

Chapter 3

Where does the European Union bring added value in labour migration?

This chapter looks at practices and policy areas where the EU can bring added value to labour migration. The first section considers EU-level measures to make EU Member States more attractive to migrants, especially by improving and supporting labour migration channels. The chapter then goes on to consider EU-level action to improve mobility, particularly among long-term migrant residents. The question of the recognition of foreign qualifications is the subject of the following section. The chapter then goes on to consider EU-level action in matching the right candidates with the right jobs, focusing on the political aspects of labour market tests and their coverage. International co-operation comes next, a policy area where the EU can bring clear strong, added value. Finally, the chapter looks at how EU-level action can prevent competition between Member States for migrant workers from leading to a collapse in standards and how it can foster innovative practices, information sharing, the equal treatment of workers, and simpler administrative procedures.

What is added value in labour migration initiatives at the EU level?

The legislative mandate for EU action is subject to the principle of subsidiarity – measures should be taken at the EU level when they can achieve more in *scale* and *scope* than at the national level. Indeed, the European Union should not legislate when an issue can be more effectively dealt with at the national or sub-national level. It should do so only when EU-level action can add value by meeting objectives that Member States are unable to achieve satisfactorily.

For measures where “bigger is better” and economies of scale can be made, there is a case for EU-level intervention. It is likely to be more effective than action by individual Member States. When the scope of measures is wide, it needs to be shown that measures are best taken at the EU level.

However, there remain some areas pertaining to labour migration which are not subject to decisions at the EU level. They include the regulation of professions, setting volumes of admission for third-country national labour migrants from outside the European Union, and determining the criteria for naturalisation, all of which are in national purviews. Even if a case could be made for the added value that EU co-operation would bring to those policy areas, the Union cannot intervene directly under the existing legal bases.

Attractiveness to migrants

Making the European Union attractive to migrants entails increasing the pool of candidates, which, in turn, requires enticing them to make the effort to meet migration selection criteria and come to the EU, be it through a job or another migration pathway such as studies, training or an exchange programme.

Added value in scope

Chapter 2, which examined the distribution of migrants and their migration intentions, found that what makes different EU Member State profiles attractive to different kinds of migrants varies widely. There are some factors – such as geographical proximity, historical and colonial ties, and shared languages – which exert a strong influence on past and present migration intentions. They are largely fixed, however, and cannot be affected by policy changes. Many other attractiveness factors, though, depend on policy settings and supporting infrastructure.

The foremost such factor is the very existence of labour migration channels. As the right to set volumes of admission rests with the individual Member States, the European Union does not have the means to definitively “open” any single Member State to labour migration. Similarly, the issuance of permits rests with national authorities, and the EU can issue no labour migration permits that would be valid in all Member States. The European Union can add value in three main domains:

- the *structuring* of existing channels
- the *creation* of additional channels and
- the *support* for the functioning of the channels.

All three domains are related, as effective support (raising awareness, broadening pools of candidates, improving the sharing of information) requires convergence between the channels (transparency and similarity of criteria and standards for procedures and practices).

There are existing provisions for economic migration in all EU Member States, but not all have developed identical channels or policies to cater to all categories of labour migrants. Efforts so far first focused on the convergence of standards and processes in existing channels in order to make them functional and then to ensure that channels are in place to cover the main categories of labour migrants. In that sense, the Union’s task is to build gateways for migration, although the final decision as to how widely the gate opens lies with the Member States.

Added value in terms of scale

Scale is another way in which EU-level action can add value. Most of the comparative data on attractiveness considered in Chapter 2 were based on indicators for individual Member States rather than for the European Union as a whole. The question is whether the Union as an entity could be a destination which is more attractive than the sum of its parts.

Employment opportunities are a key factor in appeal. The EU labour market as a whole is more attractive than any single national labour market. Evidence suggests that a larger labour market is more attractive than a smaller one (Manning and Petrongolo, 2011), as it offers more opportunities, better matches with qualifications, and the prospect of earning higher wages. Economies of scale or positive spill-overs

(e.g. word of mouth) can help job seekers to find employment sooner. Furthermore, certain jobs might be so rare and specialised that they can only be found in large markets, where qualified workers must seek them out (Helsley and Strange, 1990).

Analysis of labour migration in individual countries has also shown that local or regional labour markets within countries – even those which are attractive and have a surplus of eligible candidates – struggle to compete for labour migrants with more populous destinations in the same country. Similarly, some Member States may profit more from belonging to the EU labour market than other Member States. Evidence from other OECD countries bears this up, including findings in Norway and New Zealand (OECD, 2014ab) and Canada and Australia (OECD, forthcoming). The effect of being part of a larger labour market is to increase overall interest, although such interest is not necessarily equally distributed. Exploiting the scale of the EU in an added-value approach thus needs to avoid the pitfall of redirecting migrants from smaller local labour markets to larger ones.

A larger labour market allows workers affected by adverse employment shocks in one part of the market to find work in another part – as was seen during the European employment crisis, when the mobility of EU workers increased and absorbed as much as one-quarter of the asymmetric labour market shock within a year (Jauer et al., 2014). The current legislative framework for labour migration in the European Union binds new labour migrants to the Member State where they are employed, at least in the initial phase, and does not allow them to move freely in order to take up employment in other EU destinations without repeating the admission procedure. The added value for underserved destinations of increasing the pool of candidates also lies in harnessing the attractiveness of larger Member States to enhance less prominent destinations' ability to compete for those skills.

The larger EU-wide labour market may be more attractive, but its attractiveness is bound up with the effectiveness of mobility provisions. Without prospects of mobility for third-country nationals, the greater attractiveness – and the enhanced ability to respond to shocks – cannot be brought to fruition.

Increasing mobility

The free movement of workers is an underlying and longstanding principle of European integration. Indeed, freedom of movement is one

of the fundamental rights of European citizens. It does not extend to third-country nationals (unless they enjoy a derived right as a family member of a mobile EU national), however, and their ability to change countries to take up work is subject to the restrictions imposed in individual Member States.

The Commission has set itself the goal of aligning the rights of resident third-country nationals (TCNs) as closely as possible with those of EU nationals. Beyond the principle of equal treatment, there are good grounds for bringing TCNs specific mobility rights into line with those of EU nationals. First, Member States' labour markets are interconnected through the single market. Changes in national and regional labour markets have ripple effects, although national labour markets within the European Union are less closely connected than regions within individual countries or similarly large OECD labour markets – job-seeking mobility in the EU, for example, has historically been lower than in the United States (Baddeley et al., 2000). Labour mobility has increased in recent years, driven by enlargement (over 50% of mobile workers are from post-2004 Member States) and by the economic crisis, which widened gaps in employment levels between Southern European countries and other parts of the Union. Nonetheless, mobility remains far below levels in the United States – annual cross-border mobility in the European Union was 0.2% of the EU population in 2013, compared with 2.3% for interstate mobility in the United States.

