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**Impact Assessment**

*Accompanying the*

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND THE COUNCIL**

**on conditions of entry and residence of third country nationals in the framework of an  
intra-corporate transfer**

{COM(2010) 378 final}  
{SEC(2010) 885}

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# 1. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

## 1.1. Background

### 1.1.1. Legal and policy context

Since the Tampere European Council of 1999, the EU has sought to develop, on the basis of the new powers conferred to it by the Treaty of Amsterdam (Title IV EC), a comprehensive immigration policy that would address the phenomenon in all its main dimensions, i.e. legal and illegal immigration, integration and cooperation with the countries of origin of immigrants. As concerns legal immigration, and in particular economic immigration, Article 79 (2)(a) (b) of the Treaty on the Functioning of the European Union (TFEU) explicitly empowers the EU to adopt measures laying down conditions of entry and residence of third-country nationals and defining their rights.

The first attempt to define a common legal framework at EU level was not successful since the 2001 Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities<sup>1</sup> did not receive the necessary support from the Council. It has to be recalled in this context that legal immigration was subject at the time to unanimity in the Council and consultation of the European Parliament. The 2004 Hague Programme recognised the important role legal migration will play in advancing economic development in the EU and asked the Commission to present a Policy Plan on legal migration, “including admission procedures, capable of responding promptly to fluctuating demands for migrant labour in the labour market”. That Policy Plan<sup>2</sup> defines a roadmap and a set of actions and legislative initiatives for the coherent development of EU legal migration policy between 2006 and 2009. It suggests establishing EU rules on specific channels of legal migration (highly skilled migrants, seasonal workers, remunerated trainees, intra-corporate transferees) and a general directive on the rights of third country workers on the other. The Policy Plan was welcomed by the European Council in December 2006 which asked for a rapid examination of the Commission's legislative proposals, once presented. The first two proposals – on harmonised rules for the admission of third-country nationals for highly skilled employment ("Blue Card") and for a general framework Directive - were tabled by the Commission in October 2007<sup>3</sup>. The proposals regarding highly qualified workers ('EU Blue Card') and for a general framework Directive were presented in October 2007. The Council adopted the first proposal on 25 May 2009; the second one is currently under negotiation in the European Parliament and the Council. Both texts exclude seasonal workers from their scope of application.

Under the European Pact on Immigration and Asylum, endorsed by the October 2008 European Council, one of the five basic commitments is to organise legal immigration and in particular to increase the attractiveness of the EU for highly qualified workers and to encourage temporary migration. This proposal, together with the proposal on seasonal workers presented in parallel, takes forward the implementation of the Policy Plan on legal migration and transposes the commitment made in the "Pact" into concrete measures.

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<sup>1</sup> COM(2001)386.

<sup>2</sup> Adopted by the Commission on 21.12.2005, COM(2005)669 final.

<sup>3</sup> COM(2007) 637 and 638 of 23 October 2007.

The Stockholm Programme, adopted by the European Council of 10 and 11 December 2010, recognises that labour immigration can contribute to increased competitiveness and economic vitality and that, in the context of the important demographic challenges that will face the Union in the future with an increased demand for labour, flexible immigration policies will make an important contribution to the Union's economic development and performance in the longer term. It thus invites the Commission and Council to continue to implement the 2005 Policy Plan on Legal Migration.

### *1.1.2. Organisation and timing*

Lead DG: Home

Agenda Planning or Work Programme Reference: Commission Work Programme 2010 (31.3.2010 COM(2010) 135 final)

The chronology of this impact assessment was as follows:

- December 2007 – July 2008: data gathering and discussion with Member States in the context of the Commission's Committee on Immigration and Asylum (hereinafter “CIA”);
- Throughout 2008: consultation and exchange of views with relevant stakeholders (including businesses' representatives, social partners) in a number of meetings and conferences;
- December 2007 – October 2008: external study ordered by the Commission in December 2007;
- 29 April and 16 September 2008: Meetings of the Inter-service Steering Group accompanying the Impact Assessment, at which participated representatives of the Commission's Secretariat General and Directorates-General for Trade, for Employment, Social Affairs and Equal Opportunities and for External Relations.

### *1.1.3. Consultation and expertise*

This report is based on consultations with Member States and other stakeholders (including ETUC, the International Organisation for Migration, Business Europe, Work Permit Foundation, FEACO-Pendo Group, American Chamber of Commerce to the European Union, Mission of Japan to the EU)<sup>4</sup>. Member States were consulted within the framework of the Commission's Committee on Immigration and Asylum, at three meetings in 2008. The data was collected from these consultations as well as from case studies and literature reviews. The data-gathering and large parts of the consultations were undertaken through an external study from Ernst & Young ordered by the Commission in December 2007. That study constitutes the main support for this report. The problem, objectives and policy options assessed were based on the final report from the contractor and on the basis of a desk analysis of appropriate analytical methods and applicable legal documents.

Moreover, a public consultation was carried out with the Green Paper on an EU approach to managing economic migration<sup>5</sup>. The Commission received more than 130 contributions from

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<sup>4</sup> The summary of the answers by the Stakeholders are presented in Annex 4.

<sup>5</sup> COM(2004) 811 final.

Member States, the other EU institutions, social partners, NGOs, third countries, academia, etc.<sup>6</sup> and a public hearing was held on 14 June 2005.

## **1.2. The Impact Assessment Board**

The IAB was first consulted in January 2009 and gave its first opinion on 3 February 2009, in which, in summary, it requested more information on why EU regulation was an appropriate response to the problem identified. The Board also asked for:

- (1) less emphasis be put on the functioning of the labour market, given the rather low numbers of third-country workers involved, and to demonstrate that EU regulation would be a proportionate response.
- (2) better justification of why Article 63 (now 79) of the Treaty was chosen as legal basis (and not Article 137 (now 153) on "working conditions for third-country nationals)
- (3) clarification of the key aspects of the proposed approach, including objectives, options, criteria, taxation status, right to access to work for family members, linkages with existing legislation, whether EU national migrants could be treated less favourably than third-country national migrants and the chosen reference points for the equal treatment;
- (4) an analysis of the impact on the number of migrants;

The Impact Assessment Report was re-submitted to the IAB in April 2009, which gave its second opinion on 12 May 2009. The present version of the Impact Assessment report has been redrafted, with a view to taking these recommendations into account. In particular, the arguments about risks of distortions in the EU labour market and unfair competition have been attenuated and nuanced, further clarifications have been provided as regards the legal basis, options, rights granted, links with existing directives, application of Union preference, and the justification for EU legal action.

## **2. PROBLEM DEFINITION**

Companies outside the EU often need to send key members of staff, who are not EU nationals, to their subsidiary companies located within the EU. Businesses need to be able to react rapidly to new challenges, to provide specialist knowledge or skills that are not available locally and/or to transfer know-how to their future managers. Developments in the organisation of work and allocation within businesses also necessitate increasing mobility.

Companies outside the EU are faced with a lack of clear specific schemes in most EU Member States, complex requirements, costs, delays in granting visas or work permits and uncertainty about the rules and procedures. Further complications arise if the ICT needs to move from one Member State to another and in addition there are differences between Member States in terms of conditions of admission and restrictions on family members.

### **2.1. Scope of the problem**

#### *2.1.1. Legal background*

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

Some specific features account for the fact that ICTs are, partly or entirely, covered by many specific regulations which differ from the ones regulating 'typical' immigrants. First, ICTs only cover a small number of skilled employees of a corporation: they are typically specialist and managers, possessing uncommon knowledge specific to the company, for whom no substitute could be found. Second, the decision to post an ICT is not the result of a personal decision from the migrant but is purely demand-driven and depends on business needs expressed by the enterprise of origin or destination. Third, ICTs are still employees of their company of origin. They are carrying out their assignment for a defined period and are due to come back to their company of origin at the end of their assignment. Finally, ICTs are also closely linked to Trade: considered as a way of providing a service and hence fostering investments from corporations, they are included in Mode 4<sup>7</sup> of the World Trade Organization's General Agreement on Trade in Services (GATS) annexed to the WTO Agreement.

### *EU legal framework*

The transitional arrangements contained in the **Acts of Accession of 16 April 2003 and 25 April 2005** provide that Member States shall give preference to workers from the Member States subject to the transitional arrangements over workers who are nationals of third countries as regards access to their labour market, to mitigate the fact that these transitional arrangements limit the freedom of workers from the Member States concerned to freely move to other EU Member States to work. This preferential treatment clause in the transitional arrangements is primary EU law and, as such, prevails over secondary EU legislation. However, the 2003 and 2005 Accession Treaties are of temporary importance as they will irrevocably come to an end in April 2011 and December 2013 at the very latest.

**The 2001 proposal on economic migration** referred to above under 1.1.1 contained some specific rules on admission of intra-corporate transferees. Given that this proposal was withdrawn, the only existing EU level instrument that also addresses conditions for the admission of intra-corporate transferees is a 1994 Council resolution "on limitations on admission of third-country nationals on the territory of the Member States for employment"<sup>8</sup>, adopted under Article K.1 of the Treaty which set out definition and principles with respect to the admission of third-country intra-corporate transferees to the EU. It is worth noting that even at a time when restrictive policies prevailed<sup>9</sup>, intra-corporate transferees belonging to key personnel were allowed to enter into EU as a departure from the general rule set up by the resolution.

**Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996** concerning the posting of workers in the framework of the provision of services is of relevance. This directive applies to undertakings established in a Member State posting workers, in the framework of the transnational provision of services, to an establishment or to an undertaking owned by the group in the territory of a Member State, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting (Article 1, point 3). This directive stipulates that posted workers, whatever the law applicable to the employment relationship, should be guaranteed the terms and conditions of employment in a listed number of areas applicable in the Member State

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<sup>7</sup> Mode 4 is defined in Article I.2 (d) of the GATS as: "the supply of a service....by a service supplier of one member, through presence of natural persons of a member in the territory of another member".

<sup>8</sup> OJ No C 274, p. 3-6.

<sup>9</sup> See in particular considerations under A (i) and (ii).

where they are posted. These are: maximum work periods and minimum rest periods, minimum paid annual holidays, minimum rates of pay, including overtime rates, the conditions of hiring out of workers, in particular the protection of workers hired out by temporary employment undertakings, health, safety and hygiene at work, protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth and of children and young people and equality of treatment between men and women and other provisions on non-discrimination.

As Directive 96/71 applies to undertakings established in a Member State, it does not apply in principle to intra-corporate transfers which concern secondments from an undertaking established in a third country to one or several EU companies. Consequently, as far as no employment relationship happens to be created between the ICT and the EU undertaking, the Directive 96/71 would not apply.

In addition, except from this intra-EU mobility, Directive 96/71 has an impact on the design of the future instrument on ICTs, since according to its Article 1.4: "*Undertakings established in a non-Member State must not be given more favourable treatment than undertakings established in a Member State.*" As a result, with a view to preventing any competitive advantage for companies established in third countries transferring employees, the latter should grant to ICTs at least the level of rights provided in the Directive 96/71 in the areas concerned.

**Directive 2009/52/EC providing for minimum standards on sanctions against employers of illegally staying third-country nationals**, adopted in May 2009, prohibits the employment of illegally staying third-country nationals. "Employment" is defined as the exercise of activities covering whatever form of labour or work regulated under national law or established practice for or under the direction and/or supervision of an employer. For the purposes of this Directive, an "employer" means any natural person or any legal entity, including temporary work agencies, for or under the direction and/or supervision of whom the employment is undertaken. Accordingly, employers located both in the EU and in third countries are subject to the provisions of the said Directive.

**The "Blue Card" Directive** covers the conditions of admission of third country nationals holding higher professional qualifications and presenting a work contract for highly qualified employment of at least one year. Moreover, it excludes people entering a Member State under commitments made in an international agreement facilitating the entry and temporary stay of certain categories of trade- and investment-related natural persons. Intra-corporate transferees, who are temporarily seconded on the basis of a work contract with a third country undertaking and encompass people entering a Member State under commitments such as those referred to above, are therefore excluded from this scope and are accordingly provided relevant specific provisions on these aspects.

**The proposal for a Framework Directive** (COM(2007)638) provides for the same exclusion as the Blue Card Directive as regards the people covered by trade agreements and also excludes third-country nationals who are posted. Intra-corporate transferees are thus not included in the scope of this directive.

#### *International agreements*

The temporary presence of natural persons, otherwise referred to as Mode 4, is one of the four possible forms of providing a service, as defined by the GATS. As regards ICTs falling under



the definition applying to the sub-categories of managers and specialists, the EU commitments under the GATS and bilateral Free trade Agreements (FTAs) commits the possibility to have recourse to intra-corporate transferees in the services and non-services sectors, as applicable, and in the context of provision of services, typically for a maximum of three years (for managers and specialists) or one year (for graduate trainees), provided they meet the requirements specified in the relevant commitments, such as prior employment for one year. The sub-category of graduate trainees, which was introduced for the first time in the context of the Doha Development Agenda negotiations, will allow the natural persons belonging to this category to reside in the EU for a period of 1 year.

According to the **EU schedule of specific commitments under the GATS**<sup>10</sup>, an ICT is a natural person who works within a legal person other than a non-profit organization established in the territory of a WTO Member and who has been employed by it for at least the year immediately preceding the date of admission. The natural person is temporarily transferred in the context of the provision of a service through commercial presence in the territory of the EU Member State concerned. The transfer must be to a commercial presence of the aforementioned legal person, constituted in and effectively providing like services in the territory of the EU Member State concerned. The natural person concerned must belong to one of the following categories: managers (persons working in a senior position)<sup>11</sup>, specialists (who possess uncommon knowledge essential to the establishment's service, research equipment, techniques or management)<sup>12</sup> or graduate trainees<sup>13</sup> (persons with a university degree who are transferring for career development purposes or to obtain training in business techniques or methods).

In addition to ICTs, three other categories of natural persons are covered under mode 4, namely business visitors (who are seeking for temporary entry for the purpose of negotiating for the sale of services or are responsible for the setting up of a commercial presence and are allowed to stay for a maximum of 90 days), contract service suppliers (qualified workers engaged in the supply of a service on a temporary basis as employee of a juridical person which has no commercial presence in any Member State) or independent professionals (self-employed people who have obtained a service contract for a period not exceeding 12 months).

It is to be added that the commitments undertaken under the GATS do not cover conditions of entry, stay and work, as stated in the EU schedule.<sup>14</sup>

In 2002 an **EU-Chile Association Agreement**<sup>15</sup>, in 2008 an **Economic Partnership Agreement** (EPA) with the CARIFORUM countries<sup>16</sup> and in 2010 bilateral Agreements with

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<sup>10</sup> See WTO Doc. S/L/286 and S/C/W/273 Suppl. 1 of 18 December 2006 and TN/S/O/EEC/Rev.1 of 29 June 2005.

<sup>11</sup> "Who primarily direct the management of the establishment, receiving general supervision or direction principally from the board of directors or stockholders of the business or their equivalent, including: directing the establishment or a department or sub-division of the establishment; supervising and controlling the work of other supervisory, professional or managerial employees; having the authority personally to hire and fire or recommend hiring, firing or other personnel actions".

<sup>12</sup> "Persons working within a juridical person who possess uncommon knowledge essential to the establishment's service, research equipment, techniques or management. In assessing such knowledge, account will be taken not only of knowledge specific to the establishment, but also of whether the person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession".

<sup>13</sup> This category is not currently included in the EU annex to the GATS Agreement but is part of the revised offer submitted by the EU on 29 June 2005 within the framework of the Doha Development Agenda negotiations in World Trade Organization (WTO Doc. TN/O/EEC/Rev.1 of 29 June 2005).

<sup>14</sup> See footnote 15 of the EC schedule: " All other requirements of Community and Member States' laws and regulations regarding entry, stay, work and social security measures shall continue to apply, including regulations concerning period of stay, minimum wages as well as collective wage agreements. Commitments on movement of persons do not apply in cases where the intent or effect of such movement is to interfere with or otherwise affect the outcome of any labour/management dispute or negotiation."

Colombia and Peru on the one hand, Central America on the other, were also concluded, including provisions on intra-corporate transfers which are similar to those laid down in the GATS<sup>17</sup>.

### *National legislation*

Following the investigation carried out on the basis of the responses provided by 24 Member States to the questionnaire Migrapol 207<sup>18</sup>, the main conclusions that can be drawn from the Member States survey are as follows:

- There is a general concordance among Member State on categories admitted as ICTs, generally identified as “**key personnel**” or “highly skilled personnel”, but admission criteria and work permit durations range widely across EU Member State, and in some cases the procedures for admission can be particularly long or difficult.

- Many Member State grant equal treatment with EU nationals and right to family reunification but at the same time, **conditions and limitations to such rights exist** and they are highly variable between Member States. Moreover, the possibility for spouses to seek employment in the host country regardless of the duration of the transferee's stay is rarely granted<sup>19</sup>.

#### *2.1.2. Statistics and trends on intra-corporate transfers*

The analysis presented here has been considerably constrained by limitations in data availability and significant lack of comparability of migration statistics at EU and international level. Moreover, given the very specific nature of the migrant category analyzed, there were particular barriers in retrieving relevant literature.

Several gaps in data collection should be highlighted:

- At EU level, Eurostat does not provide data on migration flows into the Member States including ICTs, as Regulation 862/2007<sup>20</sup> does not currently provide for such a disaggregation of data. The Labour Force Survey (LSF) provides all the available statistics on work force at EU level but does not cover foreigners residing for less than one year.
- At national level, data is scarce due to the fact that ICTs do not typically receive specific residence permits and that according to their length of stay they can enter a Member State only with a visa, thereby escaping from the figures. Moreover, even if data is available, the statistics are not readily comparable due to significant differences between Member States in the definitions, as demonstrated by the responses of EU Member States to the abovementioned questionnaire. In some Member States, there is no concept of ICT as such; others use specific criteria (e.g. salary threshold), preventing the comparability of

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<sup>15</sup> Entered into force on 1 February 2003.

<sup>16</sup> Including Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, The Dominican Republic, Grenada, , Guyana, Haiti, Jamaica, Saint Lucia, Saint Vincent and the Grenadines, Saint Christopher and Nevis, Surinam and Trinidad and Tobago.

<sup>17</sup> However, it should be noted that the category of ICTs as defined in this latter agreement includes the business visitors.

<sup>18</sup> See Annex 2 for a detailed analysis.

<sup>19</sup> IE allows ICTs's partner to seek employment without requiring a minimum duration of stay, as is the case e.g. for FR (6 months of continuous residence).

<sup>20</sup> OJ L 199 of 31 July 2007, p. 23.

data. Most of the time, ICTs are categorized either as highly qualified migrants or as posted workers.

As a result, despite in-depth research, only patchy data was found regarding numbers of third country ICTs in the EU, countries of origin of foreign ICTs and number, size and sectors of EU enterprises/host organizations usually hosting ICTs.

**Table 1 ICTs in selected Member States – Absolute numbers**

Country	2003	2004	2005	2006	2007	2008	2009
<i>EU</i>							
Austria <sup>21</sup>						169	140
France <sup>22</sup>						1510	1960
Germany <sup>23</sup>						5655	4429
Italy	-	-		981	1,095		
Netherlands	-	-	2,784	3,012	2,632		
Poland <sup>24</sup>						398	459
Slovakia				377	355		
Slovenia <sup>25</sup>	-	-				1414	1433
Spain						1709	1109
<i>Non EU</i>							
Canada*	3,800	4,200	4,500	7,400	8,200		
Japan*	3,400	3,600	4,200	5,600	7,200		
United States*	57,200	62,700	65,500	72,600	84,500		
Switzerland*			7,514	4,000	6,200		

Source: Statistics provided by Member State in their replies to Migrapol 207 and ad-hoc query requested by the Commission on 17<sup>th</sup> March 2010

\* Alternative source: International Migration Outlook 2008-2009 (SOPEMI – OECD)

However, converging anecdotal evidence shows the importance of intra-corporate transfers. According to statistics provided by International Migration Outlook SOPEMI (2008), based on selected OECD countries, intra-corporate transfers (including intra-EU transfers) represent around 4% of temporary labour migrants (working holidays makers: 21%; trainees: 7%; seasonal workers: 23%; other temporary workers: 44%).<sup>26</sup> Moreover, according to SOPEMI 2009, from one fourth to one third of United Kingdom labour migrants are intra-corporate

<sup>21</sup> Rotationsarbeitskräfte, Art. 58 Settlement and Residence Act. Main economic sectors: Manufacturing (52); wholesale and retail trade; repair of motor vehicles and motorcycles (44); professional, scientific and technical activities (18); transporting and storage (13); financial and insurance activities (12). Countries of origin: India (19); China (17); US (15); Japan (12); Korea (11); Russia (10); Bosnia (10).

<sup>22</sup> Residence permit 'employee on mission' covering ICTs (either employees of a FR or a third-country company) earning more than 1,5 time the minimal wage. Main countries of origin (2009): US (685); India (545); Japan (380); Chinese (355); Canadian (320); Australia (80); Russia (75); Turkey (70); South Korea (70). Main occupation: 'engineer senior officer' (1325 in 2009).

<sup>23</sup> International exchange of personnel according to par.31 no. A of the Ordinance on the admission of foreigners for the purpose of taking up employment. Main countries of origin (2009): India (2195); US (560); China (472); Brazil (157); Mexico (153); Japan (150); Turkey (137).

<sup>24</sup> Workers posted by a third-country company. Countries of origin (2009): mainly Japan and China; South Korea; Ukraine; Turkey; India.

<sup>25</sup> Expatriate employees from third-countries. Countries of origin (2009): Croatia (925); Bosnia and H. (366); Serbia (87).

<sup>26</sup> The report emphasises that ICTs are particularly difficult to count since they may be considered as temporary- or permanent-type migrants depending on the countries.

transferees. Looking at the numbers of ICTs coming from Japan<sup>27</sup>, more than 4500 would be working in the EU in 2008.

Considering the limits of the above figures in terms of availability (given the reduced number of Member States and the short trends), reliability (given that some countries' data are taken from different sources) and comparability (given that countries may include different skills and categories of transferees within these data), it is difficult, if not impossible, to draw reliable conclusions from such data. Nevertheless, a tentative analysis can be performed to give a rough picture of the dimension of this phenomenon in and out of the EU. In fact, these figures, however limited they may be, show a relevant presence of ICTs in the Netherlands, Germany, Italy, France, Spain and Slovenia and, coupled with the trends at the global level, tend to confirm the longstanding relevance of ICTs movements in the developed countries. However, proceeding in a one-to-one comparison between EU and non-EU countries, it appears that the level of ICTs in individual EU Member State is much lower than that in non-EU countries such as Canada, Japan and United States which tend to attract such kind of movements.

