



Legal migration policy and law

European added
value assessment

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Legal migration policy and law

European added value assessment

This European added value assessment (EAVA) has been written with the aim of providing support to the ongoing work on a European Parliament legislative-initiative report on legal migration policy and law (2020/2255(INI)). The assessment reviews the key issues concerning legal migration in the status quo (with a focus on labour migration) and discusses the reasons why the EU should take action. It then explores a selection of possible EU actions, that include recognising migrants' qualifications, facilitating access to employment of migrants already in the EU, developing new avenues for legal migration to the EU, tackling discrimination and promoting migrants' rights. The assessment finds that all policy options could generate substantial benefits for workers and spillover benefits for the EU economy. Moreover, as these policy options are complementary, they could be implemented together in order to enhance the added value of EU action.

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The first annex is a research paper on the '[Added value of EU legislation in the area of legal migration policy and law](#)', written by CEPS.

The second annex is a joint paper by EPRS and the Joint Research Centre of the European Commission, which addresses the macroeconomic impact of selected policy options.

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Executive summary

Why this assessment?

Over the years, the European Parliament has underscored the need for a **comprehensive labour migration policy** in order to meet the European Union's goals for **smart, sustainable and inclusive growth**.¹ The call for action has been made more urgent by the coronavirus pandemic.² In 2021, the European Parliament adopted a resolution on new avenues for legal labour migration.³ Building on this resolution, the European Parliament⁴ is drawing up a legislative-initiative report on **Legal migration policy and law** (2020/2255 (INL)).

This European added value assessment (EAVA) was written to provide support to the drafters of the above-mentioned own-initiative report. The assessment identifies the key issues in the status quo and the reasons why the EU should act in the area of legal labour migration. It offers possible policy options for the EU and assesses their potential impacts, including their **European added value**.

Why should the EU act?

In reviewing the state of play of EU action in the area of legal labour migration, the assessment identified **five key issues** that generate **detrimental impacts** for third-country nationals (TCNs) in particular and the EU economy and society in a broader sense (Table 1).

The **coronavirus pandemic** has underscored the weaknesses of the current framework, highlighting the importance of migrant work in sectors that are essential to the EU, but also underlining the greater risk of **precarious work** that TCN workers face. Future trends are likely to exacerbate issues such as precarious working conditions and inequalities, while also flagging the urgency of resolving issues related to the structural needs of the EU economy, to major challenges (e.g. healthcare, an ageing society and climate change) and to the need for public policies to address them.

Table 1 – Overview of key issues and impacts in the status quo

Key issues	Impacts
<ul style="list-style-type: none"> • Lack of legal pathways • Barriers to equal treatment and poor protection of workers' rights • Lack of pathways for integration and social mobility • Fragmented framework • Lack of a holistic approach 	<ul style="list-style-type: none"> • Discrimination in the labour market and exploitative situations • Structural needs of the EU economy are not met • Lost productivity, innovation and tax revenue • Gaps in protection of fundamental rights • Missed cooperation and solidarity with third countries

¹ European Parliament, Resolution of 12 April 2016 on the [situation in the Mediterranean and the need for a holistic EU approach to migration](#), 2015/2095(INI); European Parliament, Resolution of 5 July 2016 [on refugees: social inclusion and integration into the labour market](#), 2015/2321(INI).

² European Parliament, Resolution of 19 June 2020 on [European protection of cross-border and seasonal workers in the context of the COVID-19 crisis](#), 2020/2664(INI).

³ European Parliament, Resolution of 20 May 2021 on [New avenues for legal labour migration](#) (2020/2010(INI)).

⁴ The proposal is being put forward by the Committee on Civil Liberties, Justice and Home Affairs (LIBE).

Source: Compiled by the authors.

The assessment identifies several **enabling factors** for the EU to act on these key issues. First, there are significant opportunities for action within the existing legislative framework on legal migration that is primarily based on **Article 79 TFEU**. Second, EU action could enhance the coherence of the legal labour migration acquis with key initiatives of this legislature, in particular, the **European Pillar of Social Rights** and the **Green Deal**. Lastly, stakeholder opinion in the EU, as registered through consultations undertaken by the European Commission, would appear to be strongly in favour of greater EU action in these fields.⁵

Scope of the assessment

The assessment defined **four broad EU-level policy options** with several sub-options within each (see Table 2). The four policy options are **complementary** and could be implemented together for a more robust EU action. For example, the potential benefits of introducing new channels for migration could be reinforced by efforts to improve workers' rights and conditions.