The lower mobility of EU workers compared with their peers in the United States – and within EU Member States – are related to well-known factors: language differences, relocation costs, the recognition of qualifications, a patchwork of regulated professions, complex transfer of social rights. Policy to improve mobility and the work towards a single labour market is addressing those factors. The barriers relevant for EU citizens, however, do not necessarily apply equally to third-country nationals. There is evidence that workers who have migrated once are more likely to do so again, and that they are more willing to move in response to labour market opportunities than the native-born (Poeschel, 2016). Indeed, third-country nationals in the EU are open to migration for a number of reasons:

- They are more likely to be unemployed and seeking employment, so job opportunities in another country might appear more attractive.

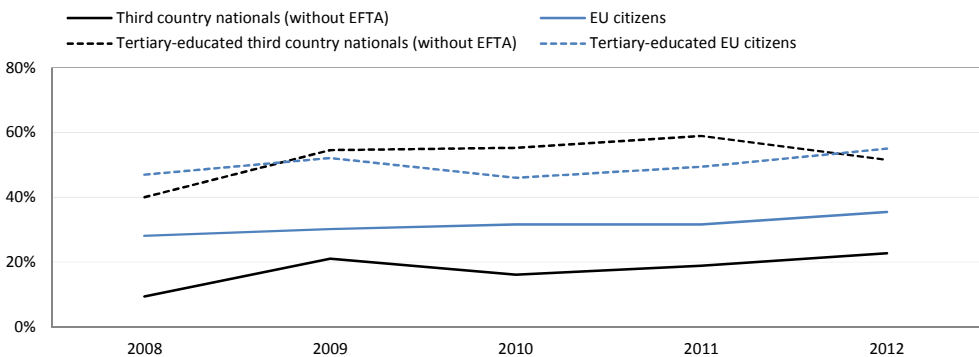
- They are younger – their average age is 33, compared with 41 among EU nationals.
- When they arrive as adults, they do not generally have qualifications obtained in the country of residence, which would tie them to that country.

On the other hand, however, they are slightly more likely to be married and much more likely to have children living with them – 40% live with their children compared to 31% among EU nationals. Both characteristics are barriers to mobility.

Poeschel (2016) uses the EU Labour Force Survey to compare the mobility of TCNs to the relatively limited baseline mobility of EU nationals (Figure 3.1). While the method underestimates mobility in all categories, TCNs are about half as likely to be mobile within the EU as EU nationals. Highly educated individuals are more likely to be mobile than other migrants – a pattern also found in EU national populations, where the tertiary-educated are generally more mobile than the workforce at large.

Figure 3.1. While EU nationals are twice as likely to be mobile as third-country nationals, the highly educated in both groups have similar mobility rates

Share of third-country nationals and EU citizens observed to be mobile between EU Member States, percentage, 2008-12



Note: Mobility that involves Finland, Ireland, Malta and the Netherlands is only partially observed. Several EU Member States do not apply the legal migration *acquis* and the mobility provisions therein.

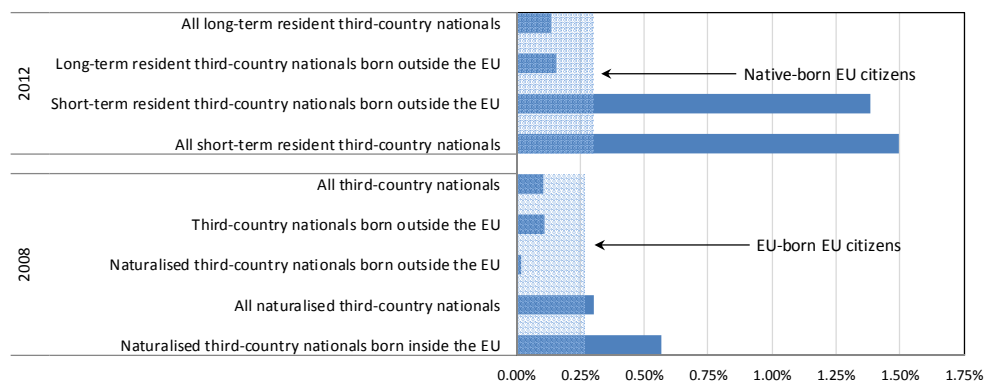
Source: OECD Secretariat calculations based on the EU Labour Force Survey (Eurostat) in Poeschel (2016).

The greater mobility of educated third-country nationals is in line with the fact that the highly educated seek jobs in larger labour markets and that labour migration schemes across EU Member States are much more open to educated migrants with job offers that match their qualifications.

However, it generally appears that the longer third-country nationals stay in the EU, the less mobile they become (Figure 3.2). Poeschel (2016) finds that migrants who meet the criteria for EU long-term residence are less mobile than recent arrivals. Long-term migrants' annual mobility rates in 2012 were less than half the average EU national rate and much higher among short-term migrants (those with less than five years residence). Poeschel uses a separate source to examine the effect of naturalisation on mobility, and finds that naturalised foreigners born outside the EU had mobility rates far below those of EU nationals.

Figure 3.2. Naturalisation and long-term residence are associated with lower mobility among residents born outside the European Union

Rates of mobility in 2008 and 2012, percentage, by nationality, duration of stay, place of birth



Note: EU-born EU citizens (2008) include those who have naturalised.

Source: OECD Secretariat calculations based on the EU 2008 Labour Force Survey (Eurostat) and its Ad Hoc Module in Poeschel (2016).

As naturalisation grants full mobility, it appears surprising that foreign-born naturalised citizens should be so much less mobile. The conditions for naturalisation in most EU Member States do, however, stipulate a degree of settlement and rootedness (e.g. command of the national language, civic knowledge, income requirements, and family

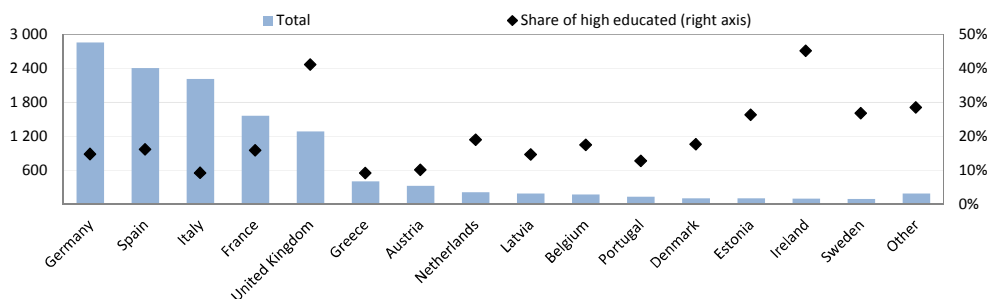
ties). Indeed, migrants who apply and meet requirements to naturalise are by selection among the most rooted of all migrants, either over time or through country-specific ties.