#### *A growing need for intra-corporate transfers into EU*

In recent years, needs for intra-corporate transfers across national borders have increased as a result of the globalisation of business and skill shortages with respect to highly skilled. Increases in trade flows, in particular on trade related services, computer and information services and the business service activities<sup>28</sup> (see Table 1 in Annex 1), the growth and spread of multinationals<sup>29</sup>, the ongoing re-structuring and consolidation of many business sectors have prompted growing movements of managerial and technical employees of branches and subsidiaries of multinational corporations, temporarily relocated for short assignments to other units of the company<sup>30</sup>.

In today's global economy, production will increasingly be organised along global supply chains. They have become an important factor in ensuring competitiveness on domestic as well as global markets. Around two thirds of the EU's imports are inputs to other products. As a result, **open trade helps embed local companies in global production chains, makes them more competitive and creates more jobs**. Trade and investment flows are complementary, create jobs and promote transfer of technology.

According to World Bank and OECD, intra-corporate transfers make up 42% of the mode 4 trade in services which itself represents 2% of the overall trade related services.<sup>31</sup>

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<sup>27</sup> Extract from the report 'Comprehensive data of companies overseas 2009' based on a questionnaire completed by Japanese companies, Mission of Japan to the European Union, July 2009.

<sup>28</sup> In this connection, Nasscom's contribution is particularly relevant since it highlights this linkage between trade and intra-corporate transfers. Nasscom is a global trade body with over 1200 members focusing on software products and services headquartered in India. As a backdrop, it recalls that in 2007, EU services exports to India amounted to 6.6 billion and EU services imports from India included 5.5 billion. Approximately 30% of Nasscom business in 2007 was related to Europe, an increase of 55% in comparison to 2004. Further substantial growth is expected in 2009, despite global uncertainties, with an expected growth in Europe by 13%. Nasscom observes that as a result of the intensifying trade relations between the EU and India, Europe has become a particular destination for intra-corporate transferees from India especially in the technology sector.

<sup>29</sup> See Annex 1.

<sup>30</sup> M. Abella, Policies and Best Practices for Management of Temporary Migration, UN/POP/MIG/SYMP/2006/03, 2006.

<sup>31</sup> Cité par A. Math (IRES) et Alexis Spire (CNRS, CERAPS-Lille), vers une immigration permanente de travailleurs temporaires, juin 2004.

Europe is the largest FDI market and the leading region and it should be stressed that high-growth economies (Brazil, Russia, India and China) are increasingly active in the global FDI market<sup>32</sup>.

Available data for selected EU Member States shows a **growing number of foreign controlled enterprises** in recent years<sup>33</sup>. Data reveal that the number of foreign controlled enterprises (whose *ownership is extra-EU 25*) appeared to be witnessing an upward trend in the business economy since 1996<sup>34</sup>. In fact, while most Member States report growing trends with different percentages over the years 2003-2005, Member States like NL (50.5%), ES (43,5%) and especially PT (272.3%) witnessed a considerable increase of extra-EU 25-controlled enterprises. Only a few Member States (i.e. BG, CZ<sup>35</sup>) reported decreasing trends.

In 2005, foreign affiliates whose ultimate control resided in extra-EU countries generated approximately 6.5% of the total value added by enterprises in Europe<sup>36</sup>. Compared to the total number of foreign controlled enterprises throughout the EU (EU and extra-EU enterprises), extra-EU controlled enterprises constituted around 36% of the value added by the total of EU and extra-EU foreign-controlled enterprises<sup>37</sup>. NL seems to host the highest share of extra-EU foreign affiliates compared to intra-EU foreign affiliates, followed by LT, CY and FR. According to available data, only six Member States<sup>38</sup> report the presence of extra-EU foreign affiliates whose percentage is below 25%.

OECD data also highlights the importance and the growth of the main extra-EU foreign affiliates, in particular in the manufacturing sector<sup>39</sup>. Their annual average increase between 1998 and 2004 has nearly always been positive, especially for DK, DE and SE<sup>40</sup>.

### 2.1.3. The relevance of ICTs for EU competitiveness

ICTs are typically needed as **qualified workers** whom the EU economy crucially needs. Indeed transfers usually concern senior executives needed to supplement resources in a context of skills shortages, to establish operations in emerging markets and to create a highly mobile senior management staff able to reproduce culture in diverse locations. A qualitative survey carried out in 2008 by Ernst and Young/OECD<sup>41</sup> on the opinions of employers

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<sup>32</sup> An open world, Ernst and Young's 2008 European attractiveness survey.

<sup>33</sup> According to EUROSTAT data, foreign control means "the controlling institutional unit is resident in a different country from the one where the institutional unit on which it has control is resident". An enterprise is deemed to be controlled by another institutional unit that controls, whether directly or indirectly, more than half of the shareholders' voting power or more than half of the shares. It has to be added that the number of foreign-controlled companies cannot be an true "proxy" of ICT's immigration, since on one side, ICTs' movements may occur from the main place of business to a subsidiary and vice versa (underestimation of the inflows of ICTs); on the other hand, ICTs only refer to some categories of workers (e.g. managers, key personnel) (overestimation of ICTs movements).

<sup>34</sup> See tables 7 and 8 in Statistical Appendix (Data on foreign-controlled enterprises (inward FATS) collected by Eurostat for the period 1996-2002).

<sup>35</sup> However, in the previous years (2003-2004), foreign-controlled enterprises had visibly increased in CZ (67.8%).

<sup>36</sup> M. Grell, Foreign-controlled enterprises in the EU, Eurostat Statistics in Focus, 30/2008.

<sup>37</sup> Data for 2005 show that EU and extra-EU foreign-controlled enterprises contributed to around 18.1% of the total value added in the EU business economy.

<sup>38</sup> PT, CZ, SK, BG, EE, RO.

<sup>39</sup> See Annex I.

<sup>40</sup> Slightly negative trends, however, have been witnessed in IE, PL and PT.

<sup>41</sup> DELSA/ELSA/MI(2008)2.

regarding highly qualified workforce shows that the needs for highly qualified workers are met equally by overseas recruitments and intra-corporate transfers.<sup>42</sup>

Human capital is the key to sustaining growth and securing lasting economic success, as talent is becoming the competitive differentiator. A skilled workforce benefits the economy as a whole as it makes it easier for enterprises to adopt new technologies, innovate in products and services, processes or work organisation. The combination of globalisation, increased competition, information and communication technologies and organisational change will also lead to less routine manufacturing and office jobs. As the 'skill intensity' of jobs will continue to increase, in line with increased consumers expectations, the global competition for talent will grow in the future. In that respect, it is worth noting that Indian and Chinese companies are now reporting a lack of high level skills. Future demographic trends add further pressure to tackle this challenge. Fewer and fewer young people will graduate from schools and universities and the working age population will start to decline from 2013 onwards. Therefore, EU will need to open up to global talent. In that context, proactive immigration policies 'reaching out' to talents and skills will need to be another component of a long-term solution to the threat of labour shortages in Europe.<sup>43</sup>

However, ICTs are not only qualified workers. One of their main characteristics is that they meet a demand in situations where there are **no alternatives**: they fill the posts that would otherwise be left vacant, since no substitute could be found to occupy a post requiring such a specific knowledge. ICTs bring with them a methodology and particular skills set which are specific to the company's business needs and culture. Since the cost of an ICT is usually higher to the cost of a local employee, as a result from assignment allowances (per diem, accommodation costs, cultural and language training, education fees for the ICTs' children, etc.), **the ICT would not be brought in if the skills were readily available locally**. It follows that business only resort to transfer the foreign resource if there is a strong business case, in the form of needed skills, to justify the expenses.

In contrast with EU Blue Card holders, ICTs are also temporary workers. Intra-corporate transfers thus **meet specific short-term needs**. Given that intra-corporate transferees carry out time-limited assignments usually followed by a return to the country where their permanent employer is based<sup>44</sup> and that according to available data, they are more likely to come from developed countries than from developing countries<sup>45</sup>, brain drain does not appear to be an issue. Even though some of the ICTs originated in the latter countries, the temporary nature of this kind of migration would indeed rather result in fostering the transfer of skills and knowledge to these countries.

Since the secondment of ICTs goes along with a strategy of expansion and investments of non-EU companies, they have also the **capacity to attract investments**.

Therefore, the transfer of qualified employees to the EU has the potential to bring skills and reinforce centres of excellence in the EU. It increases investment flows, strengthens

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<sup>42</sup> For a in-depth analysis of the EU state of play as regards highly skilled employment, we refer to the impact assessment carried out in the framework of the proposal for a Blue Card Directive (Sec (2007)1382).

<sup>43</sup> Excerpts from *New Skills for New Jobs: Action Now*. Report by the Expert Group. February 2010.

<sup>44</sup> See extract from the report 'Comprehensive data of companies overseas 2009' based on a questionnaire completed by Japanese companies, Mission of Japan to the European Union, July 2009: the rate of return to Japan after the end of services in EU is evaluated at 94%.

<sup>45</sup> See Table 1 ICTs in selected Member States and footnotes.

management effectiveness, expands EU exports, enhance the competitiveness of EU entities in overseas markets<sup>46</sup>. Such a contribution is even more relevant in time of economic crisis.

*Examples of occurrences of intra-corporate transfers*

*-a multinational IT-company with large development operations outside the EU has developed a new software programme. Due to great demand for this programme in the EU, the company decides to temporarily assign one of its workers to one of its affiliate branches in Europe to introduce the software and train EU employees on this system (transfer of know how)*

*-newly-recruited staff with management potential are assigned to different branch of the group of undertakings in order to gain the same level of experience and knowledge as their counterparts within the group*

## 2.2. What is the problem that may require action?

*Obstacles to intra-corporate transfers to Europe: the growing needs of EU business regarding this kind of mobility are not satisfactorily met*

As reported by literature and demonstrated by the consultation of relevant stakeholders, some factors currently **limit the possibility of international firms to rely on mobility of ICTs**. Many multinationals wishing to transfer their personnel claimed some rigidities and limitations, including:

- **lack of clear specific schemes** in some EU Member States, although migrants covered by the international trade commitments benefit from a specific legal framework;
- **complexity of visa or work permit requirements and uncertainty of the rule**; the labour market test constitutes one significant hindrance in that respect;
- **wide differentiation between EU Member States** with respect to conditions of admission and supporting documents;
- **rigidities and costs in transferring foreign ICTs from one European corporate headquarter to another** (absence of intra-EU mobility): progress in EU integration and globalisation has boosted the number of ICTs who move across Member States, resulting in a growing need for intra-EU mobility. Indeed, intra-EU mobility is considered very relevant to stakeholders and a majority of Member States. According to some rough estimates, the share of ICTs having recourse to intra-EU mobility amounts to about 10-25% of the total number of ICTs. Intra-EU mobility can take two different forms: firstly, during the foreseen duration of the assignment, the third country national transferred into the EU Member States' territory may be assigned to different entities located in different Member States, for example on a part-time basis or to take part in different projects (development of work in "project mode"); this may be the case for both managers and specialists; secondly, at the end of the first assignment, the ICT could be called on in a second entity located in another Member State. In particular, rotations across multiple countries within the EU are often organised in the framework of a training programme for high level new employees. Part of this intra-EU mobility is already covered by Directive 96/71 and the relevant case-law relating to freedom of provision of services. However, this

<sup>46</sup>

International Mobility of the Highly Skilled, OECD Policy Brief, July 2002. GATS Mode 4 also points to a relation between FDI and ICT.



mobility only concerns posting by EU companies and does not include posting from third-country companies.

As regards costs, they include costs with respect to becoming familiar with diverse national regulations, obtaining, translating, transmitting the documents and managing this process. These procedures are often dealt with by several consultants in each individual Member State. Other costs such as travel, accommodation, training, coordination, are to be added if several ICTs have to be transferred as opposed to one ICT being transferred. Indirect costs cover possible delay in implementing the project.

- **delays** in completing permit procedures needed to transfer employees in an efficient and timely manner, though fast access to international teams and expertise is essential for companies to remain competitive and being able to respond to changing customer needs<sup>47</sup>; the time required by Member States to process applications vary greatly from a few days or weeks to several months (up to 6 months), 3 months being apparently an average time according to Member States' responses;
- uncertainty regarding the time needed to process an application;
- **work permits with too limited a duration** and consequent burdensome renewal procedures;
- **difficulty to obtain family reunification** and impossibility for the partner to have access to the labour market, although concerns about partner's employment are one of the main reasons why staff turn down international assignments<sup>48</sup>;
- lack of transferability of pensions schemes.

Evidence actually exists of the difficulties faced in order to obtain a permit for ICTs. An example is the case of a Japanese manager who waited 12 months to be transferred to a branch of his multinational company located in Italy. Moreover, after 12 months, he still had not received the definitive documents (i.e. the work permit) but only a temporary documentation, with additional problems related to family reunification and access of his children to the Italian educational system<sup>49</sup>.

The complexity and length of the procedures for obtaining the permits could **discourage**, or at least influence, **the inflows of ICTs in the EU Member States, with a loss of the potential benefit that they could bring** (innovation, competition, expansion of activities, facilitation of ICTs from EU/reinforcement of EU position in its relationship with international partners, and ultimately creation of wealth and growth). It should indeed be kept in mind that these highly skilled workers are increasingly exercising more choice when it comes to pursuing employment that meets their expectations. In that connection, more than 40% of the companies surveyed by EY/OECD in 2008 indicated that administrative burden has directly affected the implementation of some projects.

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<sup>47</sup> According to the qualitative survey carried out in 2008 by Ernst and Young/OECD, 80% of companies surveyed view that point as a main obstacle.

<sup>48</sup> See Work Permit's reply to questionnaire Migrapol 207.

<sup>49</sup> Source: Sole-24 Ore, 11 of March 2007, n. 69.

In addition, **the ease in which companies can move their key personnel around plays an important role in determining whether to set up business in a particular country** -and, by extension, in a definite area such as Europe. According to a survey undertaken in 2007 on the attractiveness of Europe to foreign investors, almost 70% of the businesses which participated affirmed that the treatment of expatriate executives is an important criterion for selecting an investment location and required greater flexibility and simpler administrative procedures within Europe<sup>50</sup>. In the same line, additional key areas of reforms cited to encourage business investment in the already mentioned Ernst and Young Attractiveness Survey include simplification of the regulatory environment on a European level. Knowing that a new FDI project in Europe creates in average 87 jobs<sup>51</sup>, the design of attractive rules regarding expatriate executives may translate into large benefits for the EU labour markets.

In addition, these rigidities hamper the effective implementation of GATS commitments. They also result in limiting the ability of companies to exploit their internal human resources.

The need for EU action has been particularly stressed by some **stakeholders** such as Business Europe, AmCham EU (companies of American parentage), Pendo Group (business and technology consulting and outsourcing firms), Indian companies represented by Nasscom and the Japanese Government.

#### *Guaranteeing fair competition*

At the same time, intra-corporate transfers raise the question of possible unfair competition. Trade Unions are typically concerned that mode 4 will lead to more EU unemployment, a dismantling of the EU's social model and downward pressure on wages. In the framework of the consultation for the purposes of a proposal on ICTs, the ETUC stated the view that "the directive must be drafted in such a way that it cannot be used to avoid the protection of wages and working conditions (...) and EU law regarding equal treatment and non-discrimination in the workplace (...). Such a directive can be welcome if its scope only covers executives, managers or specialized workforce (...). A European directive must ensure that ICTs are not used for social dumping (...)".

Since ICTs can be posted from companies located in third countries with possible low social standards, there is indeed a danger that foreign companies might pay the minimum salary of a low-income country while having the ICT deployed in a high-income country, which would undercut the national workforce and create an uneven playing field for business.

The risks of social dumping are to be linked to a series of factors, some of them depending on the country of origin (low labour costs), integral to the temporary nature of this category of migration (difficulties to inspect the working conditions for labour inspections due to the short period of work) or relating to international agreements in the area of social security (allowing the third country national to remain subject to the home country social security regime and resulting in varying levels of social insurance contributions).

This concern is based on anecdotal evidence from Trade Unions and mainly fuelled by the experience drawn from the EU posting of workers legislation. However, as ICTs are typically qualified and well-paid workers, exploitation is usually not a concern for social partners.

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<sup>50</sup> Wanted: A renewable Europe, European Attractiveness Survey 2007, Ernst & Young.

<sup>51</sup> An open world, Ernst and Young's 2008 European attractiveness survey.

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

According to convergent sources, **the need for highly qualified resources** will increase in the future. As shown in a medium-term forecast carried out by CEDEFOP<sup>52</sup>, a shift towards services and knowledge-intensive jobs is underway and accompanied by a continuing growth in demand for many high-skilled non-manual jobs such as management, professional work or technical support of those activities.<sup>53</sup> In EU25, between 2006 and 2020, the proportion of jobs requiring high levels of education attainment should rise from 25.1% to 31.3%. In addition, up to 2020, in EU25 17.7 million additional jobs could be created in high-skilled non-manual occupations. The 2008 Ernst and Young/OECD survey<sup>54</sup> also points out that 70% of companies surveyed anticipate an increase in the hiring of highly skilled workers<sup>55</sup> in the 3-5 next years and more than 80% plan to recruit highly qualified immigrants to meet their needs. These projections may be impacted by the economic turndown; however, the growing demand for a more qualified workforce will remain, as well as the fact that according to converging studies, companies **rely heavily on their internal labour markets** for skills.

Another factor that will have a crucial influence in the evolution of the problem: employers are increasingly relying on **temporary workers**<sup>56</sup>.

In absence of any common regulation, companies face difficulties to allocate at best their personnel and to bring in highly-qualified workers from an extra-EU subsidiary: attractiveness of EU for foreign investments and EU competitiveness are therefore affected. At the same time, in the absence of common rules regarding the working conditions, intra-corporate transferees could undercut nationals and EU citizens and bring about unfair competition. Absence of a clear legal framework and wide differentiations between national regulations can also affect the efficient functioning of the EU internal market: ICTs may be officially transferred to Member States where the regulations are the most attractive in terms of administrative procedure or family rights, then temporarily transferred to other Member States without any work permit, taking advantage of the freedom of movement across the Schengen area.

## **2.3. EU right to act and subsidiarity**

### *2.3.1. EU right to act*

The legal basis for EU action in the area is established in Article 79 (2) of the Treaty on the Functioning of the European Union. This Article states that "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, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures in the following areas: (a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits; (b) the definition of the rights of

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<sup>52</sup> CEDEFOP: Future skill needs in Europe – Medium-term forecast, Synthesis report, 2008.

<sup>53</sup> Communication from the Commission "New skills for new jobs. Anticipating and matching labour market and skills needs"COM(2008)868 final.

<sup>54</sup> See footnote 41.

<sup>55</sup> Among these workers, a significant number of companies anticipate an increase in the hiring of immigrants from China and India.

<sup>56</sup> SOPEMI 2008, OECD.

third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States".

The main purpose of EU action is to design an admission instrument for ICTs, thus, to define conditions of entry and rights according to Art 79 of the Treaty. The previous Article 63 TCE did not mention explicitly the definition of rights but the conditions of residence were considered to include the working conditions, which were regulated as ancillary matters to entry and residence. The same approach had been already adopted for existing migration acquis, such as Directives 2003/109 (long-term residents) and 2005/71 (researchers), or the "EU Blue Card" Directive.

### *2.3.2. Principles of subsidiarity and proportionality*

It must be noted that the problems fall under a competence shared by the Union and the Member States. The principle of subsidiarity therefore applies, requiring that the Union does not take action unless it is more effective than action taken at national, regional or local level.

The reasons for a common intervention at EU level derive from the following issues:

**Facilitating intra-EU mobility:** rigidities in transferring foreign ICTs from a European corporate headquarter to another are important for multinational companies. The removal of these rigidities can only be achieved through action at the EU level, by facilitating intra-EU mobility, which requires a common system to admit these workers.

**Enhancing the attractiveness of the EU as a whole:** the way ICTs are treated, as well as the conditions and procedures regulating these movements influence the extent to which multinational companies decide to do business or invest in a certain area. Therefore, action at the EU level would contribute to enhance the attractiveness of the EU as a whole for foreign investments and send a clear message to third country national ICTs.

There is a need to provide for common conditions of admission for ICTs (principle of equal treatment) **in order to ensure a fair competition** and prevent risks of unfair competition posed by companies who would employ ICTs under sub-standard conditions.

**Fulfillment of EU international commitments in the context of the WTO:** the high differentiation between Member States in terms of entry procedures and temporary residency rights may hamper the uniform application of the international commitments which EU and its Member States has undertaken in the framework of the WTO negotiations (with particular reference to GATS Mode 4).

In this concern, it is worth noting that the conditions under which ICTs can perform their economic activity fall under the Common Commercial Policy (which is an area of exclusive EU responsibility), whereas entry and (temporary) residence conditions fall under the immigration policy (an area of shared competence between Member States and the Union). From this perspective, action at EU level (rather than at Member State level) on entry and residence conditions of ICTs would better ensure full **consistency and complementarity between immigration policy and Common Commercial Policy**.

### *2.3.3. EU added value*

Added value lies in the following aspects in particular:

- ICTs and multinational companies would benefit from a common, transparent and attractive European framework for key personnel, reinforcing the EU knowledge economy and fostering investments;
- A common legal framework laying down common conditions of admission for ICTs contribute to ensuring fair competition.

### **3. SETTING OBJECTIVES**

#### **3.1. Main objective**

The global objective is to support economic development of EU businesses by better responding to their needs for intra-corporate transfers of skills, while guaranteeing fair competition.

This objective is consistent with the EU 2020 strategy which sets the EU the objective of becoming an economy based on knowledge and innovation, reducing administrative burden on companies and better matching labour supply with demand.

#### **3.2. Specific Objectives**

The specific objectives, i.e. the immediate objectives of a possible EU intervention, are the following:

1. To provide for a transparent legal framework including a set of common conditions of admission for third country national ICTs entering into EU.
2. To create more attractive conditions of stay for third country national ICTs and their families.
3. To facilitate (intra-EU) mobility of third country national ICTs
4. To guarantee fair competition, including a secure legal status for third country national ICTs.
5. To facilitate the fulfillment of EU international commitments in the context of the GATS.

