

# EMN INFORM

## Intra-EU Mobility of Third-Country Nationals

### 1. AIM OF THE STUDY

This EMN Inform is based on the findings of the EMN Study<sup>1</sup> on Intra-EU mobility of third-country nationals<sup>2</sup>, informed by National Reports from 21 Member States.

This scoping study aimed, firstly, to provide an initial **overview of current mobility provisions** within the EU *acquis* to encourage the intra-EU mobility of third-country nationals and to explore also the national rules in place that regulate such movements, as well as the **challenges/barriers** which may be affecting such mobility, particularly for reasons of work. The study aimed also to 'map' the extent to which statistics are available on the **scale and scope** of intra-EU mobility of third-country nationals in order to characterise, to the extent possible, the current trends and patterns of mobility, for periods of stay in the second Member State **exceeding three months**.

### 2. KEY FINDINGS

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

the phenomenon can be effectively quantified and comprehensively understood at EU level.

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

★ Analysis of the current provisions of the EU *acquis* suggests that, for stays exceeding three months, there is a **fundamental difference** between mobility rights for EU citizens and for mobile third-country nationals, with conditions **more limited** for mobile third-country nationals. Differences in the conditions for entry and stay of more than three months between mobile third-country nationals and third-country nationals arriving directly from their country of origin / another third-country appear also to be minor, despite the mobility provisions stipulated in the EU *acquis* aimed at facilitating intra-EU mobility for certain categories of third-country nationals (Long Term Residents, EU Blue Card holder/highly qualified workers, students and researchers). Although the type and degree of such obstacles varies across the categories of third-

<sup>1</sup> The EMN Study and National Reports are available on the [EMN website](#).

<sup>2</sup> Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovak Republic, Sweden and United Kingdom.

country nationals and Member State, this finding applies to varying degrees across all of the categories examined in the Study.

- ★ The EU migration Directives that provide for mobility of third-country nationals, leave **significant areas of discretion** to Member States, and therefore to national laws in shaping mobility. Member States, acting legally, can, and do, apply measures to limit or encourage such mobility, according to their national policies and priorities, thus creating differences in rules and practice across the Member States.

### 3. PROVISIONS FOR INTRA-EU MOBILITY WITHIN THE EU ACQUIS

The EU *acquis* recognises that mobility rights have economic and social benefits for individuals and for Member States, and this is reflected in the rights of EU citizens and their family members to move and reside freely within the territory of the Member States. Limited mobility rights have been extended to various categories of third-country nationals: **long term residents, highly skilled workers, researchers, students and posted workers**. Proposals for new Directives will aim to extend the intra-EU mobility rights of **students and researchers**, and to introduce intra-EU mobility provisions for **remunerated trainees** within EU legislation, as well as **intra-corporate transferees**.

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

The significant areas of discretion left to Member States within the EU *acquis* result in **variations in the mobility provisions** for the various categories of mobile third-country nationals that are covered by the EU Migration Directives across the EU which are in general more onerous than those faced by EU citizens exercising their right to mobility

- ★ Under Directive 2003/109/EC, mobile third-country national **long-term residents** must apply for a residence permit to reside in a second Member State, whereas EU citizens need only to register their right to stay for more than three months; Member States may also apply measures to regulate the numbers of mobile third-country nationals granted the right of residence, for example, a labour market test, and other requirements not applicable to EU citizens, for example, compliance with integration measures. Mobile long-term residents exercising mobility in Member States that have adopted the Directive can, however, obtain a residence title following

simplified procedures when compared to those in place for third-country nationals arriving to the EU for the first time, and the application can be made from within the territory of the second Member State without holding a visa. In some Member States, entry for mobile third-country national long-term residents is further facilitated, and the type of residence permit issued in the second Member State may also offer more protection than for those third-country nationals who apply to enter and reside directly from a third-country.

- ★ The conditions that mobile third-country national **EU Blue Card holders** must meet under Directive 2009/50/EC are also stricter than the conditions that apply to mobile EU citizens. EU Blue Card holders must have legally resided in a first Member State for a minimum period of eighteen months before moving to a second Member State, and in order to do so they must apply for another EU Blue Card, which in practical terms, means being reassessed in order to meet all of the conditions that apply in national legislation in the second Member State, including labour market testing. Mobility may also be restricted if the Blue Card is issued for employment with one specific employer. However, an application for a Blue Card in a second Member State can be made from within that Member State, procedures for family reunification are more favourable and periods of residence in different Member States may also count towards fulfilment of the requirements for long-term resident status.

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

- ★ For **students** from third countries coming to study in the EU for periods exceeding three months,

conditions for entry and stay are set out in Directive 2004/114/EC, and the conditions for mobility are subject to strict limitations. Member States do not in general differentiate between students coming directly from a third-country for the purpose of study and those coming from another EU Member States for stays exceeding three months. Overall, the same immigration rules were found to apply.

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

## 4. KEY CONCLUSIONS

### The availability of statistics is limited

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

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

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

- ★ **Labour market restrictions** may represent a barrier for third-country nationals to access labour markets in the EU beyond the Member State in which they initially resided. In most Member States, mobile third-country nationals face similar restrictions when compared with newly arrived third-country nationals, and must obtain a work permit under the same conditions as third-country nationals coming from outside the EU. **Labour market tests** may apply that ensure that preference of labour market access is given to EU/EFTA nationals. Some Member States have however, introduced specific provisions for certain categories of mobile third-country nationals, including simplified procedures and exemptions from a work permit or from the labour market test.
- ★ The **minimum wage rate** that a third-country national needs to receive, to be granted residence and work permit, may be another potential factor which can have a negative impact on their intra-EU mobility. National discretion setting such minimum wage levels, results in higher minimum wages levels in some Member States for third-country nationals, compared to EU citizens.
- ★ Burdensome administrative **requirements for entrepreneurs and self-employed persons** can prevent mobile third-country nationals from settling in another Member State. Overall, Member States have not adopted specific provisions for such mobile third-country nationals, thus general requirements for all third-country nationals apply. The majority of Member States have introduced requirements for certain levels of initial capital in order to grant a residence or work permit for self-employment to third-country nationals, which significantly vary in Member States. Other requirements introduced in Member States include assessment of the profitability of the business, job creation requirements, language requirements and requirements for the business activity to be in line with the national economy.
- ★ Another factor potentially shaping mobility for third-country nationals may be the **recognition of**

**degrees and diplomas** and particularly, the cost, duration and documentation requirements associated with the recognition.

- ★ Other factors which may affect the decision of third-country national workers to relocate to another Member State include restricted access to **social security and social services** and variations in the mobility rights given to the **family members** of different categories of mobile third-country nationals.

## 5. FURTHER INFORMATION

You may obtain further details on this EMN Inform and/or on any other aspect of the EMN, from [HOME-EMN@ec.europa.eu](mailto:HOME-EMN@ec.europa.eu).

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