Granting full, unconditional mobility without requiring that migrants meet national criteria for integration is likely to boost mobility much more. Using the accession of countries to the EU as an example of the effect of granting mobility without imposing conditions, Poeschel (2016) looks at nationals of new EU Member States already living outside their country of nationality prior to 2012, and their mobility towards EU Member States which dropped transitional restrictions on labour market access in 2011 (Austria, Belgium, Denmark and Germany). It is no surprise that the lower-income accession countries would have higher mobility rates, but what this finding shows is that the new EU citizens who had already moved to another EU Member State became much more mobile when remaining restrictions on their mobility were dropped. He finds that their mobility rate doubled. Indeed, they were more likely (by between 0.3% and 0.6% more likely) to be mobile as labour markets opened up than suggested by previous comparisons with third-country nationals. Granting full labour market access thus has a significant effect on mobility, even if the final mobility rate is still low in absolute terms (under 0.7% annually in 2012). There are thus gains to be made in mobility by expanding rights.

Migrants with high levels of educational attainment appear more mobile than other third-country nationals. The distribution of highly educated migrants among long-term residents is not uniform across EU Member States (Figure 3.3). The highest shares are to be found in the United Kingdom and Ireland, countries which are not bound by EU legal migration policy. They host 27% of all highly educated, long-term resident TCNs in the European Union, but only 8% of the medium- and low-educated. Germany, France and Spain are homes to half of all highly educated long-term residents in the European Union.

Figure 3.3. Countries with more long-term residents often have a lower share of the highly educated among them

Eligible long-term resident third-country nationals, 2012 (in thousands) and shares of the highly educated



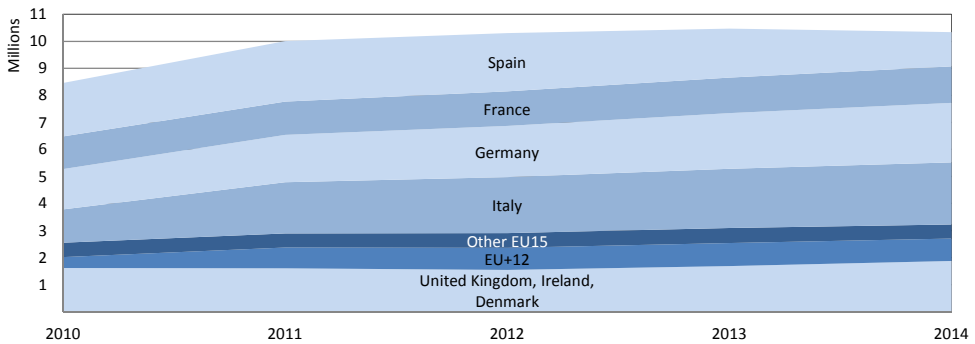
Source: OECD Secretariat calculations based on the EU Labour Force Survey (Eurostat) in Poeschel (2016).

Permit data point to permanent third-country-national residents in the European Union numbering over 10 million (Figure 3.4). At least 70% of them hold national permanent residence permits. The number of EU Long-Term Resident (EU LTR) permits rose from 1.2 million in 2008 to 2.9 million in 2014. However, almost all of the increase was driven by just one country, Italy, where the number doubled. In other EU Member States, the increase was just 28% over the same period. The increase in the uptake of EU LTR permits in Italy stemmed both from a policy decision to use the EU LTR as the default permanent residence permit and the fact that a large cohort of foreigners arrived in the early to mid-2000s and acquired the requisite five-year stay in the late 2000s and early 2010s.

The figure of 10 million is based on submissions to Eurostat as well as a number of national permanent residence categories in France, Germany and Austria not covered by Eurostat. It is still a lower-bound estimate of the number of permanent residence permit holders in the European Union, since a number of Member States, including Portugal, Finland and Sweden, do not publish figures on their stock of permanent residents. The numbers are significant, though, as Sweden issued more than 50 000 national long-term residence permits in 2014 and Portugal has averaged an issuance of about 30 000 in recent years. Finland currently (in 2016) has 48 300 active permanent residence permits in its register, compared with fewer than 300 EU LTR Permits.

Figure 3.4. Permanent residents in the European Union, by country of residence, 2010-14

Permanently resident third-country nationals in the EU, by country of residence



Source: Eurostat, with corrections by the statistics offices of France, the United Kingdom, Germany and Austria.

The estimate of 10 million is slightly lower than the EU Labour Force Survey's estimate of 12.3 million third-country nationals with more than five years of residence (Poeschel, 2016). Taken together, the two separate estimates indicate that there is a large number of long-term resident third-country nationals, much more than the 2.8 million who hold EU LTR Permits.

One obstacle to mobility is the transitional nature of most permits, which form a pathway from temporary to permanent residence and naturalisation. Indeed, the residence requirements for permanent residence are, in many Member States, very similar to those of naturalisation, as are language requirements. There is incentive for foreigners to accrue enough time to qualify first for long-term residence, then naturalisation, and to invest in the country-specific human capital necessary to ensure the conditions for each step are met.

Naturalisation is the last step in the traditional migration pathway, and one which definitively closes the gap between the rights of EU nationals and third-country nationals. If permanent residence is a brief stop on the path to naturalisation, it may be more worthwhile to encourage and support naturalisation rather than emphasise mobility for long-term permanent residents. One indicator of how fast foreigners transition to naturalisation is the naturalisation rate. It is usually calculated relative to the foreign population, in the manner of the integration indicators produced by Eurostat (2011) and the OECD

(2012), which show wide ranges in rates of naturalisation in the European Union.

Comparing naturalisation with the stock of permanent residents yields another indicator (Table 3.1). Comparison is particularly relevant where permanent residence is the usual precursor to naturalisation, or an explicit requirement. In most Member States, the rate is below 10%, with some exceptions,¹ suggesting that the permanent resident stock in most Member States shown in Table 3.1 will not diminish quickly through naturalisation and that, in some instances, permanent residence competes with naturalisation as the “final” status achieved by third-country nationals after many years of residence.

Table 3.1. Naturalisation rates relative to permanent resident stocks are variable

Ratio of naturalisation relative to the stock of permanent residents, 2010-14

	2010	2011	2012	2013	2014
Austria	2.0%	2.1%	2.2%	2.6%	2.9%
Belgium	27.5%	26.2%	37.8%	36.3%	19.0%
Czech Republic	2.9%	3.5%	1.4%	1.5%	2.9%
Denmark	129.0%	448.5%	121.6%	33.0%	96.1%
France	11.9%	9.3%	7.6%	7.4%	7.8%
Germany	6.8%	6.1%	5.9%	5.5%	4.9%
Hungary	14.6%	50.0%	64.8%	40.4%	85.4%
Ireland	76.3%	139.2%	433.9%	0.0%	913.4%
Italy	5.4%	3.0%	3.2%	4.6%	5.7%
Lithuania	0.8%	1.6%	1.0%	0.0%	0.0%
Luxembourg	233.0%	81.3%	72.0%	49.5%	127.3%
Netherlands	27.9%	34.8%	31.6%	37.4%	-
Poland	6.0%	5.1%	7.8%	6.0%	7.0%
Romania	0.0%	0.0%	0.0%	25.4%	0.0%
Slovak Republic	5.4%	2.4%	2.5%	2.6%	2.0%
Slovenia	4.8%	4.3%	1.9%	2.7%	2.4%
Spain	6.2%	5.1%	5.4%	14.5%	7.4%
United Kingdom	12.2%	11.2%	12.7%	12.4%	6.8%
Total of above countries	9.6%	8.1%	8.5%	10.0%	7.6%

Source: OECD International Migration Database for naturalisation, excluding the naturalisation of EU nationals. Eurostat for permanent residence, with corrections using national permit data for France, the United Kingdom, Germany and Austria.