### **4. Developing policy options**

Identification of the list of policy options:

#### Option 1: Status quo

Current developments in Member States would continue within the existing legal framework. However, this would mean that the EU as a whole would not be attractive for enterprises and companies, which would still face difficulties in making best use of their staff, although the need for highly qualified resources would be increasing.

#### Option 2) Directive dealing with the conditions of entry and residence of ICTs

The EU would provide a *common definition of an intra-corporate* originating from an undertaking established outside the territory of a Member State.

*Sub-option 2A:* The schedules annexed to the GATS<sup>57</sup> would be used to provide a definition of an inter-corporate transfer. In order to ensure that immigration policy is in line with trade policy and to make use of already known concepts, the definitions included in the schedules could therefore be used as a basis, which would be adapted when needed. However, the schedules cannot be taken up as such, since they do not provide a homogeneous set of conditions for the 27 Member States: commitments may vary from one Member State to another, including on the specifications of the service sectors covered. Finally, by definition, they only concern the sector of services (the transfer must be to a commercial presence of the legal person *providing like services*), whereas an intra-corporate transfer can also take place outside the sector of service. As a result, the scope of the intra-corporate transferees as defined by the Trade agreements could be slightly different from that of the future scheme. Nevertheless, Member States would not be exempted from respecting their commitments as regards the categories of ICTs who would not be covered by the scheme.

Accordingly, the definitions target managers, specialists and graduate trainee, defined in the schedules annexed to the GATS as follows: ‘manager’ means any person working in a senior position, who primarily directs the management of the host entity, receiving general supervision or direction principally from the board of directors or shareholders of the business or equivalent; ‘specialist’ means any person possessing uncommon knowledge essential and specific to the host entity; ‘graduate trainee’ means any person with a higher education qualification who is transferring for career development purposes or to obtain training in business techniques or methods. As regard this latter category, flowing from the Doha negotiations, it was considered more consistent to include them into the attractive scheme dedicated to ICTs rather than the future proposal for a Directive on remunerated trainees, as training is one of the most common objectives of the intra-corporate transfers mentioned by stakeholders.

*Sub-option 2B:* Instead of being defined along their types of responsibility in the company, key personnel would be identified through salary and qualifications criteria, as in the Blue Card Directive. This option would thus consist of amending that Directive by including intra-corporate transferees in its scope. Specific provisions could be provided, where relevant, for example as regards the requirement of a work contract with a EU company (irrelevant for ICTs), duration of stay (whereas the schedules under the GATS foresee that the maximum duration of stay is as a rule limited to 3 years for managers and specialists, the Blue Card scheme lays down provisions aiming at facilitating the issuing of the long-term residence permit (Art 17, 13, 14, 15), labour market test (typically excluded by EU commitments under GATS), mobility between the entities of the transnational corporation (not provided for Blue Card holders).

**Criteria of entry** (i.e. admission criteria) would be laid down in accordance with the definition chosen.

Evidence must be provided that the transfer indeed took place within a group of undertakings: institutional links between host entity and entity of origin must therefore be proved.

As the system is demand-driven, a document describing the tasks assigned would have to be produced. This supporting document would also specify the remuneration (salary arrangements and other related remuneration elements) which must be, whether it is an

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See WTO Doc. S/L/286 and S/C/W/273 Suppl. 1 of 18 December 2006 and TN/S/O/EEC/Rev.1 of 29 June 2005.

intrinsic element of the definition or not, at least equivalent to that granted to EU posted workers (see above on rights).

With a view to ensuring that the skills of the intra-corporate transferee are specific to the host entity and in accordance with EU commitments in the trade area, a period of 12 months of prior employment within the single legal person could be required<sup>58</sup>.

In addition, a third-country national who applies to be admitted as graduate trainee would have to present documents proving that he will be doing genuine training and not be used as regular worker. Therefore, a training agreement including a description of the training programme, its duration and the conditions in which he/she is supervised in the performance of this programme would be required. The trainee would also have to present documents showing his/her the higher education qualification, in line with the requirements provided under EU commitments in the trade area.

No labour market test would be necessary: indeed, the latest EU commitments under GATS exclude any labour market test ('economic needs test') and an alignment of these conditions should be sought for the sake of consistency between Trade and Immigration policies. In addition, such a test would be in contradiction with the purpose of setting up a transparent and simplified scheme for admission of skilled intra-corporate transferees. ICTs, who belong to the internal human resources of the company in question, hold very specific positions (managers, specialists or graduate trainees) for a temporary duration and on the basis of an employment contract concluded with a third country employer: due to these particular features, ICTs are usually not considered as likely to adversely affect national labour markets. However, primary law prevails and for Member States which happen to apply a transitional period to nationals of "new" Member States, Union preference – and consequently labour market test- must be applied.

In line with commitments under GATS, the maximum *duration of stay* would be limited to 3 years for managers and specialists and 1 year for graduate trainees. At the end of this period, the ICT should have to leave the EU territory, unless he/she is authorized to change status.

***Criteria of residence and the rights*** to be granted to ICTs: working conditions of ICTs would be aligned to those laid down by Directive 96/71/EC on posted workers. As regards other categories of rights, different options could be envisaged:

*Sub-option 2C:* in line with EU acquis in the immigration field (e.g.: Blue Card) and ongoing proposals (e.g.: framework directive), ICTs would be granted equal treatment with national workers of the Member State concerned in a large range of rights, in particular representation (i.e. right to association and affiliation of workers organizations), access to goods and services and recognition of diplomas. In order to ensure consistency with other EU instruments (in particular the Blue Card Directive) and to avoid putting into question the possible favourable status of ICTs, tax benefits would not be included .

*Sub-option 2D:* the proposal would merely refer to the provisions of Directive 96/71<sup>59</sup> regarding working conditions. No other rights would be provided. As a result, ICTs would not benefit from the principle of equal treatment in a number of areas such as: recognition of

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<sup>58</sup> Most Member States are in favour of such a condition, but some of them would like to shorten or remove this period (ex: NL, SE, IT). As regards business organisations, they oppose this criterion.

<sup>59</sup> See 2.1.1.

diplomas, certificates and other professional qualifications; and access to goods and services and the supply of goods and services made available to the public.

These provisions would be without prejudice to bilateral agreements concluded by Member States in this area.

### Option 3) Directive providing for intra-EU mobility for ICTs

In addition to definitions, conditions and admission and rights, provisions would be introduced to allow the ICTs to *move within the EU*, in order to work in several establishments belonging to the same group of undertakings and located in different Member States. The situation where an ICT is posted by the first EU company to another company located in another Member State are not covered by this scheme, as they fall under the posted workers Directive.

This option is supported by a majority of Member States (exceptions: DE, EE, SK, CY) and deemed highly relevant by all stakeholders.

A TCN who has been admitted as an ICT and fulfils the criteria for admission to the second Member State could be allowed to carry out part of his/her assignment, upon request, in an entity of the same group located in the second Member State, without having to request a second residence permit, provided that the duration of the secondment did not exceed a maximum period of time to be determined (e.g. 12 months).

A document accompanying the first residence permit issued by the first Member State would list the entities of the group of undertakings in which the ICT was authorized to work. As a flanking measure, the second Member State could be informed of the conditions of this mobility: the applicant would notify to the competent authority of the other Member State the relevant documents relating to his/her transfer to that Member State at least 30 days before the transfer and would also provide evidence of this notification to the first Member State. The second Member State would thus have the opportunity to check that the conditions of admission specific to the job performed in its territory and to the host entity (such as: part of a group of undertakings, level of salary and position held) are met. When they are not, the list of entities where the ICT is allowed to work would not be enlarged and the ICT would thus not be authorized to work in those locations.

The second Member State could require a residence permit if the duration of work exceeds three months but could not require the intra-corporate transferee to leave its territory in order to submit applications.

### Option 4) Directive facilitating family reunification and access to work for spouses

This option would provide common definitions and conditions of admission. In addition, by way of derogation from Directive 2003/86/EC, family reunification would not be made dependent on the requirement of obtaining the right of permanent residence and of the ICT having a minimum period of residence.

Residence permits for family members could also be granted more rapidly (e.g. 2 months).

In respect of access to the labour market, Member States could be prevented from applying the time limit of 12 months and spouses would thus have access to work in their country of residence. These provisions would be identical to the ones provided to Blue Card Holders.



Member States mainly agree with this facilitation but usually link the access to the labour market to a minimum duration of stay in the EU, in general 6 months (SE, IT and FR). Some other Member States are against the creation of a specific right in this matter (ex: DE, AT, CY, PL and RO).

#### Option 5) Directive laying down common admission procedures

Elements of option 2 remain (definition; conditions of admission). In addition, the introduction of a *single permit for work and residence* is proposed: it means that a single document allowing to work and reside on the territory of the Member State would be issued<sup>60</sup>, which would imply also a one-stop shop procedure for obtaining the permit. Member State mainly agree on this point (except for NL, SK and AT).

In parallel, a *maximum time for processing applications* would be set for the single permit, e.g. 1 month: one of the major aims is indeed to facilitate the mobility of this specific category of migrants; moreover, the labour market test would not be applicable and the procedure would be then simplified.

Member States are generally in favour of a longer handling-time<sup>61</sup>.

Options 2, 3, 4, 5 may be added, whereas the following option is alternative to the previous ones:

#### Option 6) To foster communication, coordination, and cooperation among Member States on these issues, including through the open method of coordination

No new legislation would be introduced but the Commission would focus its attention on complementary and supporting activities. The aim is to bring the legislative practices of Member States closer into line through the gathering and exchange of knowledge and information –including best practices–, performing comparative analyses, giving advice, promoting innovative approaches and best practice, and evaluating experiences.

## **5. ANALYSIS OF IMPACTS**

### **5.1. Options**

The assessments of policy options are presented in the tables below. Brief summaries of the policy options are provided above the relevant assessment grid. At the end of each grid, the opinions of the consulted stakeholders on the policy options are reported.

Each policy option has been assessed according to a ranking, which considers the positive (√) and negative (-) impacts, as well as neutral ones (0), for each of the assessment criteria considered.

Regarding the impact on fundamental rights, it should be made clear that the Charter applies to every person irrespective of nationality or residence (Article 51). All the options considered

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<sup>60</sup> These provisions could build on Regulation 1030/2002 laying down a uniform format for residence permits for third-country nationals.

<sup>61</sup> According to Migrapol 207, current situation in this area is following: BE: 4-6 weeks; BG, HU, IT, NL, ES: 1-3 months; AT: 6 months as a rule.

within this Impact Assessment comply with all the rights included in the Charter. However, depending on the option chosen, these rights will be more or less enhanced.

Policy Option 1 – Status quo		
Assessment Criteria	Rating	Reasoning for the ranking and aspects of the policy option necessary to achieve the impact
Relevance		
To support economic development of EU businesses, while guaranteeing a fair competition.	0	<p>-The EU is not attractive as a whole for enterprises which face difficulties in making best use of their staff, although the need for highly qualified resources is increasing. National regulations continue to vary.</p> <p>- Some Member States set up specific schemes (facilitations in terms of procedures and rights) to attract ICTs but because of their fragmentation, such schemes are unable to enhance the attractiveness of the EU as a whole. - In the absence of EU intervention, the issue of intra-EU mobility for ICTs is not addressed, creating obstacles to swift and effective allocation of human resources for companies.</p> <p>- As there is no clarification of the set of rights granted to TCN ICTs, the risk of unfair competition towards other posted workers covered by Directive 96/71 continues to exist.</p>
Expected Impacts		
Economic Impacts at EU level	0	<p>-A growing number of people are choosing an international career and the needs for higher skills are growing. When admission procedures remain under the competence of the Member States, the uncertainty and delays in the transference of key personnel and experts will continue. The competitiveness of the EU will therefore be negatively impacted, since companies will continue to encounter difficulties in attracting and bringing in ICTs.</p> <p>-Moreover, due to difficulties raised by the transfer of their nationals, third countries could hamper the transfer of EU nationals to subsidiaries established in their territory</p>
Social Impacts at EU level	0	-In the absence of EU common specific rules as regards the working conditions and further rights applicable to the ICTs transferred by third-country companies, there is risk of unfair competition by third country companies.
Impacts on third countries	0	<p>-Bilateral agreements in the Trade area may have an impact on the movements of ICTs.</p> <p>-The socio-economic position of TCN ICTs would depend on how far national rules grant rights and benefits to them.</p>
Impacts on fundamental rights	0	It depends on national Member State legislation, whether for ICT the fundamental rights of Article 7 (i.e. respect for private and family life), Article 12 (freedom of association and affiliation), Articles 15, 21 and 31 (fair and equal working conditions) and Article 34 (social schemes) are sufficiently addressed.
Feasibility		
Administrative burdens	0	N/A
Difficulty/risks for transposition	0	N/A
Financial impact	0	N/A
Stakeholders' view		According to all stakeholders, a status-quo would be harmful for the competitiveness of EU companies and the valorisation of human resources by multinational companies. In addition, some stakeholders (IOM, ETUC), point to the current absence of safeguards regarding the level of rights granted to ICTs.

Policy Option 2 - Directive dealing with conditions of entry and residence for ICTs		
Assessment Criteria	Rating	Reasoning for the ranking and aspects of the policy option necessary to achieve the impact
Relevance		
To support economic development of EU businesses, while guaranteeing a fair competition	VVV (2A, 2C) VV (2B, 2D)	<p>This option provides clear conditions of entry (notably, no labour market test), and stay and therefore enhances the transparency of the legal environment. Specific rules of admission are set up for ICTs.</p> <p>However, the rules still vary in terms of procedure (including the period of time needed to process the applications). Rights regarding family reunification are left to the discretion of Member States and intra-EU mobility is not provided.</p> <p>Sub-option 2A based on the positions occupied by ICTs provides for a broader scope than sub-option 2B, since criteria of salary and qualifications would not apply. In-house experts or managers would thus qualify, even if they are not able to demonstrate any higher education qualifications. Likewise, graduate trainees could be admitted even if they do not yet receive a high salary, provided that their working conditions are in line with Directive 96/71. On the other hand, salary and higher education qualifications are objective criteria which could facilitate the handling of applications by immigration authorities.</p> <p>Granting equal treatment in a number of rights (2C) would enhance the level of protection of TCN ICTs and would therefore reduce the risk of unfair competition</p>
Expected Impacts		
Economic Impacts at EU level	VVV (2A, 2C) VV (2B, 2D)	<p>-Establishing common rules for Member States on entry and residence will have a positive impact on EU competitiveness and innovation, since it enhances the transparency and predictability of the legal environment which is necessary to conduct business: the companies can bring in more easily ICTs.</p> <p>-The broader scope of sub-option 2A strengthens such a positive impact</p> <p>-Depending on the extent of rights granted to TCNs, constraints on companies could be more (2C) or less (2D) significant since EU companies could have to bear increased labour costs. For this reason, attractiveness for employers could be reduced. But conversely, the attractiveness of an EU scheme dedicated to ICTs could be more marked for ICTs (who, as key staff, are often able to choose the location of their work) under option 2C since they will enjoy a wider set of rights, thus countering the previous impact.</p>
Social Impacts at EU level	VV (2A, 2B, 2C) V (2D)	<p>-The labour market is not likely to be affected by these movements of migrants endowed with very specific skills, as they do not substitute any national or EU worker. The scheme must therefore ensure that it only applies to some very specific categories of workers and that their labour cost is not lower than that of nationals or EU citizens.</p> <p>-Equal treatment of ICTs in a number of areas and common admission criteria will remove the opportunities for employers to use the competitive advantages of lower waged third country ICTs and reduce the risks of displacement or social dumping. This impact would be even stronger under 2C</p>

Policy Option 2 - Directive dealing with conditions of entry and residence for ICTs		
Assessment Criteria	Rating	Reasoning for the ranking and aspects of the policy option necessary to achieve the impact
Relevance		
Impacts on third countries	VVV (2A) VV (2B, 2C and 2D)	<p>-Positive impacts on third countries could be achieved through:</p> <ul style="list-style-type: none"> <li>-enhanced opportunities of migration, stronger under 2A, (thanks to a clearer legal framework and facilitated entry), possibly resulting, in a intensified transfer of skills to third countries;</li> <li>-a better attractiveness of the EU (deriving from the common clear picture, and also from the set of socio-economic rights);</li> <li>-higher level of protection and rights (stronger under 2C; see also fundamental rights)</li> <li>-and a possible higher level of remittances (resulting from better working conditions).</li> <li>-The risks of brain drain is low since migration is purely temporary. Moreover, according to available information, ICTs' source countries are mainly developed and emerging countries.</li> </ul>
Impacts on fundamental rights	VV (2A, 2B, 2D) VVV (2C)	This option would strengthen the set of Fundamental rights granted to TCN ICTs, regarding Articles 15, 21 and 31 (fair and equal treatment). Option 2C would have a stronger impact and would in addition better ensure the right under Art 12 (freedom of association and affiliation) and Art 34 relating to social security.
Feasibility		
Administrative burdens	-VV (2A, 2C) -V (2B, 2D)	<p>-The application of new common definition and admission criteria will entail legal adjustments and result in a larger administrative burden for Member States and employers but only in the short term. Sub-option 2B provides objective criteria which could be considered easier to apply for immigration authorities. On the other hand, definitions put forward under sub-option 2A are already known by the Member States as they flow from Trade commitments.</p> <p>-The rights of sub-option 2D appear to be generally respected throughout the EU, but rights under 2C would partly and for some Member States have to be included in national legislations and respect ensured.</p>
Difficulty/risks for transposition	-VV (2B) -VVV (2A, 2C, 2D)	<p>-This policy option will impose adjustments on Member States, slightly reduced under sub-option 2B (see 'Administrative burden').</p> <p>-However, the present option does not seem to pose major difficulties in transposition and appears proportionate.</p>
Financial impact	-V (2A, 2B, 2D) -VV (2C)	-Additional costs can be foreseen for Member States and employers, resulting from the new scheme and application of equal treatment with respect to social security rights (2C). However, these costs should be moderate as ICTs would not always qualify for social security benefits, taking account of their short duration of stay. Moreover, a reduction of overall costs is likely to occur in the medium term for employers, thanks to the common admission system for ICTs.
Stakeholders' view		<p>-According to stakeholders, common definitions and conditions of admission will facilitate inflows of ICTs, thereby having a positive effect on competitiveness.</p> <p>-Regarding rights, ETUC is in favour of an enlarged set of rights. Business Europe mentions that as workers can claim social security and other benefits, this can cause a possible increase in public expenditures</p>

Policy Option 3 Directive providing for intra-EU mobility for ICTs		
Assessment Criteria	Rating	Reasoning for the ranking and aspects of the policy option necessary to achieve the impact
Relevance		
To support economic development of EU businesses, while guaranteeing a fair competition	VVV	-This option provides for a clear legal framework for ICTs from third countries and introduces intra-EU mobility elements, which allow a swift re-allocation of their internal resources for EU companies, preventing delays and costs
Expected Impacts		
Economic Impacts at EU level	VVV	<p>-In addition to transparency of the legal framework and the secured legal status of TCNs, the provisions for intra-EU mobility between branches of the same company will improve EU attractiveness for third country businesses and investments. From this perspective, positive impacts on the flexibility of assigning ICT and, in turn, on EU competitiveness could be achieved.</p> <p>As a result from this improvement of EU capacity to attract them, the future instrument should translate into an additional flow of third country nationals ICTs - those who at present turn down an international assignment because of the burdensome and unclear conditions of admission, stay and intra-EU mobility or who are not transferred since companies are deterred by complicated conditions of admission. However, at the same time, an enhanced possibility of intra-EU mobility could result in a lower number of ICTs. Taken into account these two expected results, a slight increase in the number of ICTs could result from the present proposal, which is however not possible to evaluate.</p>
Social Impacts at EU level	VV	The facilitation of intra-EU mobility will contribute to a better demand and supply matching within transnational corporations.
Impacts on third countries	VV	The positive impacts of establishment of common rules of admission and residence (option 2) are slightly strengthened through a facilitated EU mobility, since this option allows for an enlarged transfer of skills and at the same time enhances the attractiveness of Europe as a destination for ICTs.
Impacts on fundamental rights	VV	Fundamental rights under art 15, 21, 31, 12 and 34 are still positively impacted by option 2. No further rights are touched upon.
Feasibility		
Administrative burdens	-VV	-Apart from the administrative burden brought about by elements of option 2, the provision on intra-EU mobility will at first add to the administrative burden of Member States since they will need to set up cooperation systems. It will also require measures of notifications from companies. However, this option will eventually simplify the overall administrative burden, since the entry procedures will be taken on by the first Member State and because there will be no requirement for re-application of the ICT within the first months in the second Member State. This sub-option will also simplify significantly the administrative burden imposed on companies.
Difficulty/risks for transposition	-VV	<p>Further commitments from the Member States relating to cooperation requirements would be required. However, a similar system is already in place for researchers (without the notification obligations) and this could inspire the new organisation.</p> <p>This action appears to be proportionate as the administrative burden imposed on Member States is outweighed by the benefits flowing from the enhanced possibility to easily transfer intra-corporate staff from one Member State to another.</p>
Financial impact	-V (business)/-VV (Member States)	Additional costs foreseen under option 2 would remain. This option would also increase costs for the 1st Member State because of coordination, but there would be reduced costs for the 2nd Member State. It would have significant positive impact on business which would be spared the return costs to the country of origin and the costs of the transfer to the second ICT

Policy Option 3 Directive providing for intra-EU mobility for ICTs		
Assessment Criteria	Rating	Reasoning for the ranking and aspects of the policy option necessary to achieve the impact
Relevance		
Stakeholders' view		All the stakeholders agree on allowing ICT intra-EU mobility as this option would contribute to a better allocation of human resources. Also it will in their opinion increase the career opportunities for ICTs.