Table 2 – Overview of EU-level policy options

Policy option	Policy sub-options
1. Promote the recognition of professional qualifications	
2. Facilitate access to regular work for TCNs already present in the EU	2a: Students
	2b. Family members
	2c. Asylum-seekers and refugees
3. Introduce new legal channels for migrants to enter the EU	3a. Mobility schemes for entrepreneurs
	3b. Skilled refugees' mobility scheme
	3c. Support skill mobility partnerships
	3d. Promote youth mobility schemes
	Complementary instrument: EU Talent Pool
4. Improve worker rights and work conditions for TCNs	4a. Align rights of TCNs with EU nationals
	4b. Strengthen enforcement of TCN workers' rights
	4c. Reduce uncertainty with respect to obtaining long-term residence status

Source: Compiled by the authors.

European added value

The analysis suggests that EU action could generate **significant benefits**,⁶ more specifically:

- greater protection of the rights of TCN workers who are already in the EU, leading to lower discrimination, lower risk of exploitation, higher productivity and GDP gains;
- better allocation and utilisation of human capital already present in the EU, leading to higher productivity and GDP;

⁵ [Report on the consultation on the future of EU legal migration](#), European Commission, 2021.

⁶ See CEPS, Annex 1.

- better attraction of workers with relevant skills to the EU, including by supporting human capital formation, and effective protection of their rights;
- less irregular migration;
- improved relations with third countries;
- greater fundamental rights protection, coherence with EU goals and with international commitments.

Promoting **intra-EU mobility, non-discrimination and enforcement of TCN workers' rights, and a more harmonised legal framework** is central to the generation of the above-mentioned benefits to society.

The results of the macro-economic assessment⁷ indicate that all policy options have **positive effects on the EU economy**, although the size of the effect can vary substantially. It indicates that there could be gains in human capital for medium and high-skilled occupations if occupational barriers are lowered and labour market discrimination against migrant workers is diminished, as suggested by policy options 1, 4a and 4b. A scenario **combining the three options** could lead to **long-run GDP gains of €74.0 billion per year**. There could be economic gains at the macroeconomic level as well, through actions aimed at facilitating access to visas for start-up migrant entrepreneurs, at easing access to employment for migrants for family reasons, asylum-seekers and refugees, and at supporting the implementation of global skill partnerships (including a training component), i.e. policy options 2b and 2c, 3a, 3c). A scenario **combining these four options** could lead to **long-run GDP gains of €37.55 billion per year**.⁸ Overall policy options lead to small, but **positive effects on both migrants' and natives' wages** for all skill levels, and positive impacts on aggregate **productivity**.

The policy options offer high **European added value (EAV)**. The EAV stems from potential **efficiency gains** due to greater harmonisation in labour market policy across Member States, better use of the scale of the EU single market, and **greater coherence** with the EU's anti-discrimination legislative framework, with fundamental rights protection, and social policy.

⁷ See EPRS and JRC, Annex 2.

⁸ The macroeconomic modelling is a collaborative effort between EPRS and the Joint Research Centre of the European Commission. Please refer to Annex 2 for further details.

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1. Introduction

1.1. Legal migration in the EU

The EU's legal labour migration policy is governed by a set of directives established between 2004 and 2016, which define the admission and residence conditions for different categories of third-country nationals (TCNs). These directives include:

- the **Blue Card Directive** (2009/50/EC): regulating admission and residence of highly skilled TCNs, and their families;
- the **Single Permit Directive** (2011/98/EU): establishing EU rules for a single application/permit and equal treatment provisions for TCNs;
- the **Seasonal Workers Directive** (2014/36/EU): regulating admission and stay of TCNs admitted temporarily to carry out seasonal work;
- the **Intra-Corporate Transferees Directive** (2014/66/EU): covers TCNs, and their families, employed outside of the EU by a group of undertakings and posted to a subsidiary in an EU Member State for a maximum of three years;
- the **Students and Researchers Directive** (2016/801): covering the conditions of entry and residence of TCNs for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing.

In addition, the EU has directives in place concerning TCNs who are already present in the EU and are not entering the EU for work. These are:

- the **Family Reunification Directive** (2003/86/EC): regulating admission and residence of family members of TCNs legally residing in Member States;
- the **Long-Term Residents Directive** (2003/109/EC): allowing TCNs who have legally and continuously resided in a Member State for five years to obtain an 'EU long-term resident status and associated rights';
- the **Reception Conditions Directive** (2013/33/EU): regulating provision of material reception conditions to applicants for asylum, such as housing and food, as well as access to the labour market.

