
A Competition for Talents – 15 Years of EC – and EU-Directives Fostering the Immigration of Highly Qualified and Skilled Third-Country Nationals

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Summary: Beginning with the Tampere summit and the Lisbon Council conclusions and the Directives starting with the Students Directive and the Researchers Directive the European Union took significant steps to create a modern legal framework for the management of legal migration that makes the European Union attractive for highly qualified and skilled third country nationals. Also the introduction of the EU-Blue-Card was an important step on this way. The initiatives show that the Union is well aware of the demographic development and the global competition for highly qualified and skilled migrants.

However changing laws and regulations is not enough. It also requires accompanying measures and the perception and visibility of the new regulations. Also a fast and simple visa procedure is required as well as a mechanism for recognition of qualification. Language training abroad and after arrival and integration politics are also indispensable for success.

Keywords: Immigration of Third-Country nationals – Researchers Directive – EU-Blue Card – accompanying measures – language training – integration policy

1. Introduction

Since the year 2000 the EU undertook a lot of initiatives to join the international competition for highly qualified and skilled migrants. The management of legal migration more and more played a significant role not least because of an aging society.¹ In the beginning the conclusions and programmes of Tampere, Lisbon, Hague

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¹ KOTZUR, M. TFEU Article 79, p. 434, MN 5. In: Geiger, R., Khan, D. E., Kotzur, M. *European Union Treaties*. München: C. H. Beck / Hart, 2015.

and Stockholm described the aims, later the importance of programmes declined and more and more legislative instruments, especially Directives, gained weight.²

2. The EU competition for highly qualified and skilled migrants and the competences of the Member States

Already the Tampere summit in October 1999, which aimed at the development of an area of freedom, security and justice,³ underlined a more efficient management of migration flows, information campaigns and the actual possibilities for legal migration. The European council acknowledged “the need for approximation of national legislations on the conditions for admission and residence of third-country nationals, based on a shared assessment of the economic and demographic developments within the Union, as well as the situation in the countries of origin.”⁴ But at this time the discussion was more about asylum than about attracting highly qualified.

The precedency conclusions of the Lisbon European council on 23 and 24 March 2000⁵ start with the announcement, that “the European Union is confronted with a quantum shift resulting from globalization and the challenges of a new knowledge driven economy.” In nr. 5 it states: “The Union has today set itself a new strategic goal for the next decade: to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion.”⁶

In 2001 the Commission presented a proposal for a “Directive on the conditions of entry and residence of third-country-residents for the purpose of paid employment and self-employed economic activity”.⁷ In 2005 the proposal was withdrawn, because of the resistance of the Member States⁸.

² HAILBRONNER, K., THYM, D. *EU Immigration and Asylum Law. A Commentary, Second Edition*. C. H. Beck / Hart / Nomos, 2016, Part A, MN 8, 9, p. 5.

³ Presidency Conclusions of Tampere European Council on 15 and 16 October 1999. Available at: europarl.europa.eu/summits/lis11en.html

⁴ Presidency Conclusions of Tampere European Council on 15 and 16 October 1999, nr. 20.

⁵ Presidency Conclusions of Lisbon European Council on 22 and 23 March 2000. Available at: europarl.europa.eu/summits/lis11en.html

⁶ For the significance of the Lisbon council see also PORTO, M. The Path Towards European Integration: the Challenge of Globalisation. *European Studies Volume 1*, 2014, p. 41–55, 48.

⁷ Com 2001/ 386 final; nr. 2 of the proposal shows that the main aim of the proposal was to harmonize “the highly complex national administrative rules and procedures”.

⁸ Com 2005/0462 final; HAILBRONNER, K., THYM, D. (sub 2) Part C VI Art 1, MN 9, p. 623, for the proposal see also HERZOG-SCHMIDT, J. *Zuwanderung Hochqualifizierter*. Nomos, Baden-Baden: 2013, p. 30 ff.

In the Hague Program of 2005⁹ it was stated, that “legal migration will play an important role in enhancing the knowledge-based economy in Europe, in advancing economic development, and thus contributing to the implementation of the Lisbon strategy.” But at the same time it was said, that the European Council emphasizes that the determination of volumes of admission of labour migrants is a competence of the Member States.”¹⁰

With the Treaty of Lisbon¹¹ and the Treaty of the Functioning of the European Union (TFEU) a new basis for migration law was established. Article 79 TFEU established a competence for the EU to adopt legal rules on economic migration. But at the same time it restricted this competence in Article 79 para. 5 TFEU in the way, that “the Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed”.¹²

Also the Stockholm Program of 2009¹³ expressed, that “the Union should encourage the creation of flexible admission systems that are responsive to the priorities, needs, numbers and volumes determined by each Member State and enable migrants to take full advantage of their skills and competence”.¹⁴

On 15 July 2014 Jean-Claude Juncker, at that time still candidate for president of the European Council and later president, announced in his political guidelines, that he intends to promote a new European policy on legal migration. Such a policy could help “to address shortages of specific skills and attract talent to better cope with the demographic challenges of the European Union”. He

⁹ The Hague Programme Strengthening Freedom, Security and Justice in the European Union, Official Journal 3 March 2005 C 53/1; PEERS, S., GUILD, E. et al. *EU Immigration and Asylum Law*: Volume 2, second edition, Nijhoff, Leiden, Bosten, 2012, p. 4.