Policy Option 4 Directive facilitating family reunification and access to work for spouses		
Assessment Criteria	Rating	Reasoning for the ranking and aspects of the policy option necessary to achieve the impact
Relevance		
To support economic development of EU businesses, while guaranteeing a fair competition	VVV	-This option includes a clear legal framework for IC transfers from third countries (option 2). In addition, it creates more attractive conditions of stay for ICTs (see also economic impacts).
Expected Impacts		
Economic Impacts at EU level	VVV	-When spouses are able to join the sponsor and are granted access to work more rapidly and Member States are not allowed to apply the time limit of 12 months, this will have a positive effect on the willingness of ICT to be transferred for a longer period of time since concerns about partner employment are one of the main reasons why staff turn down an international assignment. Because of this, companies will be able to attract ICTs more easily and therefore be more competitive.
Social Impacts at EU level	V	In addition, since family members would be granted access to the labour market, this option would result in a larger availability of workforce. However, access to labour market would be easier for family members of of ICTs than for family members of nationals of new Member States subject to transitional measures, which could be politically difficult to defend and run counter to the Union preference. Yet, the current remaining transitional measures would not apply any more at the time when the directive would enter into force; in addition, such a provision was already put forward by the Blue Card Directive and the number of persons concerned would be small.
Impacts on third countries	VV	<p>- The positive impacts of establishment of common rules of admission and residence (option 2) are strengthened thanks to these further rights relating to family reunification; the attractiveness of a transfer to the EU territory would be enhanced and may bring about an increasing number of ICTs</p> <p>-The relevance of the remark depending on the country of origin, the remittances could be larger.</p> <p>-At the same time, the impacts in terms of circular migration could be negative, because an ICT could decide to stay in the Member State when united with his/her family and not return to the country of origin. The risks of brain drain could also be larger, as the spouse can be considered a second immigrant leaving the country of origin and possibly pursuing a carrier in the EU.</p> <p>However, according to available information, ICTs' source countries are mainly developed and emerging countries</p>
Impacts on fundamental rights	VVV	Fundamental rights under art 15, 21, 31, 12 and 34 are still positively impacted (see option 2). Moreover, under this option, article 7 (i.e. respect for private and family life) is further promoted.
Feasibility		
Administrative burdens	-VV	Besides the administrative burden brought about by elements of option 2, this option would result in simplification of the administrative burden for the family of the TCN regarding access to the EU territory and the labour market and would not add much burden on Member States since even if family members do not have a right to enter and work, they may already apply for residence and work permits. However, Member States would have to deliver the authorization within a shorter period as foreseen under the common rules of family reunification.
Difficulty/risks for transposition	-VV	This option would result in adjustments derived from the creation of a specific family right.



Policy Option 4 Directive facilitating family reunification and access to work for spouses		
Assessment Criteria	Rating	Reasoning for the ranking and aspects of the policy option necessary to achieve the impact
Relevance		
Financial and administrative costs	-V	<p>Additional costs foreseen under option 2 would remain. The new elements introduced by this policy option would have marginal effects in terms of increased expenditure by Member State governments, due to specific family reunification scheme and in relation to social security/health care services possibly granted to ICT and their family.</p> <p>However, by facilitating the access of partners to the labour market, these costs would most likely be limited for public budgets, since part of them would be borne by the employers.</p>
Stakeholders' view		All stakeholders agree on assigning ICTs the right of family reunification and access to work, as this option would remove an important obstacle to potential ICT for accepting an assignment.

Option 5 Directive laying down common admission procedures		
Assessment Criteria	Rating	Reasoning for the ranking and aspects of the policy option necessary to achieve the impact
Relevance		
To support economic development of EU businesses, while guaranteeing a fair competition	VVV	-This option provides, in addition to a clear legal framework for IC transfers from third countries, harmonization of the conditions of admission of ICTs in terms of procedure, providing more certainty for companies and TCNs and allowing costs saving (see also economic impact).
Expected Impacts		
Economic Impacts at EU level	VVV	-Transparency of the legal framework is provided thanks to common admission criteria (option 2) but further enhanced by common procedural provisions.  -The introduction of a single permit for work and residence could significantly improve the ability to easily and rapidly transfer key personnel. It will also make it more attractive for ICT to be transferred, when it is easier to enter the EU. As a result of reduced time and costs for attracting ICTs, the ability of EU firms to better and rapidly match request and demand in key internal personnel will be strengthened. These procedural measures aim at further increasing the attractiveness of the scheme already provided by the secured legal status of TCNs (see option 2).
Social Impacts at EU level	VV	When a single permit is introduced as well as a shorter time to process applications, the effort, cost and time to complete the procedure for applying for permits will be reduced.
Impact on Third Countries	VV	- The positive impacts of establishment of common rules of admission and residence (option 2) are slightly reinforced by the favourable procedural rules.
Impacts on fundamental rights	VV	Fundamental rights would not be affected by such an option.
Feasibility		
Administrative burdens	-V (business)/-VV (Member State)	The measures introduced by this option will simplify the administrative burdens for companies and ICTs, making the application procedures for work and residence more efficient. On Member States' side, it will add a slight administrative burden but will translate into costs saving in the long run.
Difficulty/risks for transposition	-VVV	This option will add to the adjustments derived from option 2 the adjustments required by the application procedures. 12 Member States would have to introduce the single permit system and invest for this aim. Costs saving would occur at the same time due to a reduced labour input. However, only 6 Member States already apply or would agree on a processing time no longer than 1 month.
Financial impact	-V (business)/ -VV (member States)	- Besides these costs flowing from option 2, in the short term, Member States will have to invest to make the single permit possible and to shorten the processing time. In a long-term perspective however, all Member States will eventually benefit financially from a single permit procedure.  -On the contrary, business should take advantage of these simplifications in financial terms (less time dedicated to administrative tasks)
Stakeholders' view		According to all stakeholders, the introduction of a single permit and maximum processing time would reduce time and efforts required by companies, which would enhance the efficient use of corporate resources.

Policy Option 6 - To foster communication, coordination, and cooperation among Member States on these issues, including the open method of coordination		
Assessment Criteria	Rating	Reasoning for the ranking and aspects of the policy option necessary to achieve the impact
Relevance		
To support economic development of EU businesses, while guaranteeing a fair competition	V	<p>-Communication, coordination, exchange of best practices and cooperation among Member States could contribute to approximate national practices on TCN ICTs across EU and to create a more harmonised legal framework, resulting in an enhanced attractiveness and a better implementation of EU Trade commitments. However, impacts are likely to be very limited in the absence of a mandatory aspect.</p> <p>-In the absence of compulsory regulation regarding the set of rights granted to TCN ICTs, the risk of unfair competition and substitution of local workers continues to exist.</p>
Expected Impacts		
Economic Impacts at EU level	0/(V)	When information on the regulations on entry and stay in the Member States are exchanged better between them, this could improve the quick transference of personnel and thus improving the competitiveness of EU enterprises and EU as a whole. However, these impacts will probably be very limited.
Social Impacts at EU level	0/(V)	Member States gain better access to information on effective policies and good practices. When Member States learn of and from each other's policies, this may result in a degree of harmonisation of rights.  However, no significant impact is expected.
Impacts on third countries	0	This option is unlikely to have an impact (positive or negative) on the transfer of skills or circular migration.
Impacts on fundamental rights	0	(no specific effect in this field)
Feasibility		
Simplification -administrative burdens	0	There will be no simplification or reduction of the administrative burden through this policy option.
Difficulty/risks for transposition	0	No difficulties or risks of transposition would be envisaged by this policy option since it would not impose any additional legislative interventions and Member States would have complete discretion in whether to adapt to the content of the information and best practices delivered through this policy option.
Financial impact	-VVV	At EU and Member State level, additional costs will be recurrent for organizing activities such as drafting national action plans, sharing good and best practices, creating networks of expertise, and data collection and dissemination.
Stakeholders' view		According to stakeholders, the exchange of best practises could have positive effects on facilitating the entry and residence of ICT, although in their view this effect will be less than with the other policy options.

## 5.2 Assessment of financial and administrative costs

**Policy option 1** (Maintaining the status quo) will not require additional resources besides those triggered by individual Member States on their own initiative.

The basic provisions of **policy option 2**, conditions of entry and residence of ICTs as a common definition for intra-corporate transferees and common admission and residence criteria, will require both one-time and recurring additional costs, as these require an adjustment of the procedures in all Member States.

For enterprises, this policy option holds limited recurring changes in financial and administrative costs, except for getting acquainted with the new legislation and to grant possibly more extended socio-economic rights to TCN ICTs.

**Policy option 3** may impose additional costs on the Member States, due to the requirement on cooperation between Member States. However, the incurring costs for Member States are probably slight since a comparable system already exists for the researchers according to Directive 2005/71.

**Policy option 4** would have contradictory effects (possible slight increase but also benefits) and would altogether not bring about net costs for Member States.

Policy options 3 and 4 would not cause any costs for enterprises, and the advantages would be high, because of the greater attractiveness and flexibility of deploying ICT.

With specific regard to **policy option 5**, it would require additional resource at EU and Member State level in order to respect the time-limits set for processing applications (costs due to the need to comply with the time limit, possibly by employing more resources for the procedure). Additional costs regarding the introduction of a single permit for Member States that currently do not operate such a system are not expected to be very high (see below). EU staff resources (3 months FTE) would be required to prepare and channel that legislation.

Employers would have great advantages of this option and much lower costs because of the single permit, the one-stop shop and the shorter procedures.

As regards to **policy option 6**, additional costs at EU level would be mainly related to the annual budget for organizing communication and coordination activities (i.e. support to the exchange of best practices, creating networks of expertise, organizing information campaign). At Member State level, there would be need for dedicated personnel for the participation to the cooperation activities. Regarding **Local Governments**, additional activities cannot be clearly identifiable due to their usually indirect involvement in the admission process of ICT. This option would require EU staff resources (1 month FTE annually) for support activities, and Member State government resources in terms of cost of time of participants in the activities (0.5 months FTE per Member State), as well as costs to convey information on their legislative framework and admission conditions. This option would not imply additional costs for employers and third countries.

Finally, no particular costs would be delivered on **third countries**, except for those possibly needed to communicate the new regime to potential ICT. Possible gains will be the remittances from ICT to the third country and the return (after a maximum of three years) of more qualified or skilled work force.

### **5.3 Comparative assessment of policy options**

The tables below compare the different policy options and sub-options in order to highlight the advantages and disadvantages of the solutions identified and to elaborate the preferred policy option.

The comparison is carried out with respect to the criteria considered for the assessment of each policy option and sub-option:

Relevance to policy objectives (global and specific objectives);

Impacts (economic impacts, social impacts and impact on Third Countries);

Feasibility (Simplification of administrative burden, the risk of transposition and the level of administrative costs).

The sub-options have been compared in relation to their specific field of intervention, thereby identifying those sub-options which are more positive within their related field.

**Table 2. Comparison between policy options – Intra-Corporate Transferees**

	Assessment criteria	PO 2A	PO 2B	PO 2C	PO 2D	PO 3	PO4	PO5	PO6
	Relevance to global objective	VVV	VVV	VVV	VV	VVV	VVV	VVV	V
Impacts	Economic impacts at EU level	VVV	VV	VVV	VV	VVV	VVV	VVV	0/V
	Social impacts at EU level	VV	VV	VV	V	VV	V	VV	0/V
	Impacts on Third Countries	VVV	VV	VV	VV	VV	VV	VV	0
	Impacts on fundamental rights	VV	VVV	VVV	VV	VV	VVV	VV	0
Feasibility	Administrative burden	-V V	-V	VV	V	-VV	-VV	-V (business)/ -VV (Member State)	0
	Difficulty/risks of transposition	-VVV	-VV	-VVV	-VVV	-VV	-VV	-VVV	0
	Financial impact	-V	-VV	-VV	-V	-V	-V	-V (business)/ -VV (Member State)	-VVV

## **6. Identification of the preferred policy option**

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

- A common definition of ICTs building on the definitions of positions occupied by ICTs (option 2A)
- a enlarged set of rights (option 2C)
- intra-EU mobility (option 3)
- facilitation for family reunification (option 4)
- common admission procedure (option 5)

It is clear that none of the individual policy options completely addresses the problems or fully achieves the policy objectives. However, by combining different aspects of the policy options, a higher degree of effectiveness could be achieved.

The table below summarizes the aspects of the assessed policy options, which are included in the preferred option.

**Table 3 Intra-corporate Transferees - Preferred Policy option**

Main field of EU action	Key feature of the preferred policy option	Policy options and sub-options considered
Definition of ICTs	Common definition based on the specific positions occupied by ICTs (managers, specialists and graduate trainees)	PO 2A
Conditions of admission	Work contract with a company located in a third-country and belonging to the multinational corporation	PO 2A
	A duration of prior employment, if required	
	Professional qualifications in line with the position taken	
	Higher education qualifications and a training plan for graduate trainees	
	No labour market test	
Conditions of residence	A common set of rights including working conditions as referred to in Directive 1996/71 and an enlarged set of further socio-economic rights	PO 2C
	Intra-EU mobility	PO 3
	Family reunification	PO 4
Admission procedure	Single permit for work and residence	PO 5

In the following paragraphs, the characteristics of each aspect of the preferred policy option are presented below in terms of advantages and disadvantages, with respect to the main issues and fields of expected impacts.

### **Main advantages**

Common conditions of admission are an advantage to the competitiveness and attractiveness of EU enterprises belonging to transnational corporations, while the reference to working conditions laid down by Directive 96/71 and the granting of a series of rights ensure a fair competition between EU posted workers and third country national intra-corporate transferees.

Facilitating family reunification for ICTs' spouses (without access to work, not to put in a more favourable situation ICTs compared to future new Member States) and supporting intra-EU mobility strengthen the attractiveness of EU for ICTs.

The single permit for work and residence, along with the maximum time for processing applications contribute to a rapid application and facilitates the transfers of key personnel.

All the above-mentioned advantages **will contribute to the EU's competitiveness and attractiveness for enterprises and investments** by facilitating movement of ICTs.



## Main disadvantages

The main disadvantage of the preferred policy option will be the costs involved: Member States will have to make modifications to their legislative frameworks in order to adapt to the provisions of the preferred policy option, mainly concerning the common definition, the single permit, intra-EU mobility and shortened time-limits to handle applications for an ICT permit as well as for family reunification. From the employers' perspective, additional time and resources will also be involved to comply with the new conditions of admission, but the simplifications flowing from a common framework will far outweigh this necessary investment (less time dedicated to administrative tasks).

### *Assessment of the preferred policy option*

The table below summarises the assessment of the preferred policy option with respect to assessment criteria identified and indicates the provisions of the preferred policy option that explain the related rating and specifically contribute to the achievement of the impacts identified.

**Table 4 Assessment of the preferred policy option**

Assessment Criteria	Rating	Provisions contributing to the rating
To support economic development of EU businesses, while contributing to preventing the risk of unfair competition	VVV	<p>Clear conditions of entry (in particular, no labour market test), and stay which enhance the transparency of the legal environment. Specific rules of admission are set up for ICTs. Procedures are simplified (single procedure/permit; shortened processing time), intra-EU mobility and family rights are granted to ICTs. Facilitation of intra-EU mobility enhances the competitiveness and attractiveness for enterprises and investments.</p> <p>Granting equal treatment in the range of rights (2C) enhances the level of protection of TCN ICTs and therefore reduce the risk of unfair competition and substitution of workers</p>
Economic impacts at EU level	VVV	<p>The common definition for ICTs and criteria for admission and residence will make it more attractive for companies to transfer their key personnel. It will make the procedures rapid and less complex and costly (single permit, max time to process applications).</p> <p>Attractive conditions of residence will make it attractive for ICTs to be transferred.</p> <p>Both will establish that the EU economy is a more competitive and more attractive for enterprises and investments.</p>
Social impacts at EU level	√√	<p>-Companies in need of in-house experts and managers will meet their needs more easily.</p> <p>-The risk of unfair competition will be prevented through definite working conditions and strict limitation to the scope of the Directive to staff who cannot be found on the national labour market.</p> <p>-Fundamental rights would be strengthened, in particular with regard to Articles 7 (family life), 12 (freedom of association and affiliation), 15, 11 and 31 (fair and equal treatment)</p>
Impacts on Third Countries	√√	<p>Positive contributions to (the development of) third countries are evident through easier access to the EU-economy.</p> <p>At the same time migration is temporary, thus avoiding the risk of brain drain.</p> <p>However, the enhanced attractiveness of the EU and the common regulations cannot prevent that ICT may not return to their home country if Member States allow them to turn into a permanent status.</p>

Difficulty/risks for transposition	√√	Difficulties of transposition will probably arise from:  a common definition, the introduction of a single permit, intra-EU mobility, the application of the principle of equal treatment as regards the rights in the social security field and the maximum time for processing applications.
Administrative burden	VV/-- (business)	A considerable degree of simplification will be achieved through the common conditions of admission, intra-EU mobility and the establishment of the single permit for work and residence.
Financial impact	-/√	Additional costs will by large be short term, concerning the costs for introducing a common definition and new procedures for admission and residence.  In the medium-long term a reduction of costs is likely to occur due to better efficiency of the admission system and intra-EU mobility.

### Assessment of the administrative costs

The following assumptions and estimates were made:

**The number of TCN ICTs admitted to the EU:** although there is only limited data available on the number of ICTs moving from third countries to Member States, it is possible to perform an “educated guess”. Under the assumption that the number of ICTs correlates on the one hand with the size of the Member State in inhabitants and on the other one the number of multinationals, the following tentative estimate can be made: multiplying the number of ICTs per country per year (3<sup>rd</sup> column of the second table) by the number of countries in one of the three categories, gives the total number per category of Member States. Adding those three numbers leads to a total approximate annual number of ICTs coming to the EU: 17,500 (incl. UK and IE) or 15,500 (without UK and IE).

### Estimation of number of ICTs in the EU per year

**Table 5. Available data**

Name of the Member State	Number of ICTs
<b>Austria</b>	140
<b>France</b>	1960
<b>Germany</b>	4429
<b>Italy</b>	1,095
<b>Netherlands</b>	2,632
<b>Poland</b>	459
<b>Slovakia</b>	355
<b>Slovenia</b>	1433
<b>Spain</b>	1109
<b>Total</b>	13,587

**Table 6 Estimate numbers of ICTs**

Characteristic of category of Member State	Name of Member State	Estimated number of ICT per year per Member State	Total number per category of Member State
Large Member States (38 – 83 million inhabitants) or a large number of international operating companies (multinationals)	UK	2,000*	2,000
Medium Sized Member States (6 – 22 million inhabitants)	Belgium Bulgaria Czech Republic Finland Greece Hungary Portugal Rumania Sweden	200**	1,800
Small Sized Member States (< 6 million inhabitants)	Cyprus Estonia Ireland Latvia Lituania Luxemburg Malta	20	140
	EU (incl. UK and IE)		17,500 (approx.)
	EU (without UK and IE)		15,500 (approx.)

\* based notably on Italy, The Netherlands and Germany. \*\* based on Slovakia and Austria

The hourly tariffs of **Member States' personnel** are estimated to be **€23**, based on EU average hourly labour costs in public administration (NACE L), extracted from Eurostat. The examination of an application is calculated to require 6 hs.

The preferred option would cause the following additional administrative costs:

**-implementation costs in the first two years for familiarizing with the obligations:** the following estimations have been made, on the basis of the estimations retrieved from the Impact Assessment on the Blue Card Directive and taking into account the number of ICTs: 1 working day and 50 officials/Member State concerned.

**-Costs for processing a application and issuing a ICTs permit (related to the examination and assessment of the documentation presented, the processing of the relevant information in the specific ICT database and the notifications of rejections to the applicants):** most of these costs with regard to processing the application already occur at present and are not additional. If the administrative costs are assumed to be the same as those foreseen for the Blue Card procedure in case of High Skilled Workers<sup>62</sup>, the required time per admitted ICT for the Member State would add up to 56 hours. Using a tariff of 23 Euro per hour, the costs per ICT would be 1,228 Euro. 16,500 ICT per year would cost the administrations of the Member States at least **20,262,000 Euro** per year **to process the applications**. To these costs would be added the costs required to process the applications which are eventually not approved which could be evaluated, anticipating a high rate of success (80%) due to a clarified legal framework, at  $6 \times 23 \times (0,2 \times 16500) = 455\,400$  Euro.

However, economies of experience would occur after one year, with a possible reduction of time and of administrative costs occurred for key actions. In parallel, the number of ICTs admitted would tend to increase, since EU attractiveness for ICTs would be enhanced.

-To these costs would be added **costs resulting from coordination needed for intra-EU mobility**. However, a similar system is already in place for researchers and would thus not require new organization. Against this background, costs are assessed to be negligible.

**-Costs relating to the shortened processing time and the single permit:** net implementation costs for the introduction of a single permit are not expected to be considerable, given that under the framework Directive (currently under negotiation in Council and Parliament) the 12 Member States that currently do not have a single permit system would be required to introduce one. Given certain specificities that a regime about ICTs requires, these were excluded from the scope of that Directive. The extension of the single permit also to ICTs under the preferred policy option would thus not entail additional costs for Member State after having transposed the framework Directive.

Costs savings could occur in the 12 Member States (BE, BG, CZ, ES, IE, HU, LV, MT, PL, PT, RO, SL) that currently do not have a single permit, notably with respect to assumptions of reduced labour input (up to 1 working day less) in a single application procedure that leads to a single permit. Assuming an overall total of 4261 ICTs for the 12 Member States, this would entail savings of up to 784 024 Euro.

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<sup>62</sup>

IA on EC proposal for a directive on Highly Skilled Workers, Final Report July 2007.

-Obligation to submit **annual statistics** to the Commission and other Member States on numbers of residence permits or visa issued to TCN ICTs. Annual reporting is calculated to require 10hs (see table below).

Equal treatment in terms of social security rights could also have a cost for those Member States which do not already grant them to ICTs. All Member States already grant equal treatment in working conditions. With respect to social security rights, gaps in rights that the proposal would close are relevant in a number of Member States that appear to have either waiting periods of between 1 and up to 10 years before access is granted to rights, or do not grant certain rights to TCNs. As far as ICTs are concerned, these are mainly sickness and health care (FI, BG, MT<sup>63</sup>) and family benefits (FI, BG, LT<sup>64</sup>, LV<sup>65</sup>, UK). ICTs are thus excluded from access to these benefits, unless a specific regime covered them. Social security bilateral agreements cover a number of ICTs, roughly estimated at 50%. For these TCNs, new provisions would apply without prejudice of the existing rules derived from the international agreement. One third of the number of ICTs concerned is assumed to be eligible for health care and family benefits. For FI (1,914 per capita expenditure), on an estimation of 200 ICTs per year admitted, these additional costs are € 63162 for sickness and health care and € 9141 for family benefits. For BG, there is no data on expenditure for sickness insurance so that the PL expenditure of € 204 is used as a proxy. That way, additional costs of € 8316 are expected for these rights. For UK, additional costs related to family benefits would amount to € 166 167.

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<sup>63</sup> However, in this last Member State, the number of ICTs is negligible and cost assessment makes therefore no sense.