Naturalisation is not an area where the European Union can intervene directly, as it is within the national competence of Member States. The added value of EU action lies in facilitating the mobility of third-country nationals who are long-term residents and may not wish to, or be able to, naturalise.

Increasing retention

Migrants appears to be more mobile early in their stays than later on, when they become long-term residents. A high share of migrants do not remain in the country of initial destination. Across OECD countries, an estimated 20%-50% of migrants leave the country to which they migrated within the first five years. European countries have been less successful at retaining migrants than the United States, Canada and New Zealand (OECD, 2008b). The EU-level added value in this area is to retain talents for the EU as a whole, ensuring that newly acquired skills don't subsequently drain out of Europe.

Retention has become a particularly important issue, as two-step migration becomes the main approach of labour migration. The transition from an initially temporary stay to permanent residence, which once represented the difference between the European model and that of non-European OECD countries, has become the main form of labour migration across the OECD. Most of today's economic migrants in the United States, Canada and Australia have prior experience as workers and students, and no longer arrive directly from abroad into permanent residence status. It has been shown that, individually, EU Member States are at a disadvantage in retaining skilled migrants, as non-European destinations exert a strong pull, even on secondary migration. Bringing the European Union as a whole into the two-step model would be a clear added value achievable only by EU-level measure. There several ways to achieve that goal.

One of the key means of improving retention is by opening up mobility pathways and allowing the experience and qualifications earned in one EU Member State to more easily transfer to another Member State through mobility than to a third country. The simplest means to make staying easier is to allow applicants to file for permits from within another EU Member State rather than having to return to their country of origin.² Improving intra-EU recognition of third-country nationals' is also supports mobility (see below).

The second way to retain migrants more effectively is to increase entitlements accruing from presence in one Member State. The two-step model prevails at the national level in EU Member States, with migrant workers required to keep their jobs during the temporary phase of their stay. Years spent in study count (albeit often partially) towards permanent residence and naturalisation, but are not transferable to a second Member State. EU-level measures can require Member States to

factor periods of temporary residence into the total number of years accrued by a migrant seeking an EU LTR permit.

Additional EU-level added value is support for TCNs who apply for residence in a second Member State because their entitlement to residence in their first host Member State is expiring. It could entail both the entitlement to reside in other Member States to seek employment and the possibility to apply for a residence permit in the territory of that Member State in case employment is offered. Such EU-level added value is particularly relevant to international students (who may struggle to find a suitable job in the country of graduation) and to labour migrants who may have lost their jobs due to changing economic circumstances in the country of employment. For these migrant categories, only EU-level action can create an EU-wide job-search provision.

Improving matching systems

The high employer demand for skills in the EU and the enormous interest in migration from potential migrants in countries of origin suggest that there is scope for an improved mechanism for matching skills with demand. There is an economy of scale to be gained from creating a larger potential migration pool, especially when specialised skills or competences are sought.

The EU already provides support in matching job seekers with vacancies under its explicit mandate to improving the functioning of the EU labour market and foster mobility. However, it has no special remit for targeting non-resident TCNs, although some existing measures, such as the job mobility platform (EURES), allow passive participation from outside the EU.

Where migrant candidates are vetted and selected in their countries of origin, there is clear added value in having pre-selected candidates grouped in a pool which would be accessible to employers and other gatekeepers in multiple Member States. Such a measure could be developed at the EU level. The same approach could be extended to initiatives such as job fairs (Ramasamy Kone, 2016). More active recruitment channels also allow for application of codes of conduct on ethical recruitment to be applied at the EU level.

Avoiding duplication in the recognition of foreign qualifications

Labour migration often implies complex administrative procedures. At the very least, it involves verifying migrants' identity documents and validating employment offers. Moreover, depending on the criteria required by the migration channel used, migrants may be required to prove their qualifications, professional experience and skills. Most EU Member States require legally approved proof of qualifications and, if translation is demanded, that it too should be legally endorsed. Complying with all these procedures requires time and money. Efforts to improve the portability of acquired recognition can be done at the EU level and would represent added value.

The recognition of qualifications is a widely acknowledged barrier to the achievement of a single market and there have long been legislative attempts at developing a mutual recognition framework. As early as 1957, the Treaty of Rome set forth a mandate to “issue Directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications.” It was originally intended to facilitate the mobility of EU workers, where it was considered an individual's right, connected to the person requesting the recognition rather than the qualification itself.

At present, there is no automatic recognition of academic or professional qualifications, even within the EU, and each Member State applies its own rules. There is a framework that guarantees the right to request recognition as well as the conditions for this process. For regulated professions, too, Member States draw up their own rules. The current legislative framework extends equal treatment in recognition procedures to third-country nationals in their Member State of residence.³

Some measures have been taken to facilitate the recognition of degrees in Europe. One example is the European Diploma Supplement, a format designed to make EU degrees more easily readable and comparable in other countries. Another example is the European Professional Card, an information-sharing instrument that supports recognition in a number of regulated professions.

Qualifications obtained abroad are individually recognised by each Member State. The 2005 Recognition Directive (2005/36/EC), contained an equivalency provision to make qualifications transferable after three years of post-recognition professional experience.⁴ This provision is also extended to third-country national workers through equal treatment

provisions in legal migration Directives, although it is a potential brake on mobility as it requires three years of work in the Member State that first recognises the credentials of the worker, who still has to go through national recognition procedures in the second Member State. Such recognition provisions do not extend to non-regulated professions and academic qualifications, which are evaluated by national recognition bodies – European Network of Information Centres in the European Region (ENICs) and National Academic Recognition Information Centres in the European Union (NARICs) – which have the final say. Just as one Member State may not automatically recognise a degree from another EU Member State, so the recognition of a third-country degree in one EU Member State cannot be transferred to another (although the three-year professional experience clause does facilitate this). There is clear scope for the added value of EU-level measures in improving recognition practices through standardised forms, information exchange and support for ENICs and NARICs.