1.2. EU attention to the issue

The European Parliament has highlighted the need for a **comprehensive labour migration policy** for TCNs, and for better integration of TCN migrants, in order to meet the European Union's goals for **smart, sustainable and inclusive growth**, as well as to fill gaps identified in the European Union's labour market.⁹ The European Parliament Research Service (EPRS) has identified a significant '**cost of non-Europe**' in the areas of legal migration and asylum as concerns the labour market.¹⁰ The European Parliament has called for action to tackle challenges introduced by the coronavirus

⁹ European Parliament, Resolution of 12 April 2016 on the [situation in the Mediterranean and the need for a holistic EU approach to migration](#), 2015/2095(INI); European Parliament, Resolution of 5 July 2016 [on refugees: social inclusion and integration into the labour market](#), 2015/2321(INI).

¹⁰ W. van Ballegooij and E. Thirion, [The Cost of non-Europe in the Area of Legal Migration](#), Study, EPRS, European Parliament, 2019; C. Navarra and W. van Ballegooij, [The Cost of non-Europe in Asylum Policy](#), Study, EPRS, European Parliament, 2018.

pandemic on cross-border and seasonal workers.¹¹ In 2021, the European Parliament put forward a motion for a resolution on new avenues for legal labour migration.¹²

Following the European Parliament's resolution, the European Commission put forward a proposal to **reform the Blue Card Directive**. An interim agreement by the European Parliament and the Council of the EU on the revision of the Blue Card Directive was reached in May 2021. In 2018-2019, the European Commission carried out a **Fitness Check of the EU legal labour migration acquis**.¹³ While the New Pact on Migration and Asylum proposed in 2020 does not include any specific initiatives on legal labour migration, the latter was the focus of the public consultation that was carried out.¹⁴ The European Commission's 2021 work programme notes that it will 'propose a number of measures on legal migration' including a review the Single Permit Directive and a revision of the Long-Term Residents Directive by the end of 2021.¹⁵

1.3. Objectives of the European added value assessment

The European Parliament's Committee on Civil Liberties and Home Affairs (LIBE committee) is drawing up a legislative own-initiative report (INL) on Legal migration policy and law (2020/2255 (INL)). This INL will be based strongly on the motion for a resolution on new avenues for legal labour migration.¹⁶

This European added value assessment (EAVA) is aimed at providing support to the European Parliament's legislative initiative. **Section 2** presents an objective, evidence-based review of the status quo, including the key issues and their impacts. **Section 3** reviews the enabling factors and avenues for EU action. **Sections 4-7** then review possible EU actions and assess their potential impacts on individuals and society. The policy options were grouped into four clusters, as follows:

- policy options to promote the recognition of qualifications for TCNs (Section 4);
- policy options to facilitate regular labour market access to TCN already in the EU (Section 5);
- policy options to introduce new labour migration channels to the EU (Section 6);
- policy options to improve worker rights and working conditions for TCNs (Section 7).

Section 8 summarises the European added value of each policy option and highlights other key findings from the assessment.

1.4. Methodology

The EAVA focuses broadly on issues concerning labour migration in the EU and possible options to address them through actions at the EU level. The assessment draws on an externalised study by CEPS (see **Annex I**) and a collaboration with the Joint Research Centre (see **Annex II**).

¹¹ European Parliament, Resolution of 19 June 2020 on [European protection of cross-border and seasonal workers in the context of the COVID-19 crisis](#), 2020/2664(INI).

¹² European Parliament, Report on [new avenues for legal labour migration](#) (2020/2010(INI)), 2021.

¹³ European Commission, 2019. Commission Staff Working Document. Executive Summary of the Fitness Check on EU Legislation on Legal Migration. SWD (2019) 1055 final.

¹⁴ European Commission, 2021. [Report on the consultation on the future of EU legal migration](#).

¹⁵ European Commission, 2020. [Commission work programme 2021](#).

¹⁶ European Parliament, Report on [new avenues for legal labour migration](#) (2020/2010(INI)), 2021.

The externalised study by CEPS draws on a broad review of research studies and stakeholder opinions complemented by legal analysis and econometric analysis or EU-wide surveys include the European Union Labour Force Survey (EU-LFS) and the Fundamental Rights Agency European Union Minorities and Discrimination Survey (EU-MIDIS).