<sup>64</sup> Same remark as for MT.

<sup>65</sup> Same remark as for MT.

**Table 7 Administrative costs**

Proposal on conditions of entry and residence of ICTs					Tariff (€/per hour)		Time (hour)		Price (per action or equip)	Freq (per year)	Nbr of entities	Total of actions	Total cost	Regulatory origin (%)			
No.		Type of obligation	Description of required action(s)	Target group	i	e	I	e						Int	EU	Nat	Reg
1		Application for individual authorisation or exemption	Retrieving relevant information from existing data	Member States – (Annual reporting to COM and other Member States)	23		10		23	1	26	26	5980			100%	
<b>Total administrative costs (€)</b>													5980				

## **7. Monitoring and evaluation**

It should be noted that the current problem of lack of data will be remedied by the statistics Regulation 862/2007<sup>66</sup> under which Member States shall supply Eurostat with statistics on residence permits and residence of third-country nationals, including number of permits, reasons for issuing the permit and its length (Article 6). The first reference year is 2008; data shall be supplied within 12 months of the end of the reference year. Additional disaggregation of the data for the year in which the permit was issued, age and sex of the holder can be provided for.

In accordance with the Commission Communication ‘A Europe of results – Applying Community law’, the Commission suggests setting up an expert group of representatives of the Member States and the Commission ('Contact Committee'), which would meet to discuss issues concerning the transposition of the proposed directive, along the lines of the Legal Working Group that meet regularly to consider the implementation of for example Directives 2009/50/EC and 2009/52/EC. The proposed expert group would ensure improved information flow between EU and national authorities on how the directive is implemented and is intended to help anticipate and resolve problems more effectively.

The following paragraphs present a possible set of indicators to use in monitoring the effects in respect to the main objectives of the EU intervention. In addition to these possible indicators we present a broad outline of possible monitoring and evaluation arrangements.

### **7.1 Identify core progress indicators for the key objectives of the possible intervention**

The table below presents a list of indicators which will make it possible to assess the progress and effectiveness of the preferred option in achieving the main policy objectives. In relation to these possible indicators sources of information that could be used to collect related data and other information are also mentioned.

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<sup>66</sup> OJ L 199 of 31 July 2007, p. 23.

**Table 8 Potential monitoring and evaluation indicators of the preferred option**

Main objectives	Potential Indicators	Sources of Information
To support economic development of EU businesses...	<ul style="list-style-type: none"> <li>- Number of requests for admittance in all EU Member States</li> <li>- number of admittances in all EU Member States</li> <li>- number of movements of ICTs between all EU Member States</li> <li>- average time process the applications of ICTs</li> <li>- Employer satisfaction about the new scheme</li> <li>- Measure of the investments</li> </ul>	<ul style="list-style-type: none"> <li>- National Labour Force statistics</li> <li>- EUROSTAT</li> <li>- Single surveys at national level</li> <li>- Single surveys at branch level</li> <li>- Administrative data from Member State authorities</li> <li>- Specific ICT Monitoring</li> <li>- Surveys amongst 'ICT-employers'</li> <li>- Surveys amongst ICTs</li> <li>- Surveys amongst Member State authorities</li> </ul>
...while guaranteeing fair competition	<ul style="list-style-type: none"> <li>- Working conditions of ICTs in comparison with the regular workforce in enterprises</li> <li>- Period of stay inside the EU as ICT</li> <li>- Number of applications for staying in a Member State after the ICT-period</li> </ul>	<ul style="list-style-type: none"> <li>- National Labour Force statistics</li> <li>- EUROSTAT</li> <li>- Single surveys at national level</li> <li>- Single surveys at branch level</li> <li>- Administrative data from Member State authorities</li> <li>- Specific ICT Monitoring</li> <li>- Surveys amongst 'ICT-employers'</li> <li>- Surveys amongst ICTs</li> <li>- Surveys amongst Member State authorities</li> <li>- Surveys amongst third country authorities</li> </ul>

**7.2. Provide a broad outline of possible monitoring and evaluation arrangements**

As far as monitoring and evaluation arrangements are concerned, they should involve reporting activities pertaining to both the Commission and the Member States.

On the one hand, three years after the deadline for the transposition of the Directive, the Commission will publish a report focused on the status of implementation of the Directive at Member State level and the overall evaluation of the measures adopted through the assessment of the above-mentioned indicators. Following this report, the examination of the results achieved against objectives would allow the Commission to decide whether proposals for amendment should be put forward in order to best respond to the defined objectives.

On the other hand, a reporting system at Member State level will be set up by the means of a specific provision included in the Directive. On this basis, Member State will be obliged to communicate statistics on the number of ICT permits issued, renewed and withdrawn,



disaggregated by citizenship, age and sex, by transferee position, length of validity of the permit and economic sector during the previous calendar year. For this reason it should be considered to 'enlarge' EC Regulation no. 862/2007 of the European Parliament and of the Council on EU statistics on migration and international protection with the target-groups ICTs.

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## ANNEX 1. STATISTICS

**Table 1 Inflows of foreign temporary workers into selected countries (thousands)**

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
<b>EU</b>											
<b>Austria**</b>									29.8	26.5	
<b>Belgium**</b>									1.6	1.5	5.4
<b>Cyprus*</b>											9.0
<b>Denmark**</b>									5.0	5.0	4.5
<b>Estonia*</b>											0.02
<b>Finland*</b>											2.5
<b>France**</b>											
Permanents	6.1	4.8	5.2	5.4	6.3	6.4	9.2	8.0	6.9	7.0	8.9
APT (a)	4.5	4.8	4.7	4.3	5.8	7.5	9.6	9.8	10.1	10.0	10.4
<b>Germany**</b>									357.8	362.8	342.3
<b>Italy**</b>									68.1	77.3	70.6
<b>Latvia*</b>											0.7
<b>Netherlands*</b>											6.2
<b>Slovakia*</b>											1.2
<b>Spain*</b>											10.7
<b>Sweden*</b>											5.3
<b>United Kingdom**</b>									144.5	195.6	183.5
<b>Non EU</b>											
<b>Australia**</b>											
Permanent settlers	20.2	20.0	19.7	26.0	27.9	32.4	35.7	36.0	38.5	51.5	53.1
Temporary workers	14.3	15.4	31.7	37.3	37.0	39.2	45.7	43.3	48.8	43.1	48.6

<b>New Zealand**</b>											
Permanent settlers	..	..	..	5.0	5.1	6.7	9.8	13.8	12.0	8.2	14.5
Temporary workers	..	..	..	25.4	29.5	32.5	43.1	54.6	63.4	69.8	88.1
<b>United States**</b>											
Permanent settlers	85	117	91	78	57	107	179	175	82	155	246.9
Temporary workers	..	..	208	242	304	355	414	358	352	397	388.3

(a) Autorisation Temporaire de Travail

\* Data is extrapolated from Eurostat evidence collected on a pilot basis. Number of permits issued in 2005 to non-EU nationals (Bulgaria and Romania included given their accession only in 2007) for employment under a 12 month period in several MS.

\*\* OECD data, Source: Abella 2006, on data OECD. Total amount of foreign temporary workers (EU nationals included)

**Table 2 Permits issued for employment by selected EU MS to non-EU citizens and regions of origin, 2005 (permits valid for less than 12 months)**

<b>Region of origin</b>	<b>EE</b>	<b>ES</b>	<b>CY</b>	<b>LV</b>	<b>NL</b>	<b>SK</b>	<b>FI</b>	<b>SE</b>	<b>Total</b>
EFTA	0	0	2	4	184	0	0	0	190
Central and Eastern Europe	7	8171	3025	424	730	562	1917	1993	16829
Other Europe	0	0	3	10	317	18	85	79	512
Africa	0	342	907	7	382	14	23	238	1913
America	4	2014	96	72	1591	136	88	1060	5061
Asia	7	158	4988	134	2689	423	262	1809	10470
Oceania	0	3	6	21	285	8	7	148	478
Others	0	0	7	1	38	0	88	10	144
<b>Total</b>	<b>18</b>	<b>10688</b>	<b>9034</b>	<b>673</b>	<b>6216</b>	<b>1161</b>	<b>2470</b>	<b>5337</b>	<b>57732</b>

**Table 3 Permits issued for employment by selected EU MS to non-EU citizens and regions of origin, 2005 (permits valid for less than 12 months)**

Region of origin	Total		Employees		Self employed		Highly skilled	
	Males	Females	Males	Females	Males	Females	Males	Females
Total non EU	43556	14176	2768	266	33821	8795	2498	634
EFTA	193	69	63	4	129	64	0	0
Central and Eastern Europe	27012	8855	1176	143	24812	6339	278	107
Other Europe	536	87	85	4	369	58	80	24
Africa	1698	353	96	2	626	247	138	37
America	4421	1297	368	30	3405	1040	618	212
Asia	9137	3356	914	76	4144	947	1229	210
Oceania	438	139	66	6	217	87	154	43
Others	120	20	0	1	117	13	1	1

Source: Eurostat, data collected on a pilot basis.

**Table 4. Duration of stay of the foreign-born population from the five main countries of origin, by country of residence and education level (percentage of the employed population aged 15 and above)**

		Primary			Secondary			Tertiary			Total		
		0-5 years	5-10 years	10+ years	0-5 years	5-10 years	10+ years	0-5 years	5-10 years	10+ years	0-5 years	5-10 years	10+ years
Country	Country of birth	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)
Australia	United Kingdom	2,6	2,6	94,8	5,6	4,7	89,8	11,1	5,8	83,1	5,7	4,1	90,2
	New Zealand	22,4	10,7	66,9	22,8	9,7	67,5	24,7	8,6	66,6	23,1	9,8	67,1
	Italy	0,4	0,3	99,3	1,5	0,9	97,5	5,1	2,4	92,6	0,9	0,6	98,6
	Former Yugoslavia	8,1	5,6	86,4	15,4	12,2	72,4	21,7	21,0	57,3	12,3	9,8	77,8
	Vietnam	9,1	22,7	68,3	9,0	18,4	72,5	6,6	10,5	82,9	8,6	19,1	72,2
Austria	Former Yugoslavia	5,4	31,9	62,7	5,9	48,7	45,4	5,2	50,1	44,8	5,6	39,9	54,5
	Germany	8,0	13,8	78,2	13,3	15,0	71,6	22,7	24,4	52,9	14,3	16,8	68,9
	Turkey	5,1	30,7	64,2	7,3	27,2	65,5	14,6	33,6	51,8	5,9	30,0	64,1
	Czech Republic	2,0	3,0	95,1	4,5	8,1	87,4	2,0	14,0	84,0	3,4	7,4	89,2
	Poland	11,5	30,1	58,5	7,5	33,5	59,0	7,7	29,1	63,2	8,3	32,0	59,6
Belgium	France	6,1	5,2	88,6	16,3	10,1	73,5	33,3	13,1	53,6	14,2	8,0	77,8
	Italy	2,4	2,6	94,9	5,6	4,1	90,3	19,7	10,1	70,2	4,2	3,4	92,4

		Primary			Secondary			Tertiary			Total		
		0-5 years	5-10 years	10+ years	0-5 years	5-10 years	10+ years	0-5 years	5-10 years	10+ years	0-5 years	5-10 years	10+ years
Country	Country of birth	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)
	Morocco	16,3	12,4	71,3	20,9	15,0	64,1	31,2	18,1	50,7	19,2	13,7	67,1
	Netherlands	18,2	13,1	68,7	26,9	19,4	53,8	30,9	18,6	50,5	24,1	16,4	59,6
	Germany	6,4	5,5	88,0	9,5	7,3	83,2	19,2	10,1	70,7	10,8	7,3	82,0
Canada	United Kingdom	1,7	2,4	95,9	2,2	3,4	94,5	3,3	3,8	92,9	2,5	3,3	94,2
	China	17,8	26,1	56,0	24,1	26,3	49,6	53,7	16,4	29,9	33,5	22,3	44,2
	Italy	0,4	0,6	99,1	0,9	1,0	98,0	1,8	1,5	96,8	0,7	0,8	98,5
	India	24,8	24,1	51,1	23,5	22,3	54,3	30,2	16,7	53,1	26,6	20,6	52,8
	United States	5,9	7,8	86,2	6,8	7,2	86,0	7,6	7,4	85,0	7,1	7,4	85,5
Switzerland	Former Yugoslavia	13,8	23,9	62,4	10,8	20,6	68,6	17,9	18,0	64,1	12,7	22,1	65,2
	Italy	4,1	2,9	92,9	7,6	5,3	87,1	33,2	11,0	55,7	7,6	4,4	88,0
	Germany	18,2	10,7	71,1	27,0	10,5	62,5	44,1	15,2	40,7	35,4	12,9	51,7
	Portugal	17,2	16,4	66,4	8,2	15,6	76,1	40,2	4,6	55,2	15,2	15,8	68,9
	France	21,9	11,2	66,8	26,6	12,2	61,2	49,7	17,1	33,2	35,6	14,1	50,3



		Primary			Secondary			Tertiary			Total		
		0-5	5-10	10+	0-5	5-10	10+	0-5	5-10	10+	0-5	5-10	10+
		years	years	years	years	years	years	years	years	years	years	years	years
Country	Country of birth	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)
Czech Republic	Slovak Republic	2,9	3,8	93,2	5,8	7,0	87,2	5,9	20,4	73,7	4,8	7,2	88,0
	Former USSR	22,6	32,4	45,1	32,7	36,8	30,6	43,7	26,9	29,4	32,3	32,9	34,8
	Poland	-	-	100,0	2,1	7,8	90,0	10,5	-	89,5	1,7	4,0	94,2
	Germany	-	2,4	97,6	-	8,0	92,0	16,5	40,8	42,7	1,1	8,0	90,9
	Hungary	-	-	100,0	-	-	100,0	-	-	100,0	-	-	100,0
Germany	Former USSR	6,0	28,6	65,4	4,1	22,0	73,9	2,5	30,6	66,9	4,5	25,9	69,5
	Turkey	1,6	9,4	89,0	-	8,1	91,9	-	-	100,0	1,2	8,8	90,0
	Poland	1,7	15,3	83,1	1,8	10,7	87,5	-	7,8	92,2	1,4	11,6	87,0
	Former Yugoslavia	0,1	7,5	92,4	0,1	3,8	96,1	-	1,3	98,7	0,1	5,7	94,3
Denmark	Romania	1,3	8,0	90,7	0,6	7,2	92,2	-	3,2	96,8	0,7	6,7	92,5
	Turkey	11,8	12,2	76,0	18,7	14,4	66,9	14,2	13,6	72,2	13,5	12,8	73,7
	Former Yugoslavia	10,4	51,4	38,2	11,2	60,1	28,7	9,5	67,2	23,4	10,6	57,5	31,8
	Germany	4,2	5,2	90,6	9,9	9,5	80,6	10,7	12,9	76,4	8,7	9,5	81,8

		Primary			Secondary			Tertiary			Total		
		0-5 years	5-10 years	10+ years	0-5 years	5-10 years	10+ years	0-5 years	5-10 years	10+ years	0-5 years	5-10 years	10+ years
Country	Country of birth	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)
Spain	Sweden	2,9	3,8	93,4	6,5	7,4	86,1	7,6	9,4	83,0	5,9	7,0	87,1
	Norway	3,4	6,0	90,6	10,3	8,0	81,7	9,3	13,0	77,7	8,1	9,2	82,7
	Morocco	42,3	13,3	44,5	29,3	10,6	60,0	22,9	8,2	68,9	38,9	12,5	48,7
	Ecuador	77,4	4,0	18,7	74,0	4,6	21,4	65,3	6,6	28,1	75,2	4,4	20,4
	France	7,0	4,0	89,0	11,3	7,7	81,0	17,3	8,2	74,5	10,7	5,9	83,4
	Colombia	71,0	6,7	22,4	71,4	6,8	21,8	59,6	7,9	32,5	69,1	6,9	24,0
Finland	Germany	23,3	11,1	65,6	20,7	11,6	67,7	21,2	10,5	68,3	22,0	11,1	66,9
	Former USSR	22,8	54,9	22,3	18,0	55,7	26,3	21,1	61,8	17,2	20,5	57,2	22,4
	Sweden	1,2	11,7	87,1	3,0	2,5	94,5	2,4	3,1	94,4	2,3	5,6	92,1
	Germany	-	26,5	73,5	11,1	2,8	86,2	4,6	31,3	64,1	7,9	13,4	78,7
	Former Yugoslavia	42,3	39,4	18,3	2,5	93,4	4,1	-	64,4	35,6	17,1	68,7	14,2
France	Vietnam	3,0	51,3	45,7	7,6	41,3	51,1	-	-	100,0	4,3	47,5	48,2
	Algeria	3,3	5,0	91,8	3,3	4,9	91,9	5,4	8,1	86,5	3,6	5,4	91,0

		Primary			Secondary			Tertiary			Total		
		0-5 years	5-10 years	10+ years	0-5 years	5-10 years	10+ years	0-5 years	5-10 years	10+ years	0-5 years	5-10 years	10+ years
Country	Country of birth	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)
	Morocco	5,5	11,9	82,7	5,6	9,0	85,4	5,7	8,6	85,7	5,5	10,5	84,0
United Kingdom	Portugal	4,2	8,6	87,2	2,8	5,1	92,1	5,5	6,2	88,3	3,9	7,8	88,3
	Italy	1,3	1,0	97,8	5,2	3,0	91,8	20,6	10,2	69,3	3,5	2,1	94,4
	Spain	1,2	1,0	97,8	3,7	1,8	94,5	19,2	7,4	73,4	3,4	1,7	94,9
	Ireland	1,5	4,4	94,1	6,2	8,2	85,7	11,1	16,0	72,8	6,2	9,4	84,4
	India	5,9	7,5	86,6	4,1	6,9	88,9	10,3	7,5	82,2	6,9	7,3	85,8
	Pakistan	10,0	12,1	77,8	4,7	9,4	85,8	7,2	16,9	75,9	8,1	12,1	79,8
	Germany	0,7	7,5	91,8	5,1	5,7	89,2	8,2	8,9	82,8	5,6	6,9	87,5
	United States	37,5	15,4	47,1	21,8	11,8	66,4	23,8	16,1	60,2	24,4	14,6	61,0
Greece	Albania	54,7	43,6	1,7	47,8	50,5	1,7	44,3	53,4	2,3	51,5	46,7	1,7
	Former USSR	63,4	31,2	5,5	68,9	27,3	3,8	70,5	25,7	3,9	67,4	28,2	4,4
	Germany	39,0	20,5	40,5	38,9	19,8	41,4	40,2	17,3	42,5	39,3	19,2	41,5
	Turkey	15,8	11,2	73,0	14,0	11,3	74,8	20,3	11,9	67,8	15,7	11,3	73,0

		Primary			Secondary			Tertiary			Total		
		0-5	5-10	10+	0-5	5-10	10+	0-5	5-10	10+	0-5	5-10	10+
		years	years	years	years	years	years	years	years	years	years	years	years
Country	Country of birth	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)
Hungary	Bulgaria	73,5	24,4	2,0	76,2	20,7	3,1	72,3	21,2	6,5	74,5	22,6	3,0
	Romania	17,4	19,7	62,9	14,0	34,5	51,6	11,4	27,6	61,0	14,6	28,9	56,5
	Former Yugoslavia	8,0	12,5	79,5	20,7	32,5	46,8	18,5	29,0	52,5	15,8	24,7	59,5
	Slovak Republic	-	2,2	97,8	9,2	1,4	89,4	5,9	7,1	87,1	5,0	2,6	92,4
	Former USSR	10,3	36,9	52,9	16,7	28,6	54,7	21,8	27,4	50,9	17,3	29,9	52,9
	Germany	24,3	4,4	71,4	9,1	7,4	83,5	5,4	9,0	85,6	9,6	7,5	82,8
Ireland	United Kingdom	23,5	18,4	58,1	26,4	17,1	56,5	33,5	19,9	46,6	28,2	18,6	53,2
	United States	14,9	16,1	69,0	28,8	15,8	55,4	40,4	18,9	40,7	34,2	17,8	48,0
	Former USSR	91,5	6,8	1,7	95,6	3,6	0,8	88,9	9,1	2,0	92,0	6,5	1,5
	Germany	35,5	17,3	47,2	46,4	18,7	35,0	45,6	22,1	32,3	44,5	20,3	35,2
	Nigeria	95,9	3,0	1,2	90,7	6,0	3,3	88,1	7,1	4,8	90,1	6,1	3,8
Italy	Switzerland	16,3	14,8	68,9	19,7	15,3	65,0	22,3	17,8	59,9	18,7	15,5	65,8
	Former Yugoslavia	33,7	37,7	28,6	31,3	46,9	21,8	26,2	45,9	28,0	32,5	40,9	26,7

		Primary			Secondary			Tertiary			Total		
		0-5 years	5-10 years	10+ years	0-5 years	5-10 years	10+ years	0-5 years	5-10 years	10+ years	0-5 years	5-10 years	10+ years
Country	Country of birth	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)
Luxembourg	Germany	20,6	14,0	65,4	21,4	15,8	62,9	30,9	18,9	50,1	23,8	16,1	60,1
	Morocco	36,5	24,7	38,8	31,8	24,5	43,7	33,7	21,3	45,0	35,5	24,5	40,0
	Albania	57,9	30,0	12,1	47,1	36,7	16,2	49,9	36,7	13,4	53,9	32,6	13,5
	Portugal	32,9	21,4	45,7	40,1	21,4	38,5	38,4	29,3	32,3	35,4	21,5	43,0
	France	16,4	4,8	78,8	39,8	10,5	49,7	68,0	7,4	24,5	44,2	8,5	47,3
	Belgium	13,8	7,8	78,4	37,3	12,3	50,5	58,4	14,6	27,0	44,2	12,8	43,0
Netherlands	Germany	7,1	3,0	89,9	28,6	9,3	62,0	49,2	11,1	39,7	28,3	8,1	63,6
	Italy	6,8	3,3	89,9	21,9	6,5	71,6	49,2	8,9	41,8	17,4	5,2	77,4
	Indonesia	2,0	1,8	96,2	1,0	2,2	96,7	2,6	1,3	96,1	1,8	1,8	96,4
	Turkey	4,6	17,1	78,2	6,6	17,6	75,8	11,6	22,1	66,3	5,4	17,5	77,1
	Morocco	7,7	17,3	75,0	12,5	20,5	66,9	7,6	22,3	70,0	8,6	18,2	73,2
	Germany	4,5	8,0	87,5	8,9	13,3	77,8	16,4	14,8	68,8	8,7	11,5	79,9
	Belgium	6,0	7,8	86,1	14,9	9,7	75,4	16,7	13,5	69,8	12,1	10,2	77,7