Recognition of qualifications is not just about facilitating mobility and the single market. For third-country nationals, the convergence of recognition procedures would be the added value, as it accelerates the recognition process. For national governments, the added value would be better information sharing on foreign degrees, as the exchange of information between ENICs/NARICs helps broaden the database, improve compliance and risk management, and saves processing time. For potential employers, transparent qualifications and more information about candidates would be boons.

Attractiveness for employers

Employers are the labour migration gatekeepers in EU Member States, without whom most of today's work permits would never be issued. It is they who have jobs to offer to freshly graduated international students and to candidates outside the EU. It is also they who are the primary in-country beneficiaries of greater access to skills. The previous chapter shows how employers have not been in the forefront of the push for regulation in EU policy-making in this area, especially as their prime concern has been to protect hard-won national schemes. Such an attitude also reflects a widespread approach to EU regulations, where business representatives seek to keep them to a minimum. However, when they see an opportunity to open up national policy, they offer greater support. In Germany, for example, the business community saw the EU Blue Card as a way of facilitating recruitment from abroad. Business interest

in the Intra-Corporate Transferee (ICT) Directive was high, too, as it addressed mobility and standardisation (issues of importance to multinational enterprises) and held the promise of simpler regulations and staff mobility.

The added value of Union-level intervention for employers is not merely in using EU legislation to overrule national restrictions or reduce regulations. It also extends to other areas.

- The number of candidates, and the likelihood they opt for Europe, can be increased. When employers offer a better package of permit conditions and associated rights, candidates are more likely to apply for and accept job offers. In addition, a pre-selected pool of candidates would bring economies of scale to job search. To increase the size of the pool, the EU should bring into play factors that enhance the attractiveness of the European Union. The EU has a greater international footprint and higher visibility than many individual countries, and boasts the capacity for outreach on a greater scale through its information provision capacity.
- The EU can contribute to service standards such as statutory ceilings on processing times and the standardisation of procedures, forms, and information sharing. Faster procedures are more likely to be used by employers. General measures to improve mobility – e.g. the EU format for CVs, “Europass” – increase the legibility of candidates’ foreign qualifications. The EU’s efforts to improve systems for recognising qualifications and processing documents from countries of origin also bring benefits of scale and scope. Legal provisions allowing, facilitating and accelerating recruitment of third-country nationals residing in other EU Member States are also important for employers.
- Faster, simpler procedures are particularly important for small and medium-sized enterprises (SMEs) (Ramasamy Kone, 2016), as they may be unfamiliar with the procedures of international recruitment and do not benefit from economies of scale. SMEs are also more likely to report that they struggle to find workers abroad and would be more likely to benefit from improved systems for matching qualifications with jobs.
- EU-level measures can help open new channels of access not previously contemplated, so allowing recruitment where it was

not possible before. Even if the final decision on admission rests with national governments, it is still possible to create channels for recruitment. In some countries, Directives have given rise to previously undefined permit categories which were not previously defined, and even to a positive right to a permit for applicants who meet criteria (Chaloff, 2016).⁵

A single labour market test for a single labour market

At present, the EU does not require labour market tests (LMTs) for third-country nationals residing abroad. There is, however, scope for clarifying the nature of labour market tests and ensuring equal treatment.

The labour market test is a component of all EU Member States' migration management systems, although each one designs its own LMT in a different way. The public employment services are almost always consulted or involved in the process although their roles are different from one country to another. The stringency of labour market tests lies in a number of parameters:

- the length of any mandatory advertising period;
- the burden of interviewing candidates and giving reasons for rejecting the unsuccessful ones;
- the level of detail required in the job description; and
- the test's catchment area (how far employers are required to look, or the geographic extent of the labour market taken into consideration when determining availability of labour).

The added value of harmonising the different facets of LMTs (e.g. where jobs are advertised, for how long, and with what degree of active involvement and review) would lie in setting basic standards so that the test is not too arduous. However, there are several arguments against harmonisation.

- Exemptions from the labour market test are myriad and would still be possible.
- Labour market tests entail a degree of discretion which defies harmonisation. Much lies in the detail of the job description itself, in how specialised the occupation is, and in assessment of the employer's good faith.

- How a labour market test is applied, how long it lasts and how thorough it is should by design vary according to economic conditions.

Labour market tests often have a very low refusal rate (OECD, 2013). That should not, in itself, be taken as evidence of the superfluous nature of tests, as LMTs also serve the purposes of requiring vacancies to be made explicit, filtering out marginal and fraudulent requests, and extending processing times. Longer processing time (and related increased costs) may actually be the intent of the LMT, since it is a means favouring the recruitment of local workers. A more stringent LMT also amplifies the effect of exemptions, such as those provided through occupational shortage lists.

Assigning a role to the public employment services (PES) does not produce the same results from one country to another because PESs function in different ways and have different shares of the market when it comes to matching workers with vacancies. EU-wide, the average PES market share was under 10% in 2012, ranging from under 3% in Italy and Spain to over 15% in Finland and Hungary (European Commission, 2015). Younger and older workers, not prime working-age workers, make the most use of the PES to find employment.

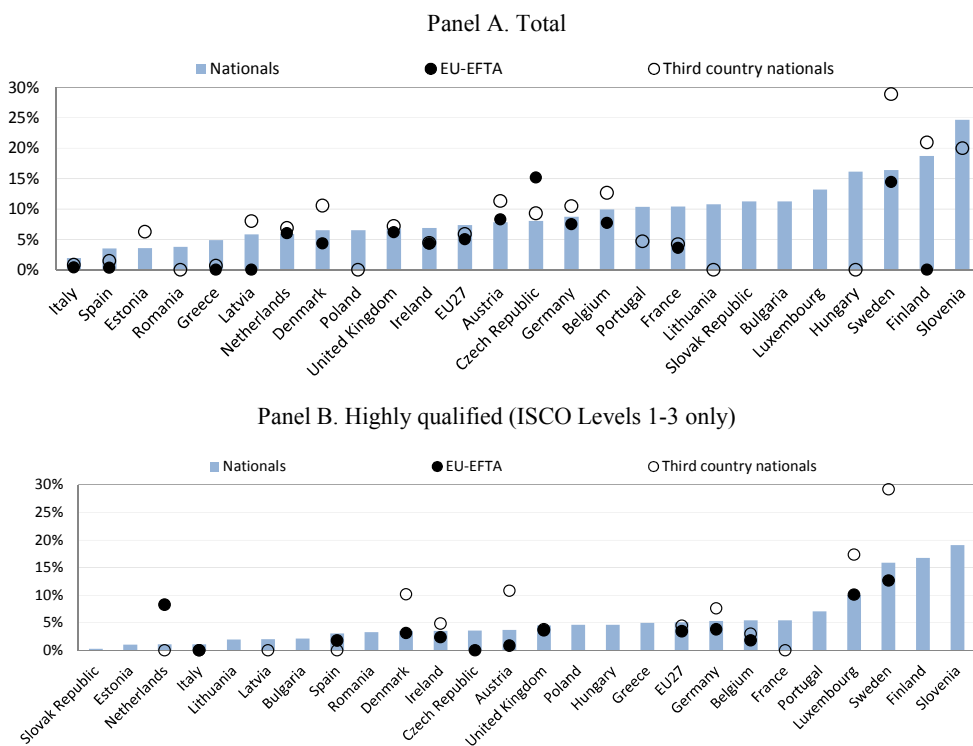
Overall, PES are little used to find work. Of the prime-age workers who found a job in 2012-13, it was through the PES in only 7.4% of cases (Figure 3.5, Panel A). The share was even lower among the highly qualified workers who found jobs – just 3.4% (Figure 3.5, Panel B). Third-country nationals were generally less likely to have found work through the PES – only 5.9% did so. TCNs who found highly qualified jobs were more likely to have used the PES than other groups, but they accounted for only 4.5% of the total.