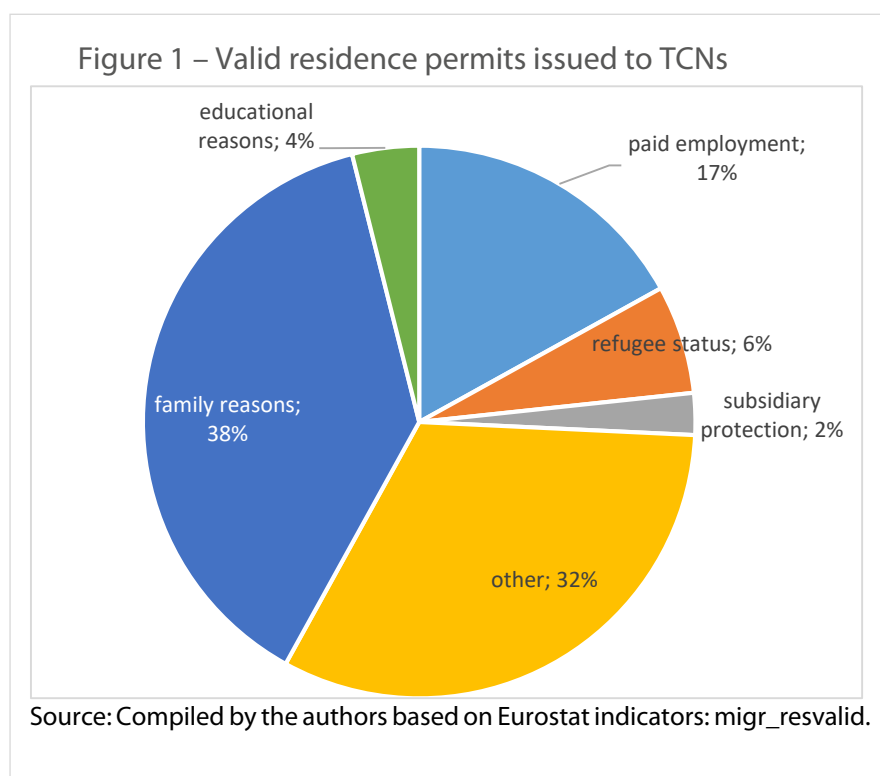
The collaboration with the Joint Research Centre (JRC) focused on a macro-economic estimation of impacts for a selection of policy options and indicators. It is based on a General Equilibrium Model that allows to take into account the interlinkages and feedback loops of the entire EU economy and provides long-run estimates of the potential impacts of selected policy scenarios.

2. Assessment of the status quo

2.1. Statistical overview

2.1.1. Scale of regular and irregular migration

In total, there were 20.3 million valid permits in 2019. **Less than one in five residence permits was issued for work reasons.** Only one out of 25 residence permits was issued for educational reasons. In contrast, the most common reason for a residence permit was not motivated by work, but rather by family reunification (38 %). The number of first residence permits issued has increased over time,



and is driven to a large extent by work reasons. In 2019 alone, EU Member States issued about 3 million first residence permits to TCNs, of which roughly 40 % (about 1.2 million) were issued for work reasons.¹⁷ With regard to **high-skilled labour**, 1.6 % of first-time residence permits were issued under the Blue Card Directive, 1.3 % under the Students and Researchers Directive as compared with 3.8 % via national schemes.

The Seasonal Workers Directive provides a specific channel for **low-skilled labour**. Almost

half of first-time permits (42 %) in 2019 were issued for seasonal workers; 93 % of these were issued by Poland. The other Member States made much lesser use of the EU scheme.

TCNs are also represented among **posted workers**. Rulings by the European Court of Justice have allowed for TCNs with a valid work and residence permit in one Member State to be posted in another.¹⁸ An estimated one out of 10 posted workers is a TCN.¹⁹

Irregular migration to the EU is on a much smaller scale than regular migration. In 2019, there were an estimated 627 900 **irregularly present TCNs in the EU**.²⁰ This represents just 0.03 % of the first-

¹⁷ Eurostat indicator migr_restfirst.

¹⁸ Lens, D., Mussche, N., & Marx, I. (2019). Europe's ever expanding mobility patterns – posting, third-country nationals and the single European labour market. CBS Working Paper No. 19.08.

¹⁹ De Wispelaere, F., & Pacolet, J. (2018). Posting of workers: Report on A1 Portable Documents issued in 2016. Tratto da <http://ec.europa.eu/social/BlobServlet?docId=19040&langId=en>.

²⁰ Eurostat indicator migr_eipre.

time residence permits issued in 2019. Surveys conducted by the International Organisation for Migration (IOM) find that a high share of irregular migrants had experienced conflict or persecution in their home country (77 %), followed by those who had experienced economic hardships (17 %).²¹ Compared to the earlier arrivals, 2020 arrivals were more likely to indicate economic reasons as the main reason for migration (29 percent in Italy and 49 percent in Spain).

Analysts noted a decline in irregular migrants based on detailed monthly data derived from the UNHCR Operational Data Portal; this decline was mainly driven by the drop in land arrivals and was predominantly observed throughout April and May 2020.