		Primary			Secondary			Tertiary			Total		
		0-5 years	5-10 years	10+ years	0-5 years	5-10 years	10+ years	0-5 years	5-10 years	10+ years	0-5 years	5-10 years	10+ years
Country	Country of birth	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)
Norway	Sweden	6,8	9,3	83,9	10,3	13,7	76,1	10,8	16,1	73,1	10,0	14,0	76,0
	Former Yugoslavia	16,9	46,5	36,6	13,3	60,1	26,7	13,6	58,5	27,9	14,0	57,1	28,9
	Denmark	2,1	5,4	92,6	3,7	5,6	90,7	5,7	8,5	85,7	4,0	6,5	89,5
	Pakistan	5,3	10,4	84,4	5,5	10,1	84,5	9,3	8,4	82,3	5,9	10,0	84,2
	United States	1,6	3,5	94,9	2,5	3,5	94,0	3,8	7,5	88,7	3,0	5,3	91,7
New Zealand	United Kingdom	2,5	2,5	94,9	8,4	6,5	85,0	14,4	7,9	77,7	9,2	6,2	84,6
	Samoa	10,5	8,3	81,3	16,5	10,2	73,4	12,4	8,1	79,4	14,0	9,3	76,7
	Australia	6,4	7,6	86,0	15,5	10,3	74,2	20,4	10,2	69,4	15,6	9,9	74,6
	China	32,9	20,3	46,9	60,2	20,2	19,5	61,0	26,2	12,8	55,6	21,9	22,5
	Fiji	26,8	14,1	59,1	29,5	14,4	56,1	28,9	12,5	58,6	28,9	13,8	57,3
Portugal	France	8,6	22,3	69,1	11,6	21,0	67,4	8,3	11,5	80,2	9,5	20,5	70,0
	Brazil	31,3	14,2	54,5	50,1	17,1	32,8	14,6	23,6	61,7	35,4	16,8	47,8
	Germany	6,9	19,4	73,7	7,0	4,9	88,1	30,1	6,5	63,4	10,8	12,5	76,7

		Primary			Secondary			Tertiary			Total		
		0-5 years	5-10 years	10+ years	0-5 years	5-10 years	10+ years	0-5 years	5-10 years	10+ years	0-5 years	5-10 years	10+ years
Country	Country of birth	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)
	Spain	7,3	13,3	79,4	2,4	1,2	96,5	44,9	23,7	31,4	11,8	13,1	75,2
	South Africa	11,0	62,3	26,7	6,5	35,2	58,4	21,2	30,5	48,3	10,2	45,2	44,6
Sweden	Finland	2,0	1,5	96,4	3,1	1,9	95,1	12,2	6,6	81,2	4,2	2,5	93,3
	Former Yugoslavia	8,9	36,9	54,1	9,0	37,9	53,1	11,6	39,3	49,2	9,4	37,8	52,8
	Iraq	38,9	32,4	28,8	26,4	29,3	44,3	42,0	24,2	33,8	35,7	28,8	35,4
	Iran	9,2	14,7	76,1	7,9	8,9	83,2	11,3	7,6	81,1	9,1	9,6	81,2
	Poland	6,0	9,6	84,4	5,7	7,5	86,8	13,1	7,6	79,3	8,1	7,9	84,1
United States	Mexico	25,4	18,9	55,7	23,2	18,5	58,3	22,8	14,3	62,9	24,7	18,6	56,7
	Philippines	16,0	20,7	63,4	13,5	18,3	68,1	12,4	17,0	70,6	13,4	18,0	68,6
	Puerto Rico	10,6	8,7	80,6	12,9	9,9	77,2	15,5	11,5	73,0	12,2	9,6	78,2
	China	19,0	20,5	60,5	21,1	20,4	58,6	25,2	20,7	54,1	22,3	20,5	57,2
	Germany	9,2	4,2	86,6	6,8	4,5	88,7	11,6	5,6	82,8	8,8	4,9	86,4

Source: Database on Immigrants in OECD Countries (DIOC).

**Table 5 Imports of Services to EU15 from non-EU Countries, 1992-2002 (Euro Million - Ecu Million in 1992)**

	<b>1992</b>	<b>2002</b>	<b>Annual Average Change 1992- 2002 (%)</b>	<b>Trade Balance 2002</b>
<b>Merchandise</b>	441118	923958	7.7	53089
<b>All Services</b>	145357	311918	7.9	24361
Transportation	41830	73075	5.7	5838
Travel	37317	82231	8.2	-11957
Communications	2692	6930	9.9	-1066
Construction Services	4012	6660	5.2	3685
Insurance	3591	5012	3.4	12676
Financial Services	4766	9908	7.6	12007
Royalties and Licence Fees.	9196	23584	9.9	-8719
Trade Related Services & Leasing	9772	19651	7.2	2006
Computer and Information Services	2192	7508	13.1	5874



Business Services	13598	51829	14.3	5304
Legal, Accounting, Management etc. Services	2874	11875	15.2	526
Advertising, Market Research etc.	2143	5605	10.1	-36
Research and Development	2402	10328	15.7	-1095
Architecture, engineering etc.	2868	8559	11.6	3496
Agric, Mining etc. Services	848	538	-4.4	105
Other Business Services	2463	14924	19.7	2308
Services between affiliated enterprises nie	6328	9955	4.6	-2343
Personal, Cultural and Recreational Services	3269	6058	6.4	-2008
Government Services nie	4507	5746	2.5	3003
Services not allocated	2287	3771	5.1	61

Source. EUROSTAT. International Trade in Services EU, 1991-2002

International trade in services expanded throughout the 1990s. Table 5 shows the value of services imports for EU15 from non-EU states for the years 1992 and 2002, distinguishing a range of service type categories. The figures indicate a substantial rise of just under 8 per cent on an annual average basis over the ten year period in question.

However, not all of the service categories distinguished necessarily involve labour migration. The most likely area to generate Mode 4 inflows is the broad sector covering trade related services, computer and information services and the business service activities. The table 1 shows that these categories exhibited the strongest growth in the 1990s: EU15 imports for these activities rose from €26 billion to €79 billion, or by 15.1 per cent between 1992 and 2002. It is worth noting that this increase went along with a rise in the corresponding services exports figures by 7.8 per cent annually between 1992 and 2000, in particular in the export of computer and information services, and to a lesser extent some business activities. Exports for the former (i.e. computer services) category rose by as much as 25 per cent annually, nearly double the corresponding imports increase (13 per cent). The “trade balance” data for 2002 reveal that trade in services generated a net EU15 cash inflow of over €24 billion in that year. Significant contributions to this favourable outcome arose from positive balances for the insurance and financial areas, computer related services and business services generally<sup>67</sup>.

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<sup>67</sup> study on assessing the question of applying numerical ceilings to the temporary movement of contract service suppliers (mode 4) in the context of the Gats negotiations on trade in services, report to the EU Commission, J.J. Sexton, Dublin, 7 April 2005

**Table 6 Number of foreign-controlled enterprises (Industry and services - excluding financial intermediation and public administration) in selected EU MS: ownership of enterprise by extra-EU 25 countries, absolute numbers**

<b>Member States</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>
Bulgaria	2199	2169	1942
Czech Republic	2034	3412	3393
Estonia	110	127	-
Spain	901	926	1329
France	5410	5979	6249
Italy	4270	4292	4766
Cyprus	-	127	-
Latvia	762	802	-
Lithuania	433	485	578
Hungary	470	502	586
Netherlands	1362	1417	2132
Austria	817	-	-
Portugal	351	346	1288
Romania	440	700	684
Slovenia	471	552	-
Slovakia	90	298	324
Finland	615	639	684
Sweden	3014	3066	3234
<b>Total</b>	<b>23749</b>	<b>25839</b>	<b>27189</b>

Source: Eurostat

**Table 7 Number of foreign-controlled enterprises (related to the business economy: industry, construction and market services) in selected EU MS: ownership of enterprise by extra-EU 25 countries, absolute numbers**

<b>Member States</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
Austria	-	-	-	767	779
Denmark	-	301	-	-	-
Germany (a)	2975	-	-	-	-
France	-	-	4472	4954	-
Ireland (b)	-	-	318	-	-
Italy	-	-	-	-	3500
Netherlands	-	1243	969	1355	1561
Finland	-	471	550	539	-
Sweden	-	-	1951	2667	3165
United Kingdom	-	8047	-	-	-

Source: Eurostat

(a) Extra-EU countries considered are Switzerland, Japan and US

(b) Data available only for the manufacturing sector (NACE category D)

**Table 8 Number of main extra-EU foreign affiliates in the manufacturing sector**

	1998	1999	2000	2001	2002	2003	2004
Denmark		60	112	104	102		
Finland			102	110			
France			397	374	465	473	496
Germany			626	624	996	978	967
Ireland			306	345	347	312	277
Italy					1210		
Netherlands		301	298	343	418	394	
Poland			183	171	168	183	181
Portugal	26	19	24	15	19		
Spain			282	297	295	307	314
Sweden			242	285	290	360	402
UK							1978

Source: OECD “Measuring Globalization – Activities of Multinationals”, 2007

## ANNEX 2. SURVEY OF MEMBER STATES' LEGISLATIONS

### 2.1. National regulations on highly skilled workers

Significant policy developments took place in a number of Member States regarding the admission of third-country nationals for the purpose of employment, which indicates the existence of labour shortages in sectors requiring both highly-skilled and lower-skilled workers in those countries. A substantial number of member states practise a policy of selective high-skilled immigration consisting of reducing and facilitating the administrative procedures applicable to the admission for employment purposes of those who are labelled as 'high-skilled, talented or well-educated'<sup>68</sup>.

The priorities, challenges and policy responses differ greatly from one state to another according to their divergent national histories of settlement and colonialism, perceived societal problems and labour market needs, as well as the economic and political situation in a given time period.

Most of the countries studied have a specific scheme for highly skilled immigrants but this category must not be mistaken with ICTs. The **Netherlands** practices a selective and demand-driven immigration policy that is rooted in economic considerations<sup>69</sup>. According to **Section 13 of the Aliens Act** an accelerated procedure for high-skilled migrants has been in force since 1 October 2004. High-skilled immigrants will not need to experience the long and tedious bureaucratic procedures of applying for a work permit<sup>70</sup>. In **Germany, the Employment Ordinance – Foreign Countries** provides that highly skilled migrants are directly eligible for a permanent settlement permit upon entering the German territory<sup>71</sup>. The Federal Employment Agency does not need to give its consent to these categories of immigrants to ensure a quick response to the application by the Foreigners Office. The **new Art. 9 of the Arrêté Royal modifiant l'Arrêté Royal du 9 juin 1999 relatif à l'occupation des travailleurs étrangers in Belgium** gives a clear preferential treatment to the category of persons falling within the privileged status of highly skilled workers allowing them to renew their work permit for a new period of four years<sup>72</sup>. The **Settlement and Residence Act of Austria** provides in Art. 41 a special **settlement permit – key worker** which will be granted in an accelerated procedure in the case of qualified personnel<sup>73</sup>.

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<sup>68</sup> There is a wide diversity as regards the definition given to high-skilled immigrants in each national legal system.

<sup>69</sup> Section 13 of the Aliens Act provides that «an application for the issue of residence permit shall be granted only if: (b) the presence of the alien would serve a real interest of the Netherlands». V. Marinelli (2005).

<sup>70</sup> An immigrant is high-skilled if s/he is in possession of a contract and proves that s/he will be earning at least 45,495 or 33,363 euros if his/her age is less than 30 years old. Other countries who define who is a highly skilled immigrant based on salary are: Austria, Belgium and Germany.

<sup>71</sup> Section 19 provides that highly qualified persons are: scientists with special technical knowledge, teaching personnel in prominent positions or scientific personnel in prominent positions, or specialists and executive personnel with special professional experience who receive a salary corresponding to at least twice the earnings ceiling of the statutory health insurance scheme. Also, Section 18 says that labour migration may take place taking into account «the requirements of the German economy, according due consideration to the situation on the labour market». «In justified individual cases, a residence permit will be issued for the purpose of taking up employment when there is a public interest, and in particular a regional interest or an interest relating to the economy or the labour market

<sup>72</sup> Art. 9.6. *Arrêté Royal modifiant l'arrêté royal du 9 juin 1999 relative à l'occupation des travailleurs étrangers*, 6 Février 2003. (AR 2003-02-06/41). S. Gsir et al. (2005).

<sup>73</sup> Special legal rules also exist for the health sector. Qualified personnel are defined according to income threshold. Workers will be qualified as such if they earn more than 60% of the income threshold for social security contributions (*Höchstebeitragsgrundlage*). Policy Report, National Contact Point Austria (2005).

In **France**, immigration is regulated according to the perceived economic needs of the country. The main principle seems to be that nobody should become a public burden, and hence that the applicant must have sufficient income and sickness/health insurance coverage. The **Loi relatif à l'immigration et à l'intégration** presents a new residence permit called **the residence permit mentioning competencies and skills** (La carte de séjour portant la mention compétences et talents)<sup>74</sup>. This permit shall be granted to those immigrants who, because of their special competences or skills, may contribute significantly and durably to the economic situation or the intellectual, scientific, cultural, humanitarian or sportive development of France and of the country of his/her nationality<sup>75</sup>.

The **United Kingdom** has also opened its borders to highly skilled workers from third countries. Job seekers with excellent university degrees and at least two years of professional experience as well as key workers may be issued work permits, provided the state of the labour market allows this. Their stay can last for up to four years. After three years, they may apply for immigrant status, which about 25% of these workers do successfully.

In **Sweden** the government uses targeted permits aimed at highly skilled workers or immigrants of exceptional talent. These targeted permits, which are valid for a renewable period of up to 48 months, are granted once a job offer has been made and require a minimum income and guaranteed housing. In Denmark, foreign experts are given the opportunity to receive a residence permit after specific assessment is made of prevailing circumstances. Furthermore, foreign experts receive a tax reduction for their first three years of residence.

Other countries do not have a specific system for high-skilled immigration. In the case of **Poland**, while the policy priorities of the **Polish Immigration Law** seem to give preference to highly skilled and qualified migrants<sup>76</sup>, there are no specific rules addressing or facilitating that goal<sup>77</sup>. **Spain** does not have a general system for the 'highly-skilled' either. The annual quota (contingente) system is one of the main mechanisms for legal labour migration. The government annually approves a quota that provides a technical estimation of the number of workers who are deemed as 'necessary' by employers and the Autonomous Communities<sup>78</sup>. The administrative mechanisms for their incorporation into the labour market are simplified<sup>79</sup>. It also encourages hiring immigrant workers in the countries of origin<sup>80</sup>. In the **Czech Republic**, a pilot project on the selection of qualified labour from specified third countries is

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<sup>74</sup> See R. Blio, C. Wihtol de Wenden and N. Meknache (2003). Article L341-2 Code du Travail (Loi n° 2005-32 du 18 janvier 2005 art. 147 Journal Officiel du 19 janvier 2005 en vigueur le 1er janvier 2006).

<sup>75</sup> This type of residence permit is valid for three years and may be renewed once if the holder is a national of one of the countries having special historical ties (*zone de solidarité prioritaire*) with France. The permit allows the bearer to carry out a professional activity of his/her choice as part of the law

<sup>76</sup> Art. 53.1.2. The Aliens Law which states that a residence permit will be granted to an immigrant who «carries out an economic activity which is beneficial to the national economy and in particular, contributes to the development of investments, transfer of technology, innovations or job creation».

<sup>77</sup> In 2004 a few amendments were introduced in the new laws regulating the access to labour market by immigrants, yet there is no system for highly qualified immigrants. Regulation of 9 February 2004 of the Minister of Labour, Economy and Social Policy to amend the Regulation concerning detailed principles on issuance of promises of work permits and work permits to foreign workers, of 19 December 2001, Text No. 236. *Dziennik Ustaw*, 25 February 2003, No. 27, pp. 1494-1503.

<sup>78</sup> Quotas are established according to the labour sector, territory and kind of employment. The competent authority drawing up the *contingente* is the *Secretaría de Estado de Inmigración y Emigración*, after consulting the Tripartite Employment Commission on Immigration, which is a permanent platform for cooperation between the state and the social partners (employers and trade unions). A. Balch (2005).

<sup>79</sup> It offers the possibility for them to obtain visa and residence and work permit at the same time in the embassy

<sup>80</sup> See Art. 77-83 of the Royal Decree 2393/2004.

in place to attract skilled workers for settlement. This scheme can also be accessed by students who have studied in Czech universities and high schools.

A particularly interesting development that appears, to a certain extent, to be the result of the outflow of their nationals to other Member States for the purpose of employment concerns the growing labour shortages that have been identified in **Estonia, Latvia** and **Lithuania** and the interest expressed by employers there in hiring workers from third countries. In **Estonia**, employers would like to employ qualified workers, particularly in the construction and IT sectors but they are discouraged by the complex rules applicable to hiring workers from third countries. In **Latvia**, plans are being discussed to facilitate access of employment for third-country nationals, particularly specialists, in light of depopulation and the low birth rate. A related development concerns amended regulations, which enable students in Latvia to work up to 20 hours a week and the possibility for asylum-seekers to obtain a work permit until a final decision is taken on their status. Emigration from **Lithuania** has resulted in a significant decrease in the population, which is not however reflected in the official statistics indicating that by the end of 2005 there were 22,100 fewer persons in the country than by the end of 2004. As a result, job shortages have appeared in the construction and retail sectors, hospitals and educational establishments. There has also been an adverse impact on investment in Lithuania with some companies considering withdrawal or reconsidering their entry in the country because of the lack of an appropriate labour force.

## 2.2. National regulations on ICTs

The investigation has been carried out on the basis of the responses provided by the Member States to the questionnaire Migrapol 207<sup>81</sup>.

The present analysis covers the **24** EU Member States which provided responses to the questionnaires and is mainly focused the following areas: definition; entry and residence conditions; rights granted and, in particular, specific provisions regarding family reunification.

14 MS have specific provisions for ICTs, who are typically **defined** as follows:

- employees of a foreign company, working on the territory of the Member States in order to carry out a specific activity or service;
- employees transferred on the basis of a specific agreement or programme;
- trainees<sup>82</sup> of a foreign company part of an intra-corporate transfer.

Most of Member States<sup>83</sup> generally limit the admission of the ICTs to the following categories: managers, key staff personnel, high skilled personnel.

As far as the **entry and residence conditions** are concerned, admission criteria usually include:

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<sup>81</sup> The questionnaire Migrapol 207 has been circulated in the framework of the 28h CIA Meeting.

<sup>82</sup> This is the case of FI, IE, ES, NL.

<sup>83</sup> DE, ES, IE, NL, SK, DK and SE



-certificates attesting the level of education, qualification and previous training activities (CZ, DE, NL, AT);

-previous experience in the same activity (ES, NL and IE<sup>84</sup>);

-thresholds regarding the annual minimum salary (IE, NL, FR<sup>85</sup>).

Some Member States provide for further conditions for the admission of ICTs, by fixing annual quotas for third countries employees (this is the case of RO) or placing percentage caps to the number of ICTs for each company<sup>86</sup>.

Work and the residence permits are usually **issued separately**<sup>87</sup>.

**The duration of the work permit** is highly variable across EU Member States, ranging from 1 month to 2 years. However, in all the Member States these permits are renewable. The duration of residence permit is generally linked to the duration of the work permit.

Finally, some Member States<sup>88</sup> explicitly foresee geographical and professional limitations as regards the validity of the permit.

As far as the rights are concerned, Member States usually grant the ICTs **equal treatment with EU nationals**. In particular cases<sup>89</sup> it is specified that health assistance is guaranteed.

Finally, it is worth noting that many Member States foresee explicit provision for **family reunification**. Family reunification may be allowed from the beginning of the stay of the ICT<sup>90</sup>; or after 6 or 18 months of continuous residence of the ICT<sup>91</sup>; or if the work permit exceeds a certain duration<sup>92</sup>.

Generally, the permit to reunification is granted to the spouse and the children. In Ireland, spouse and dependant are allowed to seek employment and apply for a spousal/dependant work permit.

In the light of the above, the main remarks can be summarized as follows:

-there is a general concordance among MS on categories admitted as ICTs, generally identified as “key personnel” or “highly skilled personnel”, but admission criteria and work permit durations range widely across EU Member States.

-Procedures for admission can be particularly long or difficult (e.g. SK and RO).

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<sup>84</sup> For at least one year.

<sup>85</sup> France requires a gross salary of 1,5 SMIC (Salaire Minimum Interprofessionnel de Croissance); the Netherlands requires a salary-criterion of at least € 47.565 (younger than 30y: € 34.881); Ireland requires a minimum annual salary of € 40,000.

<sup>86</sup> This is the case of Ireland where the number of ICTs should not exceed 5% of the total Irish workforce in a company, although in exceptional circumstances such as small or start-up companies a higher percentage may be permitted on a strictly temporary basis with an absolute limit of 50% of non-EEA staff.

<sup>87</sup> Except from DE and DK.

<sup>88</sup> PL and SE.

<sup>89</sup> IT, CZ, and LT.

<sup>90</sup> e.g.: ES.

<sup>91</sup> e.g.: FR, AT in particular circumstances.

<sup>92</sup> e.g.: SE.

-Many Member States grant equal treatment with EU nationals and right to family reunification but, at the same time, conditions and limitations to such rights exist and they are highly variable between Member States. Moreover, the possibility for spouses to seek employment in the host country is rarely granted.

-The wide differentiation between EU Member States and the lack of clear and/or specific schemes in some of them create severe difficulties to foreign multinational companies which are faced with highly variable systems across EU and have to fulfil complex and long procedures.

## 2.3 Summary of Member States' responses to Migrapol 207

The analysis focuses on replies to Section B of Migrapol 207.