Although the public employment services are little used to find work, that does not in itself disqualify them from conducting labour market tests, as most LMTs target individuals who are unemployed and may already be registered as job seekers. Indeed, the purpose of the LMT in most countries is not generally to help employers find the best candidate, but to ensure that local workers who are available learn of the vacancy. Equally important is that tests should enable PESs to place more workers by requiring employers to submit vacancies. The political function of the LMT – communicating to the public that adequate safeguards are in place against potentially negative labour market impacts of third-country migration – indicates that there is a role for the PES. Nonetheless, their

small market shares would suggest that they should not be relied upon exclusively to reach out to the unemployed, especially those who are not enrolled as job seekers at their local PES office.

Figure 3.5. Few people find jobs through the public employment services, especially skilled workers, 2013

Percentage of workers aged 25-49 who found work through the public employment services in EU Member States, by nationality



Source: Eurostat, Labour Force Survey (2013).

The above considerations on LMTs single out two parameters where EU intervention could add value: the nationalities of workers who may be considered as potential job candidates, and the geographical coverage of the search for candidates. In practice, variations in LMTs are most apparent when it comes to the second parameter – how widely employers must cast their net in Europe before they may seek and hire candidates from third countries (Table 3.2). There are also substantial differences in national regulations as which groups of candidates may be targeted to fill vacancies.

Table 3.2. Few Member States impose an EU-wide labour market test, and some exclude third-country nationals

Features of labour market tests in EU Member States

	What target group must be tested for availability?	What basin of reference is used?	Is EURES required?	Does the regulation explicitly specify that non-Nationals must be considered?
Austria	Registered unemployed	National	No	"Eligible non-Austrian worker"
Belgium	Registered unemployed	Regional	No	No
Czech Republic	Job-seekers	National	No	Can be filled by "EU national"
Estonia	Not specified, but agency registers unemployed	Not specified	No	No
Finland	Not specified	Not specified	No	No
France	Not specified	Not specified	No	No
Germany	Job-seekers	National	No	No
Greece	Unemployed	Regional	No	All "legal residing in Greece"
Hungary	Job-seekers	National	No	EEA nationals
Ireland	Job-seekers	National + EURES	Yes	No
Italy	Job-seekers	National	No	No
Latvia	Job-seekers	Local	No	No
Lithuania	Job-seekers	Local	No	No
Luxembourg	Job-seekers	Local	No	No
Netherlands	Job-seekers	Within EEA	No	Must advertise for available EEA workers
Poland	Job-seekers, registered unemployed	Local	No	No, only reference to Polish nationals
Portugal	Job-seekers	Local	No	No
Romania	Registered unemployed	Local	No	"EU, EEA, Swiss, or long-term resident Third Country National"
Slovak Republic	Job-seekers	National + EURES	Yes	No
Slovenia	Job-seekers	National	No	No
Spain	Job-seekers, registered unemployed	National	No	No
Sweden	Job-seekers	National + EURES	Yes	No
United Kingdom	Job-seekers	National	No	Advertising requirement for "EEA workers"

Note: Job-seekers may be employed.

Source: OECD survey of legislation and government officials, 2014-2015 in Chaloff (2016).

The argument for an EU-wide labour market test falls into two non-exclusive domains:

- who should be included when examining “available labour” in labour market tests,
- the geographical coverage of the labour market test.

Who should be included in the labour market test takes into account the equal labour market rights of nationals, EU nationals (including EEA and Swiss nationals), and third-country nationals with legal and unrestricted access to the labour market in accordance with EU instruments. In the European Union, EU nationals enjoy an unambiguous right to equal treatment when being considered for a job. The equal treatment of third-country nationals with certain statuses has been affirmed but not explicitly incorporated into the labour market tests of a number of countries.

The political and communication-related function of the LMTs should also be considered. Labour migration is predicated on the assumption that skills cannot be found efficiently and effectively within the labour market of reference. Equal treatment under the labour market test is a clear obligation, but EU measures can bring added value by clarifying how to apply equal treatment.

Equal treatment goes beyond the principle of “Community Preference”, now “Union Preference” (see Chapter 1 and Robin-Olivier, 2016). While Union Preference is satisfied when third-country nationals do not receive preferential treatment over EU nationals of countries subject to transitional period, it has been interpreted as requiring vacancies to be offered first to EU nationals before being opened to third-country nationals abroad. In legal terms, the Union Preference principle requires neither a labour market nor that EU nationals should be given priority over third-country nationals. It is only in cases where priority is given to EU nationals that all EU nationals must be treated equally and therefore nationals of EU accession countries should not be given a less favourable treatment than third-country nationals in terms of access to the labour market.

The EU could bring clear added value if it could ensure that labour market tests gave equal consideration to all EU/EEA nationals and to third-country nationals with full access to the labour market. Further, the principle of prioritising recruitment in the EU over recruitment from third countries could add value to EU regulation in labour migration. Granting such priority would provide clearer guidance as to who is considered “available labour” in labour market tests and bolster the significance of exemptions. It would also support the political function of the LMT by emphasising the inclusion of third-country nationals under equal treatment while giving priority to all resident available labour.

Geographical coverage of the labour market test

Although a labour market test could cover the entire EU labour market or only a fraction of it, a review of existing LMTs shows that most have no more than local or national scope. Where a labour market test does go beyond national boundaries, it is generally because it is compelled to do so by a mandatory listing on the EURES platform. Just as there is no requirement for vacancies to be advertised throughout the EU, there is no general requirement for EU Member States to apply labour market tests across the European Union.