¹⁰ The Hague Programme Strengthening Freedom, Security and Justice in the European Union, Official Journal 3 March 2005 C 53/1, p. 4 (legal migration and the fight against illegal employment).

¹¹ Official Journal C 306/1, 17 December 2007.

¹² HAILBRONNER, K., THYM, D. (sub 2) Part C I, MN 12 and 26, p. 278, 283; see also KOTZUR, M. TFEU Article 79, p. 436, MN 12. In: Geiger, R., Khan, D. E., Kotzur, M. (sub 1), who addresses Article 79 p. 5 as an “ordre public for the labour market. The core area of legal immigration is left within the competence of the Member States. ... As the Member States, however, regard the permanent migration as central element of their sovereignty, a more comprehensive regime was not possible”; for the genesis of Article 79 p. 5 and the significance of labour migration in the area of freedom, security and justice see: THYM, D. *Migrationsverwaltungsrecht*, Mohr, Tübingen, 2010, p. 95 ff.

¹³ The Stockholm Programme: An Open and Secure Europe Serving and Protecting the Citizens, adopted by the European Council on 11 December 2009, Official Journal 2010 C 115/1.

¹⁴ For the importance of the programmes see HAILBRONNER, K., THYM, D. (sub 2), Part A, MN 8 and 9, p. 5.

emphasized, that he wanted Europe to become at least as attractive as the favorite migration destinations such as Australia, Canada and the USA.¹⁵

3. The sectoral Directives

3.1. The Researchers Directive

The researchers Directive from 12 December 2005¹⁶ refers to the goals of Lisbon in recital 2 of the preamble. In recital 3 it states, that the globalization of the economy calls for greater mobility of researchers, something which was recognized by the sixth framework program of the European Community, when it opened up its programs further to researchers from outside the European Union. One of the measures to achieve the goal of 700.000 researchers, who are needed to meet the target of 3% of the GDP invested in research is – besides making scientific careers more attractive and promoting womens involvement in scientific research – to open up the community to third-country nationals, who might be admitted for the purposes of research. (recital 4).

The Researchers Directive determines the conditions of admission of third-country nationals for the purpose of research and establishes a fast track procedure: To be eligible for a residence permit the researcher only has to conclude an effective admission agreement for the purpose of carrying out a research project with a research institution accredited by the authority in charge of.¹⁷ It also aimed at a uniform status in all aliens laws for the purpose of carrying out scientific research.¹⁸ The researchers Directive wasn't a great success, which was underlined by low numbers of researchers admitted under the Directive. The evaluation report of the commission identified as reasons unclear definitions and the fact that the privileged status for researchers granted by the Directive

¹⁵ JUNCKER, J. C. A new start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change, Political Guidelines for the next European Commission, policy area 8. Towards a new Policy on Migration.

¹⁶ Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purpose of scientific research, Official Journal L 283, 3. 11. 2005, p. 15–22.

¹⁷ PEERS, S., GUILD, E. et al. (sub 9), p. 129; KLUTH, W. Der Aufenthalt von Forschern nach § 20 AufenthG, *Zeitschrift für Ausländerrecht und Ausländerrecht – ZAR* 2008, p. 234–237; GRIESBECK, M. Erfahrungen mit der Forscherzuwanderung nach § 20 AufenthG und ihre Bedeutung für eine erfolgreiche Migrationssteuerung. In: Jochum, G., Fritzemeyer, W., Kau, M. (Hrsg.). *Grenzüberschreitendes Recht – Crossing Frontiers, Festschrift für Kay Hailbronner*, 2013, p. 61–74.

¹⁸ HAILBRONNER, K., THYM, D. (sub 2) Part C VI, Art. 1, MN 5, p. 622.

was and – despite many efforts to publicize it – remained little known.¹⁹ Another reason given for the low demand was that even the employers, i.e. the research institutions, considered the two-stage procedure defined in the Directive to be too complex and bureaucratic.