### Legislation concerning Intra-Corporate Transferees

MS	Presence of specific rules	Categories' Definitions	Entry and residence conditions			Family reunification
			Admission criteria	Work and Residence Permit	Rights granted and limitations	
AT	Y	<p>- "rotational workforce": as defined in the GATS but not limited to the service sector</p> <p>- key personnel (not temporary)</p>	<p>- check of health insurance and work conditions</p> <p>- required diploma and documents for work qualification</p> <p>- university degree for graduate trainee</p>	<p>- residence and work permit is for one year but renewable</p> <p>- visa up to 6 months</p> <p>- single procedure</p> <p>- processing time: 6 weeks for key personnel; 6 months as a rule</p>		generally not provided but possible for key personnel
BE	N	- schemes for managers and high skilled workers		<p>- no work permit for workers posted to the main place of business</p> <p>- processing time: 4-6 weeks</p>		- family reunification and right to work
BG	N	<p>- superior managing personnel</p> <p>- specialists</p>	- no labour market test	n.a.	n.a.	n.a.
CY	N	n.a.	n.a.	n.a.	n.a.	n.a.
CZ	Y	- reference to GATS category	<p>- proof that the applicant is covered by the GATS</p> <p>- certificate attesting the level of qualification;</p> <p>- declaration about the type of work, place of work and the period during which the work will be performed, statement of the employer expressing his intention to employ the ICT</p> <p>- no labour market test</p>	<p>- the work permit may be issued for the maximum period of one year; renewable</p> <p>- work permit limited to a specific post</p>	<p>- as regards social assistance this is generally guaranteed to a person with a permanent residence in the Czech Republic and to ES/EEA citizens whose stay in the Czech Republic is longer than 3 months (allowance for living and supplement for housing).</p> <p>- family allowances after 365 days</p>	n.a.
DE	Y	skilled personnel part of an exchange within a Company or Companies belonging to the same	- a) university or High Professional school degree or a comparable	- work permit restricted to a specific employer	- employment conditions equal to German standards.	- generally not allowed but granted on a case-

MS	Presence of specific rules	Categories' Definitions	Entry and residence conditions			Family reunification
			Admission criteria	Work and Residence Permit	Rights granted and limitations	
		Group;  ICT holding specific knowledge and indispensable to prepare a project overseas	qualification;  -a)b)salary level equal to German standards  -a)b) no LM test	-duration no longer than three years.		by-case basis
DK <sup>93</sup>	N	-the regulation applies to foreign professionals who play a leading role in a company.	-the salary and employment conditions must correspond to Danish standards.  -employment contract or offer	-residence permit for work purposes, issued for a period of maximum three years with possibility of extension.	n.a.	n.a.
EE	N	-no restriction regarding the type of work performed	-valid work contract with an employer  -seconded to another country for a certain period of time  -Host entity has to be registered in Estonia and has responsibility as a sponsor	-ICTs receive a residence permit for employment;	n.a.	n.a.
EL	Y	-companies holding a specific legal status (trading, trade & industry, constructions, shipping);  -directors, administrators, legal representatives and managing executives of subsidiaries and branches of foreign companies which are legally activated in trading in Greece	<i>-the Greek company must employ at least 100 Greek nationals</i>  -TCNs must possess scientific knowledge in their field of expertise, in which their counterparts are lacking  -certified copies of the employment contract, diplomas  -the number of employees may not exceed 5% of all Greek employees	-residence permit initially issued for a period of one year; may be renewed for two years	n.a.	family reunification
ES	Y	workers posted by a TC company (its principal place of business is outside the EU/EEA);  -contract services suppliers;  -ICT (including for the purpose of a training);	-prior employment in the foreign company: 9 months, in the same job: 12 months;  -the ICT habitually resides and works in the foreign country	-single application  -work permit with duration of one year with possibility of extension one more year (in any case linked to the duration of the	n.a.	-specific family reunification scheme for managers and highly qualified workers

<sup>93</sup>

The concept of ICTs does not exist on a separate basis in Danish law.

MS	Presence of specific rules	Categories' Definitions	Entry and residence conditions			Family reunification
			Admission criteria	Work and Residence Permit	Rights granted and limitations	
		-highly qualified workers in charge of the monitoring of works or services performed by Spanish companies		activity);  -work permit restricted to a specific employer and place  -processing time: 1-3 months		
FI	N	expert duties in the middle or top management of a company or that requires special expertise		work permit with different duration with respect to the categories:  -up to 18 months;  -up to a maximum of two years	n.a.	n.a.
FR	Y	TCN transferred to France in order to realize an activity within the same company	-the ICTs are either employees of a FR company or a TC company  -they earn more than 1,5 time the minimal wage:  -prior employment in the foreign company: 3 months	-a single permit (carte de séjour temporaire « salarié en mission ») is issued. The duration of such permit is up to three years renewable.	n.a.	family reunification is allowed whether the ICT can prove a continuous residence for at least 6 months;
HU	N	n.a.	in some cases (i.e. key personnel) the work permit is issued without the labour market test.	-work permit (exceptions: chief executives and members of the supervisory board of business associations with foreign participation; persons who will carry out work that involves commissioning, guarantee service activities performed on the basis of a private contract with a foreign-registered company, if such does not exceed fifteen consecutive days)		n.a.
IE	Y	senior management;  key personnel;  trainees.	-the employee or transferee in question must have been working for a minimum period of 12 months with the overseas company prior to transfer;	-the duration of an Intra Company Transfer Permit is for a defined period depending on the reason for transfer;  -applications may	n.a.	-spouses and dependents, once they are legally resident in the State on the basis of being the permit holder's Spouse or Dependant, are

MS	Presence of specific rules	Categories' Definitions	Entry and residence conditions			Family reunification
			Admission criteria	Work and Residence Permit	Rights granted and limitations	
			<p>-minimum annual salary of €40,000.</p> <p>-the number of ICTs cannot exceed 5% of the total Irish workforce in a firm (except for exceptional cases)</p>	<p>be granted for a maximum period of up to 24 months in the first instance and may be extended upon application to a maximum stay of five years.</p> <p>-work permit for a specific employer</p>		<p>free to seek employment and apply for a Spousal/Dependant work permit;</p> <p>-the spouse and dependant children can apply to join the transferee in the State while the transferee is lawfully in Ireland.</p>
IT	Y	n.a.		<p>-work and residence permit (Entry visa issued by Italian Embassy);</p> <p>-the permit's duration is equal to that of the work permit (not less than one year) and cannot be renewed.</p>	<p>-the residence permit entitles its holder to register in the National Health Service.</p>	<p>-the alien's family members can follow him and are issued a residence permit which has the same duration as the worker's permit, considering that the duration of the worker's residence permit is not less than one year.</p>
LT	Y	n.a.		<p>-no work permit for ICTs</p>	<p>-ICTs enjoy equal treatment with nationals with regard to working conditions, including pay and dismissal, health and social security and pensions (if social taxes are paid in LT), freedom of association and affiliation</p>	n.a.
MT	N	n.a.		<p>-provided a Work permit;</p> <p>-maximum duration of one year (renewable);</p> <p>-the work permit has to specify the job (position) and enterprise, agency or organization where the alien will be employed.</p>	<p>-all employees in Malta have equivalent rights in respect of working conditions.</p>	n.a.
NL	Y	<p>key staff (manager/specialists) of an international company;</p> <p>graduate trainees in an international company.</p>	<p>-for both categories: required University/high vocational training qualifications;</p> <p>-for category b): required a traineeship program;</p> <p>-for category a): required a salary-criterion of at least € 47.565 (younger than</p>		n.a.	n.a.

MS	Presence of specific rules	Categories' Definitions	Entry and residence conditions			Family reunification
			Admission criteria	Work and Residence Permit	Rights granted and limitations	
			<p>30: € 34.881);</p> <p>-for category b): required a market-conform salary;</p> <p>-for category b): required a period of employment of at most 3 years.</p>			
PL	Y	<p>a) ICTs posted for the period not exceeding 30 days in the calendar year;</p> <p>b) ICTs posted for the period exceeding 30 days in the calendar year;</p> <p>c) ICTs posted to Poland within framework of a service provided by a foreign establishment for the Polish one.</p>		<p>specific permit are issued with regard to the category: a) no work permit necessary, visa for the purpose of work; b)c) work permit</p> <p>the duration of the work permit differs for each category: a) limited to 30 days in the calendar year; b) general work permit rules apply; c) generally limited to the duration of contract;</p> <p>residence permits are granted for a period exceeding 3 months. Maximal period – 2 years. It is possible to renew the residence permit or change its conditions.</p>	<p>rights granted differ with respect to the categories: a) since no legal relationship with the Polish entity is entered into, TCNs has contract-based rights; b) generally, same as for nationals performing work on limited-time duration contracts; c) generally, not worse then minimal for nationals performing work, as regards remuneration: not lower then average in the sector/position.</p> <p>-some limitations are envisaged for the categories mentioned: a) not limited; b) and c) limited to specific employment with a specific employer and in a certain location;</p> <p>-possibility to change status.</p>	<p>-same as general for TCN-workers, based on the European Social Charter.</p>
PT	Y	GATS	<p>-proof that the transfer occurred within a group</p> <p>-same services between 2 companies</p> <p>-prior employment: 1 year</p>			
RO	N	n.a.	<p>-the vacant positions cannot be filled in by Romanian citizens, citizens of other European Union Member States, of the signatories of the Agreement on the European Economic Area, as well as by permanent residents on the territory of</p>	n.a.	n.a.	n.a.

MS	Presence of specific rules	Categories' Definitions	Entry and residence conditions			Family reunification
			Admission criteria	Work and Residence Permit	Rights granted and limitations	
			<p>Romania;</p> <p>-they meet the special requirements regarding professional training, activity experience and authorization, which are requested by the employer according to the laws in force;</p> <p>-they produce proof that are medically fit to perform the given activity and have no criminal record incompatible with the activity performed or to perform on the territory of Romania;</p> <p>-they fit the annual number of employees approved by Government decision;</p> <p>-the employers have their obligations to the State budget paid up to date.</p>			
SE	Y	<p>-leadership position within an international concern or within a business which is their subcontractor or customer, and who in this capacity needs to work in Sweden; or:</p> <p>-specialist duties within an international concern or within a business which is their subcontractor or customer (so-called concern-transfers), and in this capacity needs to work in Sweden for more than one year; or:</p> <p>-employment within an international concern and who needs to work in Sweden in order to obtain training in business techniques or methods.</p>	-no LM test	<p>-a temporary work permit can be issued for a maximum period of 48 months and it can in some cases be extended to 3 years depending on the sector concerned</p> <p>-permit valid for a specific employer and occupation</p>	<p>-the ICT must be ensured salary, insurance protection and other conditions of employment in accordance with applicable collective agreements or practices in the relevant occupation branch;</p> <p>-during the period of admission, permits are restricted to a specific occupation and a specific employee.</p>	-if a permit is issued for more than six months, family reunification is allowed immediately.



MS	Presence of specific rules	Categories' Definitions	Entry and residence conditions			Family reunification
			Admission criteria	Work and Residence Permit	Rights granted and limitations	
SK	Y	<p>Workers employed by a foreign legal person:</p> <p>-essential senior executive;</p> <p>-specialist;</p> <p>-person at the managing position within the legal person (manager), and who responds for establishment of a commercial representation of the service provider in the SR.</p>	<p>-the alien is required to attach documents not older than 90 days to the temporary residence application, and which confirm:</p> <p>-duration of prior employment: 1 year</p> <p>-the IC transfer (e.g. amendment to the contract employment specifying the position and type of work and place of employment)</p> <p>-no LM test</p> <p>-financial means of stay;</p> <p>-proof of accommodation during the temporary residence;</p> <p>-Proof of integrity.</p> <p>Upon the permit issuance within 30 days:</p> <p>-proof of not suffering from any disease that endangers the public health;</p> <p>-proof of medical insurance.</p>	<p>-provided a Work permit and Temporary Residence Permit;</p> <p>-the work permit for the intra-corporate transfer may be issued for the period of the transfer, maximum for a period of 1 year;</p> <p>-the work permit is renewable;</p> <p>-the temporary residence permit for a period necessary for the purpose achievement, maximum for a period of 2 years.</p>	n.a.	n.a.
SL <sup>94</sup>	N		<p>-the ICT must be in possession of a valid travel document whose period of validity exceeds the intended period of stay in the Republic of Slovenia by at least three months;</p> <p>-must be in possession of an appropriate health insurance;</p> <p>-must be in</p>	<p>-work permit issued by the competent Authorities;</p> <p>-residence permit for employment or work purposes, issued on the basis of a work permit;</p> <p>-work permit issued for a maximum of one year (renewable for no longer than two years);</p>	n.a.	-TCN who has resided for at least year in SL on the basis of a residence permit of at least one year

<sup>94</sup>

The concept of ICTs does not exist in the Slovenian law.

MS	Presence of specific rules	Categories' Definitions	Entry and residence conditions			Family reunification
			Admission criteria	Work and Residence Permit	Rights granted and limitations	
			possession of sufficient funds for subsistence during his/her stay in the country, or his/her subsistence must be guaranteed otherwise and valid work permit.	-residence permit linked to the duration of the Work permit.		

### **ANNEX 3. CASE STUDIES: MAIN FINDINGS**

In the countries studied (Germany, the Netherlands and the USA), regulations managing entry and temporary residence of ICTs may be part of more general regulations on (highly) skilled labour. The entry conditions are generally simpler than those applicable to other (temporary) migrants, e.g. no labour market check is needed.

## ICT Case study n°1 - German work permit

<b>BACKGROUND</b>
<p>On August 1st 2000, the Green Card regulation was introduced to admit IT specialists for businesses and to address the emerging need for specialists in other industries. It is generally agreed that the Green Card was unsuccessful, in that it did not succeed in bringing about the additional IT workers as was expected.</p> <p>The new Immigration Act (1 January 2005) has replaced the former German Green Card Initiative. This new provision of the Immigration Act is not limited to IT specialists.</p> <p>The national regulation for employment, Section 31 on International exchange of Personnel and External Projects (December 2007), distinguished two groups of transferees, one is of employees posted in foreign projects and one is of intra-corporate transferees.</p>
<b>Legal provisions</b>
<p>Under the national regulation for employment, an ICT is described as a qualified, skilled employee holding a university or high professional degree or a comparable qualification, in the context of exchanges of personnel within an international company or corporation.</p> <p>Specialists and skilled employees of an internationally operating group who are transferred temporarily to Germany can obtain a work permit provided that the intended assignment can be seen as a part of a personnel exchange program for internationalization of the group.</p> <p>A residence permit can be granted without a economic need test for employment / labour market check</p> <p>The permit is valid for at least one year with a maximum of three years. An extension over three years is not allowed. Permits cannot be renewed, but the status of the employee could be changed.</p> <p>The terms of employment, especially on salaries, should be comparable to those of German employees in similar positions.</p> <p>The approval from the labour agency is limited to the individual employer.</p> <p>One cannot make a claim on family reunification, but admission is allowed by discretion.</p> <p>It is sufficient that the company sends, from time to time, skilled employees also from Germany to other countries.</p> <p>This kind of work permit can be obtained from a special labour authority (ZAV), without a labour market check, which usually speeds up the visa process considerably.<sup>95</sup></p>
<b>Conclusion and remarks</b>
<p>There have been different programmes introduced to attract different kinds of skilled workers to Germany, not always successful. There are still a lot of barriers faced by companies that would like to attract skilled workers. In some cases companies will attract their employee through the International Personnel exchange, to find a way around the bureaucratic situation.</p>

<sup>95</sup>

Baker & McKenzie's Global Migration & Executive Transfers practice (2006) Immigration Manual 2006.

## ICT Case study n° 2 - Dutch work permit

BACKGROUND
<p>On 1 October 2004, the skilled worker regulation came into force. To this end, the Aliens Employment Act, the Aliens Decree 2000, the Regulations on Aliens 2000 and the Aliens Act implementation guidelines were amended.</p> <p>The background of the skilled worker regulation is the Lisbon Strategy, an EU-agreement to turn the European Union into the most dynamic knowledge economy in the world.</p> <p>A skilled worker<sup>96</sup> is a migrant who comes to the Netherlands in order to work in paid employment, receiving a certain income. In order to comply with the skilled worker regulation, the employer for whom the skilled worker shall work must have signed a declaration and submitted certain documents to the IND (The Immigration and Naturalisation Service).<sup>97</sup></p> <p>There are no special regulations regarding ICT in the Netherlands. The Intra-Corporate Transferee can however apply as a skilled worker. Many ICT are admitted to the Netherlands this way because of the easier and quicker procedures that is involved specifically for skilled workers. From 2005 to 2007 between 2500 and 3000 skilled workers a year were admitted through this Skilled Worker Regulation..</p> <p>More than 2,000 employers and institutes have already signed statements to enable the admission and residence of knowledge migrants. It has become clear that companies use the scheme specifically to bring international managers, researchers and ICT staff to The Netherlands. The top three countries of origin are: India, the United States of America and Japan.<sup>98</sup></p>
LEGAL PROVISIONS
<p>For aliens who meet the conditions of the skilled worker regulation, obtaining a residence permit is easier and can be done quicker than for aliens who apply for a residence permit via the regular procedure based on paid employment.</p> <p>Also the employers do not need a work permit for non-EU subjects when employing skilled workers, while a decision about the application for a residence permit is taken within fourteen days through a separate procedure.</p> <p>An employer can bring a foreign employee to the Netherlands as a skilled worker, if:</p> <ul style="list-style-type: none"><li>-the employer has signed a declaration on the admission of skilled workers and the employer has been admitted to the procedure by the Immigration and Naturalisation Service; and</li><li>-the employee is to work as an employee and proves this by means of an employment contract; and</li><li>-the employee earns a gross income of at least € 46,541 or €34,130 if he is under 30.</li></ul> <p>The employee must apply for a provisional residence permit at the Dutch embassy or the consulate in the country of origin or continuous residence.</p> <p>The residence permit is granted for the period of the employment contract, with a maximum of five</p>

<sup>96</sup> Several terms are used in English to identify this kind of employee; knowledge worker, knowledge migrant and skilled worker.

<sup>97</sup> Source: EMN.

<sup>98</sup> Source: IND - The Immigration and Naturalisation Service.

years.

The (registered) partner of the labour migrant will be given a residence permit for the period of one year. The residence permit of the children is the same as the residence permit of the highly skilled migrant. Family members are free to work on the labour market.

One attractive aspect of employing foreign nationals both labour migrants and highly skilled migrants in the Netherlands is that many will qualify to receive 35% of their income tax free. The effect of this is to make the overall tax burden similar to that faced in the UK.

After 3 years in the Netherlands on a work permit, it is usually possible for an individual to obtain permanent residence. Thereafter they are free to take up any lawful employment and no longer require an employer-sponsored work permit.

#### CONCLUSION AND REMARKS

The work permit legislation in the Netherlands makes it possible for employees' spouses to get a job. With the law passed in April 2005 the importance of dual careers for highly qualified people to international companies is recognized and this was welcomed by global companies who need highly skilled internationally-mobile workforces.<sup>99</sup>

It seems however, that bringing specialized personnel to the Netherlands has become increasingly difficult with employers facing stricter rules and time-consuming procedures. Universities and high-tech companies are complaining that they cannot get bright people and top talent to come from distant countries to the Netherlands to work for a specific period. The procedures are said to be too slow and complicated.

In a recent letter to parliament, the Dutch government requested relaxing a number of restrictions on knowledge migrants. The aim of the new strategy is to make it much easier for this labour talent from abroad to find their way into the Dutch labour market.<sup>100</sup>

In 2007 the Immigration and Naturalisation Service concluded that there were a few obstacles in the functioning of the law and in attracting the target group:

The residence applications should be processed within a two-week period, which proves not always to be the case.

Collaboration between the various organizations involved is not yet fully streamlined. The obstacles are found in the area of the issuance of the residence permits and the registration of the migrants' personal data.

Not all target groups are reached due to the salary criterion.

There is a risk of fraud, because no pre-selections are made to assess companies for their reliability and, if necessary, block them from participating in the scheme.<sup>101</sup>

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<sup>99</sup> Source: Stichting Permits/Permits Foundation

<sup>100</sup> Source: Foreign Investment Agency (NFIA.com) April 20, 2006

<sup>101</sup> Source: IND (April 2007)

## ICT Case study n° 3 - NAFTA ICT Visa

<b>Background</b>
<p>The North American Free Trade Agreement (NAFTA) was designed to open borders and promote free trade between three countries: Canada, the United States and Mexico. This agreement was signed on December 17, 1992 and implemented on January 1, 1994. As a treaty under international law, NAFTA is a complex trade agreement, which brought significant immigration consequences. NAFTA is an expansion of the earlier Canada-U.S. Free Trade Agreement (CFT) of 1988. Border restrictions were largely unaffected by the 1988 Free Trade Agreement. It intends to facilitate the movement of U.S., Canadian and Mexican business persons across each country's border through streamlined procedures. Chapter 16 of NAFTA, entitled "Temporary Entry for Business Persons" provides for the temporary entry of businesspersons among the United States, Canada, and Mexico.</p> <p>TN (Trade NAFTA) status is a special non-immigration status unique to citizens of the United States, Canada and Mexico. It allows American, Canadian and Mexican citizens the opportunity to work in the United States or Canada under a somewhat limited set of occupations. Business persons included in NAFTA are grouped under four categories: Business Visitors, Professionals, Intra-Company Transferees, Traders and Investors</p>
<b>Provisions foreseen by the law/agreement examined</b>
<p>Intra-Company Transferees are businesspersons employed by an enterprise to perform management or executive functions or those which involve specialized knowledge, and are being transferred to an enterprise, parent branch, subsidiary or affiliated branch located in the United States, Canada or Mexico. The Chapter Sixteen, Annex 1603, "Temporary entry for Business Persons", section C-Intra-Company Transferees provides that:</p> <p>Each Party shall grant temporary entry and provide confirming documentation to a business person employed by an enterprise who seeks to render services to that enterprise or a subsidiary or affiliate thereof, in a capacity that is managerial, executive, or involves specialized knowledge, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry. A Party may require that such business person shall have been employed continuously by such enterprise for one year within the three-year period immediately preceding the date of the application for admission.</p> <p>No Party shall, as a condition for temporary entry under paragraph 1, require labor certification tests or other procedure of similar effect; or impose or maintain any numerical restriction relating to temporary entry under paragraph 1.</p> <p>Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Part to obtain a visa or its equivalent prior to entry. Before imposing a visa requirement, such Party shall consult with a Party whose business persons would be affected with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall, at the request of a Party whose business persons are subject to the requirement, consult with that Party with a view to its removal.</p> <p>Even though the three countries are bounded to apply the above provision of NAFTA Agreement, there are nevertheless some differences in the type of classifications and in the procedures applicable in the three concerned States.</p> <p><b><u>United States of America:</u></b></p> <p>NAFTA Intra-Company Transferees are admitted in the US under the L-1 classification. L-1 applies to</p>

intra-company transferees who come to the United States to perform services in a managerial or executive capacity. The L-1 is generally issued for three years (one year only for a new company). It may be renewed for up to seven years for a person employed in an executive or managerial capacity, and up to five years for a person employed in a capacity requiring specialized knowledge. These limitations on stay do not apply to L-1 employees who work six months per year or less in the U.S. or who commute regularly to part-time work in the U.S. Dependents (spouses and unmarried children under 21 years of age) of L-1 workers are entitled to L-2 status, and L-2 spouses may apply for work authorization in the United States. To qualify as a NAFTA Intra-Company Transferee people must:

-be a Canadian/Mexican citizen;

-be in an executive or managerial capacity, or one involving specialized knowledge, in which case they must prove that they possess such knowledge and that it is required for their proposed employment;

-have been engaged in a similar position within the enterprise for at least one out of the previous three years;

-be transferred to an enterprise that has a clear relationship with the enterprise in which they are currently employed;

-comply with the country's existing temporary entry immigration requirements.