The case for expanding the geographical scope of the labour market test to the entire EU is not self-evident. Indeed, evidence on the mobility of job seekers argues against a uniform LMT requiring employers to actively seek candidates far from their local labour market. Less skilled workers, in particular, appear not to be highly mobile.⁶

That being said, the functioning of the single labour market is based on integrated local labour markets and well developed mobility pathways, and differences in wages are much greater between EU Member States than they are between regions within them. Even where local workers may be unwilling to travel long distances within their own country to apply for vacancies, workers who live far away may be tempted by wage differences and factors related to working and living conditions and opportunities in each Member State. Intra-EU mobility patterns that have emerged in recent years have been driven by such wedges. There is a relationship between internal migration, mobility and migration from third countries. For example, Mocetti and Porello (2010) find that highly-educated natives flow into areas with international migration, but that the internal mobility of low-educated natives is reduced. Farchy (2016) looks at mobility and international migration and finds that a 10% increase in the population share of nationals in new EU Member States is associated with a 1.6% increase in the population share of third-country migrants and an increase of 1.7% in the population share of migrants from EU15 and EFTA countries. Farchy's finding suggests that mobile individuals – from both within the EU and outside the EU – respond to strong labour demand.⁷

Ensuring that the coverage of vacancy requirements is EU-wide may contribute to the mobility of EU nationals within the single market and would be coherent with the principle of the single labour market. Mobility is associated with lower levels of third-country labour migration. Indeed, while Farchy finds that migrants tend to move toward the same areas as mobile EU nationals, there are nevertheless some displacement effects. Furthermore, when third country *labour* migrants alone are considered, the displacement effects identified are greater, independent of education level.⁸ A 10% increase in the population share of new Member State migrants is associated with an almost equivalent fall in the population share of third-country labour migrants.⁹ Mobility is thus associated with lower migration of TCNs.

It is difficult to extrapolate from findings on mobility and migration to assume that an EU-wide labour market test would drive mobility. In all likelihood, the effect of an EU-wide publication of vacancies on the

mobility of third-country nationals would be limited. Even those with long-term residence permits, or other permits that grant unrestricted labour market access, do not enjoy the same labour market access outside their national labour market. Equal treatment at present extends only to those third-country nationals legally resident within the country. Highly educated third-country nationals are already more mobile within Europe – partly because they face fewer barriers and partly because they are more likely to move to take up skilled employment opportunities. Yet the highly educated are less likely to be registered as unemployed with the public employment services to use them to find work. An EU-wide PES publication requirement may not bring added value to the mobility of third-country nationals.

More broadly, then, the added value of an EU-wide labour market test lies in reinforcing the single market through measures directly related not to labour migration but to mobility. Foremost among such measures is the reinforcement of the capacity to match job seekers with vacancies at the EU level, whether through existing platforms (such as the EURES network and job mobility portal) or through new ones. Such measures would allow an EU-wide labour market test to draw in available workers more effectively. Until such conditions are met, however, the return on imposing an EU labour market test may not be worth the effort.

Co-operation with third countries

The development of an EU external relations policy is a result of the recognition that the EU has a “place at the table” (Juppé, 2011) only as a whole single entity, drawing on a widening battery of instruments. The creation of an EU external relations competence lies in the efficiencies of scale and scope it offers and the acknowledged value added it brings to relations with third countries. It is able, on the one hand, to use greater leverage in bargaining and, on the other, to work according to shared principles. The European Union has been delegated to negotiate readmission agreements with a number of third countries, for example, on the grounds that its diplomatic leverage is more likely to secure a framework agreement and that a single agreement will allow resources to be better shared and used for return. The EU has a diplomatic presence in more than 140 countries, more than many of its smaller Member States. And even where Member States have a diplomatic presence, the EU delegation can amplify its effect (Bátora, 2015). Nonetheless, the

European External Action Service is a recent creation and still developing.

As for labour migration, the European Union brings added value by multiplying the leverage of individual Member States in negotiating framework agreements. The EU is a major provider of aid to developing countries that includes programmes specifically oriented towards reinforcing capacity to manage legal labour migration.

In negotiations on labour migration, third countries are interested primarily in the EU opening channels of migration in exchange for development co-operation in areas like training, selection and compliance (OECD, 2008a). As the European Union does not have its own labour migration permit quota, it does not have the ability to hold out the promise of admission, but instead can support framework agreements by funding components thereof or working with member states to co-ordinate or pool bilateral offers. One example of this is the 2015 Valletta Action Plan, which includes the promotion of legal channels and commitments from the European Union to fund scholarships and from Member States to launch pilot projects to pool offers for legal migration. The Action Plan embraces much of the good practice developed over the past decade in bilateral co-operation on legal migration, but also identifies specific new areas for co-operation, such as identifying professions where participating States commit to pilots for facilitating recognition of skills and qualifications, or training African entrepreneurs in European countries.

The European Union can, however, negotiate visa facilitation agreements, which are also of great interest to partner countries.¹⁰ The link between readmission agreements and visa facilitation mirrors the link between readmission agreements and labour migration, which has long been the model for bilateral agreements between EU Member States acting bilaterally and third countries. The two elements are also central to “Mobility Partnerships”, discussed in the preceding chapter. They are examples of the umbrella approach to migration issues with neighbouring countries (Balleix, 2016).

While bilateral agreements between individual EU Member States and third countries can give rise to labour migration capacity building, the success of such initiatives is tied to demand in the destination country. In contrast, EU backing for capacity building can support labour migration to EU Member States which are not party to any bilateral agreements. One common problem with training programmes tailored to

specific destination countries is that they may be so long that the initial demand has faded by the time programmes are over. Linking training with skills requirements and certification standards in multiple EU destinations can mitigate that risk and improve the likelihood of work placements for participants in other EU Member States which have opened their labour markets for workers with these skills. Training programmes should aim to meet similar standards in more than one destination; support should be contingent on courses providing certificates in multiple national frameworks or at least provide guidance on portability and mutual recognition procedures. Just as many EU funding measures require transnational partnerships, so could capacity building require an output of certification valid in more than one Member State framework.

Similarly, the European Union can support EU-specific human-capital investments which are broader than those oriented towards any single EU Member State. Support for learning languages spoken in the European Union is one area and capacity building in labour migration management is another. A third important area is support for the convergence of higher-education programmes in line with the harmonisation of EU systems set out in the Bologna Process.

The EU funds a number of programmes enabling TCNs to come to EU Member States as part of cultural, training or educational programmes. The programmes boast added value in comparison to those of individual Member States, as they involve researchers and students without binding them to a specific destination country and allow them to take advantage of mobility provisions for students and researchers.

Projecting the presence of the European Union through cultural and scientific initiatives in third countries raises the profile of Europe as a whole. Making sure that Europe is present in cultural debates and in scientific collaborations and that its results are made visible in origin countries increases the interest of potential migrants in pursuing opportunities for study or employment in the EU rather than in other OECD destinations.

Finally, the presence of EU delegations in countries of migrant origin constitutes a network of potential support for other value-added initiatives which do not yet exist – e.g. establishing a pre-selected pool of candidates for migration and facilitating recognition of foreign qualifications. The latter could be supported not only by providing information on national requirements and procedures but also by helping

candidates and training institutions to understand how to meet training and documentation requirements for multiple EU Member States.