3.2. The Students Directive

Also the students Directive of 2004²⁰ referred to the opening of the Community for third- country nationals. In recital 6 and 7 of the Directive it reads: “(6) One of the objectives of Community action in the field of education is to promote Europa as a whole as a world centre of excellence for studies and vocational training. Promoting the mobility of of third-country nationals to the Community for the purpose of studies is a key factor in that strategy. The approximation of Member States’ national legislation on conditions of entry and residence is part of it. (7) Migration for the purpose set out in that Directive, which is by definition temporary and does not depend on the labour market situation in the host country, constitutes a form of mutual enrichment for the migrants concerned, their country of origin and the host Member State and helps to promote better familiarity among cultures.” In this time the goal still was to make the students fit for a profession in their home country, and not to keep some of them in the EU and make them stay. Economic activities were permitted to cover part of the costs of their studies (recital 18), but the situation of the labour market had to be taken into account and each Member State had to determine himself the amount of hours per week (Article 17).²¹ But the conclusion of the evaluation report²² 7 years later made already clear, that “the issue of access to work for third-country national students at the end of the studies could be specifically addressed, as this seems to be a decisive factor in the students choice for a destination country and an issue of common interest in the context of a declining working-age population and a global need for highly-qualified workers.”²³ Indeed students and graduates are an attractive potential of migrants for the labour market. They are young and highly qualified, have already language skills and are acquainted with the

¹⁹ Commissions report (COM (2011) 901 final).

²⁰ Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purpose of studies, pupil exchange, unremunerated training or voluntary service, Official Journal L 375, 23/12/2004, p. 12–18; PEERS, S., GUILD, E. et al. (sub 9), p. 195.

²¹ For the differences between the Students Directive and the researchers Directive regarding the temporary stay see HAILBRONNER, K., THYM, D. (sub 2) Part C VI, Art. 1 MN 4, p. 621.

²² COM/2011/0587 final from September 2011.

²³ PEERS, S., GUILD, E. et al. (sub 9), p. 208.

country they will work in, because they already studied there. Moreover they don't need recognition of a foreign qualification.²⁴

3.3. The REST-Directive

More than a decade later this approach has changed. It was no longer “study and go” but “study and stay”²⁵. The new REST (Researchers and Students)-Directive of May 2016²⁶, which should respond to the need identified in the evaluation reports on the researchers Directive and the students Directive, to remedy the identified weaknesses, explicitly says in recital (3): “This Directive should contribute to the Stockholm Programme’s aim of approximating national legislation on the conditions for entry and residence of third-country nationals. Immigration from outside the Union is one source of highly skilled people, and students and researchers are in particular increasingly sought after. They play an important role in forming the union’s key asset, human capital and in ensuring smart, sustainable and inclusive growth, and therefore contribute to the achievement of the objectives of the Europe 2020 strategy.” In recital 8 it is explained, that the Directive “should promote the Union as an attractive location for research and innovation and advance it in the global competition for talent and, in doing so, lead to an increase in the Union’s overall competitiveness and growth rates while creating jobs that make greater contribution to GDP growth.”²⁷

The REST Directive improves the intra-EU mobility of international students. It also gives researchers three options for a legal stay in a Member State. With the REST Directive a new residence title for mobile researchers, who already hold a residence permit for researchers of another Member State was

²⁴ Sachverständigenrat für Migration/ The Expert Council of German Foundations on Integration and Migration/SVR: *Mobile Talente? Ein Vergleich der Bleibeabsichten internationaler Studierender in 5 Staaten der EU*, Berlin: 2012, p. 6; Sachverständigenrat für Migration: *Zugangstor Hochschule, Internationale Fachkräfte als Fachkräfte von morgen gewinnen*, Berlin: 2015, p. 7.

²⁵ OECD, *International Migration Outlook 2016*, p. 51; GRIESBECK, M., HESS, B. “Study and stay” – Entwicklungen und aktuelle Fragestellungen der rechtlichen Grundlagen der Zuwanderung und des Aufenthalts von Studenten und Absolventen. In: *Recht der Jugend und des Bildungswesens – RdJB*, 2016, p. 43–55.

²⁶ Directive (EU) 2016/801 of the European Parliament and the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purpose of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au-pairing, Official Journal L 21. 5. 2016, 132, p. 22–52.

²⁷ Already the Global Approach to Migration and Mobility (COM (2011) 743 final), p. 14 stated, that “greater mobility for students and researchers from third countries could also be a path towards catering for labour market needs in Europe if some students were to be able to work after completing their studies”.

introduced. The REST Directive had to be implemented in all Member States by May 2018.²⁸

3.4. The ICT Directive

Another legal framework that shows that the European Union wants to improve the conditions for third-country nationals is the ICT-Directive of 2014²⁹. It not only refers to the Commissions Communication of 3 March 2010 entitiled “Europe 2020: A strategy for smart, sustainable and inclusive growth” and its objective of an economy based on knowledge and innovation (recital 3), but also refers to the important demographic challenge, that will face the Union (recital 4). The ICT Directive intends to simplify intercorporate transfer and facilitate the immigration of managers and specialists in EU Member States. It offers a uniform admission procedure based on harmonized criteria and creates two new residence titles (the ICT-Card and the Mobile ICT-Card) that supplement the residence permits already in existence.³⁰ The ICT Directive is now transposed in almost all Member States.³¹