Once applicants have a job offer, confirmed by a letter presented to an immigration or consular officer, visas involve little paperwork or delay, which makes them well-suited for meeting companies' needs in a timely manner. Canadians need only to supply job documents, proof of citizenship and an approved Petition for temporary worker before they will be admitted to the U.S. For Mexicans, the process is slightly more complicated and can't take place at a port of entry. A Mexican citizen must obtain first a visa at a US consulate (generally in Mexico). Once the visa stamp is obtained in the passport, they may enter the US in a similar manner to a Canadian citizen.

### **Mexico:**

To work in Mexico as an Intra-company Transferee, an approved FM-3 FORM will be required, which American and Canadian citizens can obtain from a Mexican embassy or consulate or from a National Migration Institute office within Mexico, or on the Internet.

When applying for the required FM-3 form, the American and Canadian citizens must demonstrate that they meet the qualifying criteria as a NAFTA Intra-Company Transferee. FM-3 forms are valid for one year but they may request up to four extensions of one year each before they need to get a new form.

When applying for an FM-3, the following information will be required:

-a letter in Spanish from the employer addressed to the immigration authority

-a passport (valid for at least six months from the date of application)

-two recent passport-size photos

-cash or a money order for the application fee.

The letter from the company in Mexico must contain the full name and address of the applicant, request for a FM-3 Visa, and refer to the attached documentation. In addition, the arrangements for payment and the location(s) of work within Mexico should be explained. The information demonstrating that the applicant meets the requirements of a NAFTA Intra-Company Transferee is also required.



**Canada:**

Canada allows for the transfer of certain employees (executives, senior managers and specialized knowledge workers) to the Canadian branch, subsidiary or affiliate of an international company without the involvement of Human Resources Social Development Canada (HRSDC). American or Mexican Companies can use the Intra-Company Transferee provisions to transfer their employees to Canada with respect for the following conditions:

-they must have worked at least one year in the preceding three-year period for the United States or Mexican employer who wishes to effect the transfer;

-The employee must be in an executive or managerial position, or one involving “specialized knowledge” relating to their company’s business;

-the employee must be transferred to Canada to work temporarily for the same or an affiliated employer;

The enterprise in the USA or Mexico must have either a parent, branch, subsidiary, or affiliate relationship with the Canadian firm

They need a work permit.

Transferees should be prepared to supply the following documentation when applying for a work permit:

-Proof of citizenship;

-Outline of pre-arranged position in Canada, including: duration of stay; description of employment as executive or specialized knowledge;

-Proof of relationship between Canadian and foreign employers;

-Proof of previous employment with organization: minimum of one continuous year in the last three years; similar position to the one being offered in Canada.

Initial work permits for Transferees will be valid for at most three years. Transferees entering Canada to open or work in a new office will be granted permits valid for up to one year only.

Extensions may be granted for up to two years at a time. Executive Transferees can be granted permits for up to seven years in total. Specialized knowledge workers can receive permits valid for up to five years in total.

**KEY LESSONS**

Immigration patterns were not affected by NAFTA. The long-term trend in legal and unauthorized labour migration from Mexico to the United States continued and even accelerated after NAFTA was implemented.

The first 10 years of NAFTA agreement show that Canadians’ use of TN status is particularly large. By contrast, relatively few high-skilled Mexican workers enter the U.S. Cost of living, the education differential and language are barriers that stop Mexicans to make use of NAFTA. Also, Americans do not make use a lot of the TN visa as the U.S.A is the biggest host country to receive high-skilled workers.

The L-1 visa applied in the US seems to be an excellent visa for multinational employees. It offers immediate and future immigration benefits and is a solution for employees who would otherwise not qualify for visas. It does not require the company to try to find a U.S. worker first, pay a prevailing wage or refrain from laying off U.S. workers. Holders may adjust to permanent residency, and do not need to demonstrate non-immigrant intention.

## **ANNEX 5 STAKEHOLDERS CONSULTATION**

### **5.1. Questionnaire for the stakeholders**

A questionnaire has been sent to the stakeholders in the framework of the consultations for the Impact Assessment on Community instruments on economic migration, including: seasonal workers, remunerated trainees and Intra-Corporate Transferees. The questionnaire is divided in three sections, concerning the three specific categories of immigrant workers.

The complete questionnaire and list of stakeholders was delivered, asking stakeholder to complete the section/s in which they have specific interest or have developed relevant experience. Below are reported the list of all stakeholders involved and the relevant sections of the questionnaire.

The consultation began on 11 of February and ended on 7 of April.

#### **List of stakeholders:**

ETUC (European Trade Union Confederation);

Business Europe;

UEAPME (European association of craft, small and medium-sized enterprises);

International Organization for Migration (IOM);

International Labour Organisation (ILO);

Migration Policy Group;

University of Kent;

Nijmege University;

Université Libre de Bruxelles;

CEPS;

Caritas Europe;

European Platform for Migrant Workers Rights;

Immigration Law Practitioners' Association;

Platform of European Social NGOs (Social Platform);

ENAR – European Network against racism;

European Coordination's for Foreigners Rights to Family Life;

Euro-Mediterranean Consortium for Applied Research on International Migration (CARIM);

European Women's Lobby;

AISEC;

Work Permit Foundation;

Migration Policy Institute;

OECD;

UN-DESA;

FEACO - European Federation of Management Consultancies Association;

AmCham EU – American Chamber of Commerce to the European Union;

Mission of Japan to the European Union.

A more selected group of stakeholders was contacted for a second round of consultation during the last phase of the Impact Assessment in order to gather relevant stakeholders' opinions regarding the list of policy options identified and agreed with DG JLS and their potential economic and social impacts. Replies were received from Business Europe and from ETUC whose opinions and observations have been reported and used to complete the assessment of each policy option.

## Questionnaire for stakeholders

### Section 3: Intra-Corporate Transferees

#### Question 3.1.

a. The preliminary research carried out in the context of this assignment identified some relevant *issues concerning the socio-economic context*, which can be classified into the following categories:

Effects on the EU labour market: matching skills and labour shortages, innovation, R&D and capabilities, EU attractiveness for Foreign Direct Investments, GDP growth, productivity and competitiveness at EU level;

Other social issues: because of the exemption from labour market test and due to potential difficulties to check ICT's remuneration, possible effects on wages and employment; socio-economic integration of ICT, family reunification and access to work for spouses, their access to social security and health care services;

Main issues in sending countries: brain drain, skills availability and human resources;

Circular migration: helping EU Member States addressing their labour needs, supporting the development of countries of origin.

Are these issues a reason for concern? Could you explain the rationale behind your answer?

b. What other issues and problems do you identify, if any?

a. Do you think that there is a need for an EU intervention and the need for an EU-level approach to address these issues?

YES                      NO

                    

Please explain your choice below:

b. If you think that EU intervention is essential or useful, could you please motivate your choice and explain what would be in your opinion the added value of EU action?

c. If you think that EU intervention is not appropriate (or not fully appropriate), could you please motivate your choice and explain why these objectives could be better achieved at national level?

**Question 3.3** As defined at this stage, the set of *objectives*, that the Commission initiative could pursue, are the following:

enhancing the competitiveness and the attractiveness of the EU economy for ICT;

reinforcing the EU position in its relationship with international partners;

ensure quickly and effective entry procedures for ICT;

granting favorable residence conditions for ICT<sup>102</sup>;

What is your opinion on the relevance/pertinence of each one of the above mentioned objectives? Are there other global or specific objectives that you consider important to include?

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<sup>102</sup>

It is worth mentioning that the conditions under which ICTs can perform their economic activity broadly fall under the common commercial policy. Therefore, the immigration policy can only address entry procedures and residency rights of ICTs.

**Question 3.4** What is your opinion on the options listed below? Which would be the positive and negative effects of the solutions that you identified?

		<i>Explanation of the choice</i>	<i>Possible positive and negative effects</i>
With reference to the introduction of a common single procedure in all MS for the application by ICT and trainees for a residence/work permit, would it be appropriate?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Should equal treatment with EU nationals be ensured?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Should family reunification and access to work to spouses be granted?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Should intra-EU mobility (still in a context of intra-corporate transfers) be allowed?	<input type="checkbox"/> Yes <input type="checkbox"/> No		

		<i>Explanation of the choice</i>	<i>Possible positive and negative effects</i>
Upon the ICT's return to his/her country of origin, should provisions ensuring the transfer of pensions' rights or the payment of a lump sum be introduced?	<input type="checkbox"/> Yes <input type="checkbox"/> No		

**Question 3.5** With regard to the *definition of ICT* and the categories included<sup>103</sup>, which could be the possible solutions? Which would be the positive and negative effects of such solutions?

**Question 3.6**

**a.** Which *conditions of entry* (i.e. criteria to be fulfilled in order to be admitted as ICT and procedures for admission) would be applicable for ICT?

What should be the *duration of the permit*? Would it be *possible to renew it*?

**b.** Among the *rights* listed below, which ones should be granted? Please explain the choice and specify the positive and negative effects

		<i>Explanation of the choice</i>	<i>Possible positive and negative effects</i>
Protection against discrimination at work	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Equal treatment with national workers in respect of wages	<input type="checkbox"/> Yes <input type="checkbox"/> No		

<sup>103</sup>

According to art. 14 of the 2001 Proposal for Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities, "Intra-corporate transferees shall either be: (a) "key personnel", that is to say persons working in a senior management or executive position within a legal entity, receiving general supervision or instructions principally from the board of directors or stockholders of the business or their equivalent; (b) "specialists", that is to say persons possessing uncommon knowledge essential to the establishment's service, research equipment, techniques or management" (COM(2001) 386 final).



		<i>Explanation of the choice</i>	<i>Possible positive and negative effects</i>
Join a social protection scheme	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Access free to public medical health services	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Free housing	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Adequate prevention of occupational accidents or diseases	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Others (please specify)	<input type="checkbox"/> Yes <input type="checkbox"/> No		

**Additional comments**

## 5.2. Outcome stakeholder analysis – first consultation

Below is the list of those stakeholders which specifically answered the section of the questionnaire on Intra-Corporate Transferees:

Business Europe;

International Organization for Migration (IOM);

European Coordination's for Foreigners Rights to Family Life (hereinafter COORDEUROPO);

Work Permit Foundation;

FEACO-Pendo group;

American Chamber of Commerce to the European Union

Mission of Japan to the European Union

The consultation began on February 11<sup>th</sup> and ended on April 7<sup>th</sup>. After having collected all contributions, an in-depth analysis of their contents and insights was carried out and is presented in the following paragraphs. Since the analysis was performed in relation to each question, each analysis is introduced by a general overview of the issues and concerns raised

a. The preliminary research carried out in the context of this assignment identified some relevant **issues concerning the socio-economic context**, which can be classified into the following categories:

- a. Effects on the EU labour market: matching skills and labour shortages, innovation, R&D and capabilities, EU attractiveness for Foreign Direct Investments, GDP growth, productivity and competitiveness at EU level;
- b. Other social issues: because of the exemption from labour market test and due to potential difficulties to check ICT's remuneration, possible effects on wages and employment ; socio-economic integration of ICT, family reunification and access to work for spouses, their access to social security and health care services;
- c. Main issues in sending countries: brain drain, skills availability and human resources;
- d. Circular migration: helping EU Member States addressing their labour needs, supporting the development of countries of origin.

Are these issues a reason for concern? Could you explain the rationale behind your answer?

b. What other issues and problems do you identify, if any?

by each question and to which stakeholders were expected to give their views and remarks

### A) Problem definition

Most stakeholders agree that the issues concerning the socio-economic context, mentioned above are relevant. Many of them raise the issue of **overall competitiveness of the EU** and its **attractiveness for foreign direct investment**. Business Europe, for example, is concerned that the **difficulties in attracting ICTs will hamper companies to innovate, remain**

**competitive and expand their activities**, and ultimately negatively effect the creation of wealth and growth. The FEACO-Pendo Group mentions that the current state of play, of each EU Member States having separate rules and regulations reduces the competitiveness of the EU in an increasing global market and faced by shortages of skilled labour. The EU should instead be able to recruit quickly and move ICTs quickly, according to the FEACO-Pendo Group. The Mission of Japan to the European Union emphasizes the point of the EU's attractiveness for foreign direct investments.

The Work Permit Foundation addressed, as the only stakeholder, the issue of **brain drain** by stating that ICTs often return to their home country with the benefit of the added experience and development potential. The other stakeholders do not make notice of brain drain as a problem.

As an additional problem, the International Organisation for Migration is concerned for the absence of safeguards ensuring that **ICTs undergo equal treatment with nationals in terms of wages and working conditions**. The Mission of Japan to the European Union also raises this issue, but emphasizes more on the practical issues for ICTs, such as moving to other Schengen Agreement countries, difficulties in home doctor applications, residence registrations and opening bank accounts.

## **B) Subsidiarity and EU Added Value**

### **Question 2**

- a. Do you think that there is a need for an EU intervention and the need for an EU-level approach to address these issues? (*YES/NO and explanation of the choice*)
- b. What other issues and problems do you identify, if any?
- c. If you think that EU intervention is not appropriate (or not fully appropriate), could you please motivate your choice and explain why these objectives could be better achieved at national level?

**All stakeholders agree that there is a need for an EU intervention.** Many stakeholders emphasise the need for unifying the current 27 different systems for application and residence in common rules or principles.

According to most of the stakeholders, the added-value of EU intervention would be useful to **establish, single, fast and transparent procedures, or common principles of entry, admission and residence for ICTs and their family members**. For employers EU intervention would be more increased simplicity, transparency, and efficiency in obtain work permits and visa for ICT and the lifting of restrictions on the movement of ICTs between Member States (Work Permit Foundation).

Some stakeholders also mention that more attractive policies would support attractiveness of the EU as a business location and to ensure that member states stay competitive (Business Europe, Work Permit Foundation, International Organisation for Migration).

### C) Objectives (question 3)

Most stakeholders consider each of the objective stated above as relevant.

Only Business Europe states that instead of a set of objectives there should be a **key objective**

**Question 3.3** As defined at this stage, the set of **objectives**, that the Commission initiative could pursue are the following:

enhancing the competitiveness and the attractiveness of the EU economy for ICT;

reinforcing the EU position in its relationship with international partners;

ensure quickly and effective entry procedures for ICT;

granting favorable residence conditions for ICT<sup>1</sup>;

What is your opinion on the relevance/pertinence of each one of the above mentioned objectives? Are there other global or specific objectives that you consider important to include?

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**ective entry procedures for ICT.**

The International Organisation for Migration raises the additional objective of **creating transparency for companies by the applying one set of rules and procedures** to all the Member States.

The Mission of Japan to the European Union makes as an additional remark that the **objectives currently focus just on the rights of ICTs**. They suggest exempting ICTs from certain obligations, such as language requirements, only relevant to economic migrants.

### D) Policy Options (question 4)

#### Question 4

**The stakeholders where asked to express their opinion on the following elements:**

Common single procedure

Equal treatment

Family reunification and access to work to spouses

Allowing Intra EU mobility

Pension rights

#### **Common single procedure**

All stakeholders agree on the need for a common single procedure, because:

It will simplify and accelerate the procedure both for the employer and the migrant (The International Organisation for Migration)

It would be a business-friendly solution. However, they warn for grouping ICTs together with remunerated trainees. In their view the latter should be subject to simpler admission criteria.

They foresee as a positive effect of a single procedure that all business initiated transfers (as opposed to individual initiated migration) could be processed through a single ‘fast track’ procedure. Possible negative they foresee is that it would become more difficult to transfer trainees (The Work Permit Foundation).

It will not only enhance the benefit of ICT, but also help to promote the attractiveness of the EU as a Single Market (American Chamber of Commerce to the European Union).

Also the FEACO- Pendo group suggests a fast track single application procedure as the preferred policy option. They recommend as an additional remark, to combine the work permit, visa and residence permit in a single permit for third country ICTs temporarily assigned to the EU (similar to the elements contained in the proposed Directive for highly skilled workers). They also recommend that a proposed directive should allow Member States to waive some of the minimum requirements which would be harmonised under the Directive if they believe lower requirements are justified.

### **Equal treatment**

All stakeholders that replied agree on the need of equal treatment for third-country ICTs to EU nationals.

The International Organisation for Migration underlines that equal treatment will enhance the attractiveness of the EU economy for ICT.

The Work Permit Foundation also mentions equal treatment to family members of ICT. They recommend to apply equal treatment to rights and duties that accrue as a result of being legally resident and employed and paying taxes and social premia. They suggest to omit the application of specific Member States requirements for longer-term migrants to speak the language and attend integration courses for ICTs and their family members. The Work Permit Foundation foresees as positive effects of equal treatment the integration of ICTs and their family members for the period of the assignment without being a burden on public funds. Negative effects are in their opinion not significant as ICTs remain a limited time in the host country and their residence is dependent on a contract of employment. Their numbers are small (less than 1% of the total employed staff) and they are not a drain on public funds.

The American Chamber of Commerce to the EU states that the EU should continue its efforts in the liberalisation of the movement of people in the EU internal market in the least discriminatory possible manner for non-EU nationals including Japanese citizens. Their point of view is that equal treatment with EU nationals will only enhance the benefits of ICT but also help to promote the attractiveness of the EU

### **Family reunification and access to work for spouses**

All stakeholders agree on assigning ICTs the right of family reunification and access to work for spouses.

Business Europe mentions that if family reunification or access to work for spouses is not granted, it is difficult to convince staff to take assignments of a longer duration.

According to the International Organisation for Migration, the ease in which companies can move around their key personnel can play an important role in determining whether to set up

business in a particular country. Therefore family reunification and access to work for spouses should be facilitated.

The Work Permit Foundation remarks that the experience in international companies is that policies that apply to the family members often determine the success of an international assignment. In particular, concerns about partner employment are one of the main reasons why staff turn down an international assignment. Therefore the Work Permit Foundation suggests that family members should be allowed to accompany the ICT without waiting time. Also they should be allowed to join at a later date without additional bureaucracy (i.e. still linked to the ICT). They suggest that spouses and family members should be given immediate and open access to the labour market without an additional work permit requirement.

The FEACO- Pendo remarks that the spouses should be given free access to the labour market of all EU Member States during the validity of the work permit of his/her ICT spouse.

The American Chamber of Commerce also sees family reunification and access to work for family members as a mean to promote the attractiveness of the EU as a single market.

As an additional remark to this question, the Work Permit Foundation foresees the following positive effects of family reunification and granting spouses the right to work:

- For EU/ Member States: an attractive climate for skills and talented ICTs, enhanced country brand, supports trade and investment, helps integration, the whole family can contribute to economy.
- For employers: reduced cost of assignment failure, help to attract/retain mobile talent
- For ICT family: mobile, motivated family, partner can work and maintain skills, eases transition back to employment in home country
- Negative effects: None. ICT numbers are small (1% of employees). Not all partners will want to work or find a job. They have to compete with local nationals. If the partner is the best person for the job, this will contribute most to the local economy.

### **Allowing intra-EU mobility**

All the stakeholders agree on allowing ICT Intra-EU mobility. Although the Work Permit Foundation suggests to make it subject to a continuing or new contract of employment.

Business Europe emphasis that companies should be able to move executive and professional staff from country to country depending on commercial needs or where the ICT can be most productive for a specific period.

The International Organisation for Migration mentions that intra EU mobility for ICTs increases the attractiveness for business of EU Member States and the EU economy as a whole.

The American Chamber of Commerce highlights that the progress in EU integration and globalisation has boosted the number of ICT who move across Member States. Against this background they suggest that free intra-EU movement should be allowed.

### **Pension rights**

Three stakeholders, who are stated below, agree on the importance of pension rights for ICTs:

According to the International Organisation for Migration it will foster the circularity of migration and increases the chances that the ICT with a pension will go back to their countries of origin.

The Work Permit Foundation states that transfer of pension rights or accrued value or, perhaps more realistically, a lump sum refund of the contributions will be welcome. The view as positive effect the reduced costs to employers or employees depending on how it would be administered.

The American Chamber of Commerce mentions suggests that from the viewpoint securing income of elderly people, it is essential that pensioners are guaranteed the reasonable scope of rights of pension benefits proportionate to the insurance premium paid in the country of appointment, upon the return of ICT to his/her country of origin. If its purpose is to prevent non-refund for the insurance premiums paid in the country of appointment, it will help reduce economic burden of ICT and promote personnel and economic exchanges. Furthermore, they suggest it will be necessary for ICT to have a choice between receiving benefits as pension or as lump-sum payment.

#### **E) Additional comments (remarks not strictly linked to a specific question)**

As an additional remark, The FEACO-Pendo Group summarizes the specific costs companies have to bear as a result of the various barriers and constraints encountered by companies when looking to temporarily transfer third country ICTs to the EU. Those are direct costs to companies related to obtaining a work permit, visa and residence permit and additional costs to companies such as delays in assigning the ICT due to the length and complexity of the various procedures; lost opportunity costs if the ICT cannot be assigned to the required location at all or on time to perform the work. In some cases, contracts are lost resulting in lost revenue for the company; increased attrition rate if cannot assign ICTs easily; reduction in productivity of ICTs.

The Mission of Japan to the European Union highlights issues such as the length of time required for the issuance, the complexity of procedures, the expiry period, renewal procedures, language requirements, inconsistency in service at the local levels as problems associated to the issue of residence and work permits, as well as visa procedures for ICT and their families.

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Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service applicable as of 12 January 2007

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