Simplification for compliance

The added value of EU-level action is clearly evident in migration management information platforms like the Schengen Information System and EURODAC (the EU fingerprint database), though these are rather focused on preventing irregular entry and managing asylum applications. Compliance measures in the field of labour migration may also benefit from shared information to improve integrity, reduce risk and build trust among Member States. And the portability of authorisation to work and the ability to accumulate periods of residence can be achieved only through co-operation at the EU level. At present, checks on prior criminal history in the country of origin, or on the existence of family ties, may be performed on a migrant's admission to the first Member State, but are not automatically valid when the holder applies to a second one.¹¹

The mutual recognition of permits, too, is possible solely through EU-level co-operation. The 2014 Intra-Corporate Transfer Directive – in its provisions on intra-EU mobility – contains an element of “mutual recognition” in some cases and, building upon the verification of the fulfilment of admission conditions carried out by the first Member State and the mutual trust among Member States. It does not however compel the second one to accept the first's decision that the permit-holder poses no threat to “public policy, public security and public health”. That is up to each country.

Leveraging competition and preventing a race to the bottom

Chapter 1 shows how individual Member States have introduced labour migration programmes in the competition for talent. Innovation and experimentation in the field of labour migration policy fosters development of responses to specific national requirements and the emergence of new models which can be shared with other countries, so increasing the competitiveness of the European Union as a whole. That being said, competition should not become a race to the bottom.

Equal treatment means aligning the rights of third-country nationals with those of EU nationals. In that sense, it has clear implications at the national level: Member States must extend fundamental rights to prevent

abuse and limit the risk of labour market segmentation. Ensuring equal treatment also lessens the risk of unfair competition between EU Member States, e.g. a Member State allowing worse labour conditions and lower salaries for foreign workers than for nationals. Indeed, it safeguards the EU labour market as a whole.

Competition is also about benchmarking. Standard indicators and statistical analysis allow the comparison of performance and trends at the EU level and enable individual Member States to assess their policies against those of their neighbours. Benchmarking labour migration management performance supports Member States by gauging their ability to compete both within the European Union and with other migrant destinations.

Summarising factors of attraction and the value of EU intervention

Table 3.3 summarises how value-added intervention at the EU level can support factors which make a country attractive to talent and how it does so with greater effectiveness than measures taken at the national or sub-national level. The summary table incorporates factors of attractiveness identified in this and previous chapters (Gubert and Senne, 2016; and Weisser, 2016) and measures to enhance it. It indicates areas of intervention which range from specific regulations to broad cultural initiatives. It also indicates the limits to intervention.

The following chapter examines specific measures in the field of labour migration and support that include the attractiveness of the European Union. The sectoral approach evident in the measures – Directives aimed at specific groups – does not mean that broader attempts to bring added value through EU intervention have not been made through initiatives not strictly related to third-country nationals. This chapter has identified the importance of mainstream measures to enhance the functioning of the single market which directly impact the added value of the EU by making Member States attractive to talent from third countries.

Table 3.3. Summarising the added value in EU-level approaches to labour migration management

Factors which make a country attractive for migrants	Means to improve these factors	Added value intervention at EU level
Large labour market	Increase scale of labour market.	Leverage large single labour market, create mobility provisions.
Job quality	Ensure minimum standards.	Ensure equal treatment and prevent abusive practices.
Information about the destination	Improve knowledge about the country or region.	Presence in many origin countries, platforms for collaboration.
Historical and cultural ties	Greater presence in origin countries, soft power.	Shared cultural outreach, consular co-operation, convergence of education systems.
Same language	Increase knowledge of the language in the origin country.	Support language instruction, provide information in official languages across countries.
Open legal labour migration channels	Create channels for labour migration, increase access to existing channels.	New channels cannot be created, but can be branded, publicised and supported.
Labour market conditions and job opportunities	Simplify job search employment.	Matching mechanisms.
Accessible administrative procedures	Lower costs, simplify procedures.	Set ceiling on fees and minimum standards for processing times, improve verification procedures and visa sharing information, improve transferability of recognised documents, clarify transparency rules and opportunities for redress.
Experience in the country	Circular migration channels, student and training opportunities.	Support exchange programmes, scholarships.
Provisions for family	Clear, predictable and favourable conditions for family reunification and the status of family members.	Harmonisation of conditions for family reunification and rights of family members.
Access to social benefits	Transparent rules for eligibility.	Equal treatment provisions Multilateral pension agreements and calculation of pension accumulation.
Access to permanent residence	Clear, predictable and favourable conditions for obtaining permanent residence.	Harmonisation of conditions for permanent residence, portability of periods of residence.
Access to naturalisation	Clear, predictable and favourable conditions for acquiring nationality.	No possibility to intervene in criteria, but can support permanent residence and general integration measures to meet national criteria, as well as information.

Notes

1. Ireland's permanent residence permit is difficult to obtain – it is granted only after eight years of residence. It is therefore seldom a bridge to naturalisation. Luxembourg has naturalised a large number of refugees who did not hold permanent resident permits. Hungary has a programme for foreigners of Hungarian origin.
2. This has already been achieved in some EU legal migration instruments, such as the EU Blue Card, which only allows Member States to require the applicant to be outside of that Member State, rather than outside of the EU.
3. This means that third-country nationals have access to the same recognition procedures under the same conditions as host-country nationals and facilitates the process when they move across Member States. However, the recognition procedure as such remains a national competence and this still does not guarantee that the qualifications would end up getting recognised in the Member State concerned.
4. For the purposes of recognition procedures in a second EU Member State, an EU national can present third-country qualifications if they have been recognised by the first EU Member State and if the individual has practiced the profession for at least three years in the Member State that first recognised his or her qualifications (Article 3[3]).
5. If there are no volumes of admission preventing approval, meeting the criteria for a permit indicated in the relevant EU Directive means that there is a positive right to obtain that permit.
6. According to research in the United Kingdom (Manning and Petrongolo, 2011), the probability of a worker applying for an unskilled vacancy in a ward 5 kilometres away from his or her ward of residency, was just 11%. As for skilled vacancies, a similar reluctance to search for jobs far from home has also been found in the United States. Marinescu and Rathelot (2016) find that workers are 35% less likely to look for jobs more than 16 kilometres from their home postal code, and the probability falls below 10% when the distance exceeds 70 kilometres.

7. When demand-pull factors are accounted for, however, a 10% increase in the population share of migrants from new Member States is associated with a 5% to 6% reduction in the population share of third-country migrants, which suggests that there may be a labour substitution effect between new Member State migrants and those from third countries.
8. Displacement in this context is not of local workers out of employment, but of mobility for employment.
9. Farchy (2016) finds no effect on the employment rate of third-country labour migrants. It is not possible to distinguish between lower inflows of labour migrants and higher outflows to explain the association.
10. EU wide visa and readmission agreements are in place, but on labour migration this has been left – until now – to bilateral agreements by Member States.
11. Concepts of family and how family ties are verified substantially differ across Member States and are not necessarily portable even if registered.

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