4. The council Directive 2009/50/EC (Blue Card Directive) as the main Directive

As turning point on the way from a possibly somewhat hesitant or even reluctant policy concentrating on researchers to fulfill the Lisbon goals to an active policy of attracting high skilled professionals is the so-called Blue Card Directive³². It directly aimed at attracting highly qualified third-country workers and created the “Blue Card” to compete with the well-known American “Green Card.”³³

The Directive establishes a fast track admission procedure. It implements a special residence permit, the so-called EU Blue Card, for highly qualified

²⁸ Federal Office for Migration and Asylum/ European Migration Network, Migration, Integration, Asylum, Political Developments in Germany 2017, Annual policy report by the German National Contact Point for the European Migration network (EMN), Nürnberg 2018, p. 32.

²⁹ Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, L 157/2.

³⁰ Federal Office for Migration and Asylum/EMN, Nürnberg, 2018, p. 29.

³¹ EMN annual report on migration and asylum 2017, Bruxelles, 2018, p. 11 f.

³² Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, Official Journal L 155, 18/06/2009, p. 17–29.

³³ PEERS, S., GUILD, E. et al. (sub 9), p. 47, 65.

workers³⁴. The Blue Card is subject to special requirements (e.g. occupational qualification and a minimum salary to be defined) and provides special rights concerning mobility, family reunification and permanent residence. But the Member States were still able to issue residents permits other than Blue Cards for any purpose of employment.³⁵

The proposal for this Directive came from Vice President Fratini. In a speech in a conference in Lisbon on 13 September 2007 and one week later in a speech in the European Parliament he explained the initiative. One month later the Commission presented the first draft of the Directive and in May 2009 the Directive was adopted by the Council.³⁶

The initiative clearly aimed at fostering economic growth and mitigating demographic problems resulting from an aging population.³⁷ The Directive explicitly refers to the objective of the Lisbon European council in March 2000 to become the most competitive and dynamic knowledge-based economy in the world (recital 3) and to the Hague Programme of 2004 and its statement, that legal migration will play an important role in enhancing the knowledge-based economy in Europe (recital 4).

In recital 7 of the preamble of the Directive it is explained, that the intention is to foster the admission and mobility of third country nationals in order to make the Community more attractive for high skilled workers from around the world and sustain its competitiveness and economic growth. However it is repeated also in recital 7 that it is also necessary to take into account the priorities, labour market needs and reception capacities of the Member States. The Directive should be without prejudice to the competence of the Member States to maintain or to introduce new national residence permits for any purpose of employment. The third country nationals should have the possibility to apply for

³⁴ Article 2 c), article 7 of the Directive.

³⁵ Article 3 (4) of the Directive.

³⁶ PEERS, S. Legislative Update: EC Immigration and asylum Law, Attracting and Deterring Labour Migration: The Blue Card and Employer Sanctions Directive, *European Journal of Migration and Law – EJML* 2009, p. 387–426, p. 389; KUCZYNSKI, A., SOLKA, S. Die Hochqualifiziertenrichtlinie. *Zeitschrift für Ausländerrecht und Ausländerpolitik – ZAR*, 2009, p. 219, 220 f.; HERZOG-SCMIDT (sub 8), p. 35 ff.; referring to the differences of the first proposal and the final version and the aims of the member states see: WIND, M., ADAMO, S. Is green better than Blue? The Danish JHA Opt-out and the Unilateral Attempt to Attract Highly Skilled Labour. *European Journal of Migration and Law – EJML*, 2015, p. 329–360, p. 345 ff.

³⁷ See ÜMÜS, Y. K. EU Blue Card Scheme: The Right Step in the Right Direction? *European Journal of Migration and Law – EJML*, 2010, p. 435–453 with a quotation of President Baroso. Also the impact assessment refers to the expected decline of working age population in the EU member states. PEERS, S. Legislative Update: EC Immigration and asylum Law, Attracting and Deterring Labour Migration: The Blue Card and Employer Sanctions Directive, *European Journal of Migration and Law – EJML*, 2009, p. 387–426, p. 409.

an EU Blue Card or for a national resident permit. The Directive should also be without prejudice to the right of the Member States to determine the volumes of admission of third country nationals entering their territory for purpose of highly qualified employment (recital 8).

5. The German Act on the Transposition of the Directive on Highly Qualified as example for the competition for highly skilled migrants in a Member State

In Germany the Act on the Transposition of the Blue Card Directive of 1 June 2012 entered into force on 1 August 2012.³⁸ The act not only transposed the Directive on Highly Qualified Workers of 25 May 2009 and introduced the EU Blue Card into national law; it also significantly modified the law on residence and the employment of foreigners to make Germany more attractive for highly qualified workers.

