for residence permits for research purposes directly to the authorities in that Member State** without returning home first.
- Moreover, researchers who intend to make use of their **right of mobility between Member States** need not return to their country of origin to submit an application.
- This Directive is not applied by the United Kingdom and Denmark.

T H E E N D

Have a nice weekend in Florence