The legislator also took advantage of the opportunities posed by the transposition law to simplify the regulations on residence and employment for university students, graduates, and skilled labour.³⁹ For students and graduates the act implemented the right to stay for another 18 month after the examination in order to seek for a job commensurate with their qualification. Before that time the period was only twelve month.⁴⁰ If they are successful they may apply for a residence title for the purpose of employment.

The EU Blue Card (section 19a Residence Act) introduced a new type of residence title for thirdcountry nationals holding an academic degree who have received a specific job offer. The EU Blue Card is the only residence permit with an income limit for highly qualified workers. The EU Blue Card's attractiveness is enhanced by entitling its holder to a(not only temporary) settlement permit

³⁸ German Federal Law Gazette / BGBl I 2012, p. 1224.

³⁹ See also the explanatory memorandum in Bundestagsdrucksache/German Parliamentary doc 17/8682, p. 1: "The bill also intends to make Germany more attractive for well-trained immigrants. This facilitates the permanent immigration of highly skilled labour and improves the legal requirements for taking up employment by foreign nationals after graduating from a German university."

⁴⁰ Sachverständigenrat für Migration/ The Expert Council of German Foundations on Integration and Migration/SVR: *Mobile Talente? Ein Vergleich der Bleibeabsichten internationaler Studierender in 5 Staaten der EU*, 2012; Sachverständigenrat für Migration/ The Expert Council of German Foundations on Integration and Migration / SVR, *Zugangstor Hochschule – Internationale Studierende als Fachkräfte von morgen gewinnen*, 2015.

already after 33 months, if the employment contract continues and mandatory or voluntary contributions were paid into the statutory pension fund or comparable arrangements. For EU Blue Card holders with German language skills of level B1 of the “Common European Framework of Reference for Languages” the term is shortened to 21 months. The members of the EU Blue Card holder’s family must not provide any proof of German language skills prior to entering the country and may work without any restrictions immediately upon entry. Furthermore EU Blue Card holders and their family members may stay abroad up to twelve months without losing their residence permit, while the regular time limit is six months.

Next to the introduction of the Blue Card, the most significant change was the creation of a new type of residence permit for highly qualified third-country nationals for the purpose of seeking employment (section 18c of the Residence Act). The most extraordinary aspect of this introduction is that it marks a break with the principle that had ruled the law on foreigners in Germany for decades, i.e. the link between a job and the residence permit. A residence permit had always been subject to an employment or a job offer. Section 18c of the Residence Act for the first time permits access for the purpose of employment without having to prove that employment or an offer for it are already in place. Although this is limited for six months and only available for highly qualified, whose subsistence is secure, the literature heralds this modification as a fundamental change of paradigm in German foreigners policy.⁴¹ It is also confirmed by the OECD, that Germany has developed one of the most modern migration systems with the lowest barriers for the migration of highly qualified workers.⁴²

In Germany the Blue Card was a great success compared to other EU Member States. Already in 2013 4.651 third country nationals immigrated on the basis of a blue card. Since then there was a continuing increase up to 9.652 in 2017.⁴³ On the other hand, Germany was the only Member State with a remarkable number of Blue Cards. In 2016 Germany was Nr. 1 of the Member States regarding the issued Blue Cards with 17 630. Nr 2 was France with 750 and all other Member States were below.⁴⁴ In 2015 there were 14.620 Blue Cards issued by Germany,

⁴¹ LANGENFELD, Ch., WAIBEL, S. Von der Begrenzung zur Steuerung: Deutschlands Abkehr vom “widerstrebenden” Einwanderungsland. In: Jochum, G., Fritzemeyer, W., Kau, M. (Hrsg.). *Grenzüberschreitendes Recht – Crossing Frontiers, Festschrift für Kay Hailbronner*, 2013, p. 169 et seq. 176 f.; OECD, *International Labour Migration: Germany*, 2013, p. 27; SVR /The Expert Council of German Foundations on Integration and Migration, 2015 Annual Report, p.13, 32 ff.

⁴² OECD, *Zuwanderung ausländischer Fachkräfte: Deutschland (German version)*. Paris, 2013, p. 15.

⁴³ Bundesamt für Migration und Flüchtlinge, *Das Bundesamt in Zahlen 2017: Nürnberg*, 2018, p. 90.

⁴⁴ Ifo schnelldienst 6/218.

659 by France and less than that by all other Member States. All in all more than 85 % of all Blue Cards were issued by Germany.⁴⁵

Already 2014 Jean-Claude Juncker made the revision of the Blue Card one of his priorities.⁴⁶ A new proposal was presented on 7 June 2016. The first trilog meeting took place 12 September 2017. The trilog is still going on.⁴⁷

6. The necessity of accompanying measures

6.1. Better information about the new immigration options

So it might seem that a lot was done by these new regulations. But managing migration does not only depend on legislative changes, it also requires accompanying measures and the perception and visibility of these new regulations.⁴⁸ This is confirmed by the experience made with the low demand for the privileged migration of researchers according to section 20 of the Residence Act as a transposition of the Researchers Directive.⁴⁹ All of these new regulations and their consequences for third-country nationals and their families must also be known.

Often it is not easy to discern the appropriate residence title. In Germany the Residence Act of 2005 only recognized three residence titles (visa, residence permit, settlement permit). Meanwhile there are four more because of EU regulations (EU long-term residence permit, Blue Card, ICT-card, mobile ICT-card). The legal aspects differ markedly in respect to the purposes of stay. Major distinctions exist, or recently existed, particularly in regard to get approval by the Federal Employment Agency, to shorten the time frame it takes to get a settlement permit, the possibility of family reunification with or without a language test, and to provide entitlement for economic activity for spouses. Thus a scientist in Germany for example, had six options for applying for a residence title.⁵⁰

⁴⁵ Briefing: EU Legislation in progress 12. 12. 2017, SVR 2015, p. 15.

⁴⁶ Guidelines 15. 7. 2014, see above FN 8.

⁴⁷ Briefing: EU legislation in progress 12. 12. 2017

⁴⁸ SVR/The Expert Council of German Foundations on Integration and Migration/ 2015 Annual Report, p. 13.

⁴⁹ See Commission Report Com (2011) 901 final.

⁵⁰ The residency permit for highly qualified foreigners (Section 19 Residence Act), the EU Blue Card (Section 19a, Residence Act), the residence permit for purposes of research (Section 20, Residence Act), the residence permit for the purpose of self-employment (Section 21, Residence Act) or for the purpose of attaining further education, e.g. PhD (Section 16, Residence Act) or to apply for a residence permit the standard way (Section 18, Residence Act). Many foreigners did so because they, or their employers, were too unfamiliar with the other possibilities or they found them to be too complicated.

That demonstrates that potentially highly-specialized immigrants must receive information already in their home countries about the different options of immigration and the consequences for them and their families. The best way is that embassies as well as other contact agencies abroad (e.g. the Goethe Institute) can upon request point people in the right direction.⁵¹ Also the key point paper of the German government from October 2018⁵² for a new skilled workers immigration Act underlines the importance of improved marketing together with the business sector.

Beyond that, it is desirable that small and mid-sized companies also have the opportunity to recruit highly-skilled personnel and that they know the various options. Universities should also be able to give accurate advice to graduates wanting to stay in Germany. They should be able to point out, for example, the possibility of extending residence permits for up to 18 months for the purpose of seeking a job commensurate with their qualification after having successfully completed their studies (Section 16, sub-section 4, Residence Act).⁵³

Information portals are a positive first step: The multilingual welcoming portal “Make it in Germany” directed at foreign skilled labour informs about job opportunities in Germany, the legal requirements for employment, and first insights into living and accommodation in Germany.⁵⁴ The key point paper for the planned skilled workers immigration law recommend to make this portal the central portal for the acquisition of skilled labour forces of the Federal Government.⁵⁵ Another multilingual portal “Welcome to Germany” offers more detailed information, e.g. on integration.⁵⁶ However, any such information portal can be no more than merely a first step; there is always a need to talk to someone. A suitable tool for dealing with the first questions is a hotline. A successful example is the hotline “working and living in Germany”. In 2017, 13.736 consultations were provided. Between the establishment of the hotline in April 2012 and December 2017 71.444 consultation calls have been answered.⁵⁷

⁵¹ SVR/The Expert Council of German Foundations on Integration and Migration 2015. Annual Report, p. 13; KOTZUR, M. TFEU Article 79, p. 434, MN 5. In: Geiger, R., Khan, D. E., Kotzur, M. (sub 1): “a practical and adequate infrastructure is necessary”. Kotzur refers i.e. to the network of immigration liaison officers and to the European Migration Network.

⁵² Key point paper nr. 3; the key point paper was agreed upon by the coalition partners in fulfilling an agreement of the coalition treaty. The key point paper provides guidelines for the preparation of the „skilled workers immigration law“; Available at: www.bmi.bund.de

⁵³ SVR The Expert Council of German Foundations on Integration and Migration 2015. Annual Report, p. 15 f.

⁵⁴ www.make-it-in-germany.com

⁵⁵ Key point paper of the German Government of 2 October 2018, Nr. 3.

⁵⁶ Available at: <http://www.bamf.de/DE/Willkommen/willkommennode.html>

⁵⁷ Emn-report Germany 2017, p. 29 and 64.

6.2. Easy family reunification and labour market access for family members

Furthermore it is obvious that highly qualified workers are not only looking for good working and integration perspectives for themselves, but also for easy family reunification rules and a quick access to the labour market for the partner.⁵⁸ Already the Blue Card Directive was well aware of the importance of attractive conditions for partners. In recital 22 it is recommended: “Favourable conditions for family reunification and for access to work for spouses should be a fundamental element of this Directive which aims to attract highly qualified third country workers.” In article 15 of the Blue Card Directive there are laid down special derogations from the Family Reunion Directive.⁵⁹ It was even supposed, that this might induce persons to apply for a Blue Card only because of the privileges of family reunification.⁶⁰ Also the REST Directive refers to good working possibilities for family members.⁶¹

In Germany by an amendment of the Residence Act in 2013 the possibility for spouses to work without any restrictions immediately after immigration on behalf of family unification has been extended to all family members holding a residence permit under section 5 (section 27 subsection 5 of the Residence Act).

6.3. Recognition of Qualification

When a high qualified or skilled worker decides to immigrate into the EU for work it must be clear, that his qualification is recognized, that means that it is commensurable to a qualification of an EU Member State citizen. Indeed the recognition of qualifications achieved abroad was a great obstacle in the past. Often high qualified and skilled workers had to work below their qualification and could not contribute to economic growth according to their qualification. A lot of initiatives were launched in the EU Member States⁶².

⁵⁸ MAYER, M. *Attracting highly qualified and qualified third country nationals*. Nürnberg: 2013, p. 19; HESS, B. *Zuwanderung von Fachkräften nach § 18 Aufenthaltsg aus Drittstaaten nach Deutschland*, working paper 44 der Forschungsgruppe des Bundesamts für Migration und Flüchtlinge, Nürnberg: 2013; for the importance of good family reunification regulations see PEERS, S., GUILD, E. et al. (sub 9), p. 149, where the miserly attitude of theresearchers Directive is seen as a main problem for the success of the directive.

⁵⁹ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, Official Journal L 251, 03/10/2003, p. 12–18.

⁶⁰ PEERS, S., GUILD, E. et al. (sub 9), p. 68.

⁶¹ Recital 11 “... Those family members should have access to the labour market”.

⁶² OECD International migration outlook, Paris, 2017, p. 82 f.

Germany already in 2012 passed the “Law to improve the Assessment and Recognition of Foreign Professional Qualifications” (the so-called Federal Recognition Act) of 1 April 2012. The Federal Government for the first time established a general legal entitlement to apply for the examination of the equivalence of a foreign professional qualification.⁶³

The law’s purpose was to simplify and promote the economic integration of skilled labour with foreign qualifications with regard to Germany’s demographic development and the growing shortage of skilled labour.⁶⁴

The law covers more than 600 professions for which the qualifications are regulated at the federal level. All German federal states (Länder) have adopted laws for the professions regulated at the Länder level (e.g. teachers, educators, engineers, social workers, etc.).⁶⁵

The Recognition Law has been a great success. The recognition Act report shows, that nine out of ten professionals, who have acquired their qualification abroad are working after the recognition. The employment rate has risen considerably. From 2012 to 2015 more than 40.700 applications were accepted as fully equivalent, only 1.900 were rejected.⁶⁶

That there is a demand for information about the recognition of qualification shows the hotline for the Recognition Act. Experience with the hotline for the Recognition Act proves that this tool really meets a demand. Information on the Recognition Act is available on the online portal „www.anerkennung-in-deutschland.de”.⁶⁷

This experience also showed that questions on the recognition of the inquirer’s qualification are often combined with questions on whether this qualification will serve to find employment and to obtain a Residence permit in Germany. It seems that the best way is to establish a single contact point for all issues related to migration. Also the key point paper of the German government from October 2018 recommends a fast and simple recognition procedure.⁶⁸

6.4. A fast and simple visa procedure

Another barrier is a long waiting period for visa. Sometimes because of capacity shortages diplomatic missions are not capable to process all visa applications

⁶³ German Federal Law Gazette/BGBl I 2011, p. 2515.

⁶⁴ The full explanatory memorandum for the government’s bill submitted on 22 June 2011 can be found in Bundestags-Drucksache/German Parliamentary doc. 17/6260, p. 39.

⁶⁵ Emn-report 2017, p. 64.

⁶⁶ Bundesministerium für Bildung und Forschung – BMBF, Bericht zum Anerkennungsgesetz 2017, Berlin, 2017.

⁶⁷ Available in English (“Recognition in Germany”) and nine other languages.

⁶⁸ Key point paper of the German Government of 2 October 2018, Nr. 2.

within an adequate timeframe. In some diplomatic missions an applicant has to wait eight months or more.⁶⁹ Also the key point paper of the German government from October 2018 recommends a quicker procedure and a better communication between the participating authorities. E-government solutions are planned, especially the digitalization of the visa procedure.⁷⁰

6.5. Language training abroad and after arrival and integration policies

Next to making the new regulations better known it is also necessary to devise policies facilitating integration into the labour market and society. These specifically include possibilities to overcome language barriers (as is also confirmed in the OECD study⁷¹), options for family members to participate in education, take up employment and to integrate as well as a culture of welcoming and acceptance by the host society.⁷²

In Germany integration courses were introduced in 2005 for all newly arrived immigrants, but are also available for foreigners who have lived in Germany for some time already. An integration course consists of a language course and an orientation course. The language course comprises 600 to 900 lessons, the orientation course 60 lessons. The orientation course covers topics like Germany's legal system, history and culture and provides knowledge about rights and obligations as well as about values considered important for living in Germany. It ends with a final exam. The language course also covers important aspects of life like work and career, health, education and media in Germany. The participants learn how to write letters and e-mails, make phone calls and apply for a job. There are full-time and part-time courses.

Integration courses have been a great success: Until 31 December 2017 1.95 million people attended an integration courses of one of the 1.736 providers.⁷³

But also the providing of language skills in the country of origin before emigration is important. Pre-integration courses are well known as a precondition for family reunification⁷⁴ to prepare for the immigration in a new and perhaps unknown country, but language training and transmitting of knowledge before

⁶⁹ Federal Office for Migration and Asylum/ European Migration Network, Nürnberg: 2018, p. 29.

⁷⁰ Key point paper of the German Government of 2 October 2018, Nr. 5.

⁷¹ OECD, *Zuwanderung ausländischer Fachkräfte: Deutschland (German version)*, 2013, p. 26.

⁷² See also Article 79, p. 4, TEUF, and KOTZUR, M., TFEU Article 79, p. 435, MN 11. In: Geiger, R., Khan, D. E., Kotzur, M. (sub 1).

⁷³ Federal Office for Migration and Asylum/EMN, Germany 2017, (2018), p. 66.

⁷⁴ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, Official Journal L 251, 03/10/2003, p. 12–18, Article 7, p. 2.

leaving is also of value for highly qualified and skilled workers. Also the OECD study and the key point paper of the German government of October 2018 recommend language training abroad, for example with the support of the Goethe Institute.⁷⁵

Also the courses of the ESF-BAMF program for the enhancement of technical language skills help with linguistic integration. This is a nationwide program to upgrade German language skills related to different occupations supported by the European Social Fund. More than 228,000 participants have been enrolled from 2009 until the end of 2017.⁷⁶

Highly qualified and skilled migrants also should have the impression, that they are accepted and required. For some time already some municipalities have established Welcome Centers to help international skilled workers to their bearings in Germany. The best known among them is the Welcome Center Hamburg.⁷⁷ But also universities have taken the initiative by establishing Welcome Centers to guide and accompany students and professors from abroad when they come to Germany and support students to find a job after the examination⁷⁸.

7. Conclusion

Beginning with the Tampere summit in October 1999 and the Lisbon Council Conclusions in March 2000 and the Directives starting with the Students Directive in 2004 the European Union took significant steps to create a modern legal framework for the management of legal migration that makes the European Union attractive for highly qualified and skilled third-country nationals. Even with the restriction, that Member States have the competence to define priorities and volumes, the programmes and Directives show that the Union is well aware of the demographic development and the global competition for highly qualified and skilled migrants.

However changing laws and regulations is not enough. Successfully attracting highly qualified and skilled migrants has to go beyond. It is indispensable that the options for legal migration for the purpose of economic activity are known abroad and accepted by the persons concerned and that their practical implementation by the authorities works. It also means that the people affected

⁷⁵ OECD, *Zuwanderung ausländischer Fachkräfte: Deutschland (German version)*, 2013, p. 25, key point paper of the German Government of 2 October 2018, Nr. 4.

⁷⁶ Federal Office for Migration and Asylum/EMN, Germany 2017, (2018), p. 66.

⁷⁷ OECD, *Zuwanderung ausländischer Fachkräfte: Deutschland (German version)*, 2013, p. 110.

⁷⁸ Some universities have established special Career Services and International Offices, Sachverständigenrat für Migration. *Zugangstor Hochschule*, Berlin: 2015, p. 26 ff.

are aware of the new rules for easier immigration of skilled labour or for the options for students and graduates. Counseling is needed abroad and after arrival as well as language training and knowledge about the rules and habits of the country they are coming to. When arrived they have to have the impression, that they are welcome and required with their qualification. Recognition of qualifications is as important as quick and easy visa procedures. Accompanying integration policies are required as well, specifically for the acquisition of language skills to enable the newly arrived migrants to get their bearings in the new environment fast and to bring the full benefits of their skills and talents to the labour market without delay.

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