2.1.2. Structural needs of the EU economy

Information on **skills shortages** of the EU labour market was obtained from the EU Commission Business Survey. In this survey, firms are asked to indicate if their business is constrained by a lack of labour, in other words, a labour or skills shortage. Labour shortages are noted for high-skilled and low-skilled work. Some labour shortages are experienced across the EU while others are specific to certain Member States.²² Skills shortages are higher in the new Member States due to high emigration following the enlargement.²³

The EU's labour market has longer-term, **structural needs** that extend beyond the short-term needs of businesses. These structural needs reflect changing socio-economic, environmental and other contextual challenges such as the aging of the population, the increasing digitalisation of the economy and climate change. The Covid-19 crisis has highlighted the relevance of TCN workers in essential sectors such as health care. Moreover, several studies underline that in some of the EU labour market sectors affected by structural needs (e.g. domestic care work), TCN workers play a major role in responding to the labour demand.

In a public consultation carried out in 2020, respondents considered that the sectors in which the EU will need to recruit the most in the future include health care (77 % of respondents), agriculture, forestry and fishery (58 % of respondents), and information and communications technology (51 % of respondents).²⁴

2.1.3. Labour market characteristics of TCNs in the EU

Overall, TCNs are on average more likely to be **low-skilled** than employed EU citizens. More than 40 % of employed TCNs are low-skilled as compared with 15 % of employed EU citizens. The difference is narrower for the high-skilled category – one out of four TCNs is highly skilled as compared with about one out of three EU citizens (see Table 3).

²¹ Aksoy, C. G., & Poutvaara, P. 2021. Refugees' and irregular migrants' self-selection into Europe: Who migrates where?. *Journal of Development Economics*.

²² Among low-skilled work, labour market shortages are observed across the Member States for construction, land transport, repair and installation services and security services. Among high-skilled work, labour market shortages are observed for computer programming and employment services.

²³ Giesing, Y., & Laurentsyeve, N. 2017. Firms Left Behind: Emigration and Firm Productivity. CESifo Working Paper No. 6815.

²⁴ [Report on the consultation on the future of EU legal migration](#), European Commission, 2021.

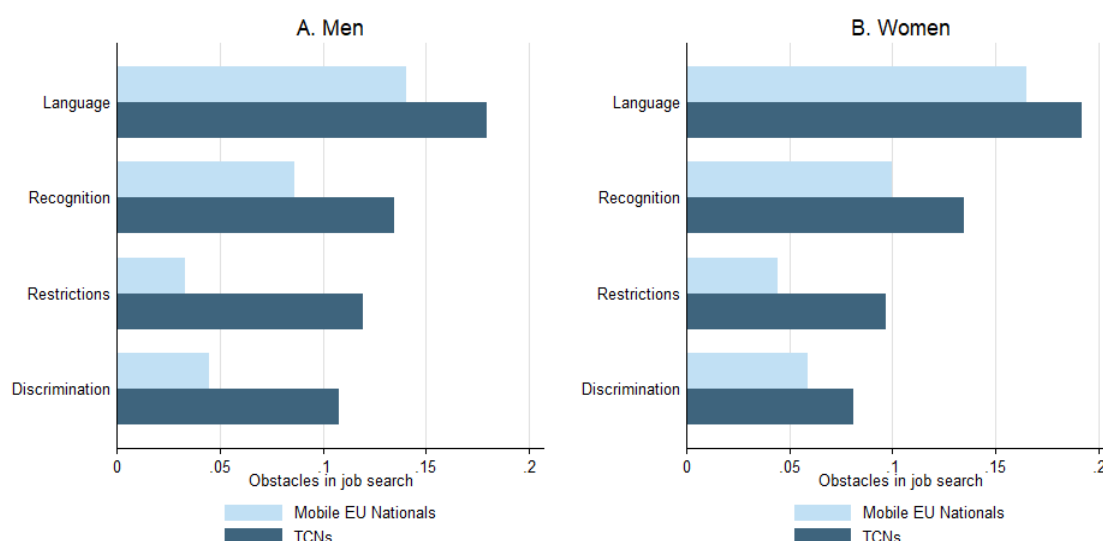
Table 3 – Skill level among employed TCNs and EU citizens

	Employed TCNs	Employed EU citizens
Low-skilled	42 %	15 %
Medium-skilled	34 %	50 %
High-skilled	24 %	35 %

Source: Annex I CEPS – analysis of the EU-LFS for the EU-27 in 2019.

There is a positive trend in the education level of recently arrived TCNs to the EU: compared to all TCNs residing in the EU, TCNs who arrived at their destination between 2017 and 2019 are on average better educated. TCNs with a tertiary degree constitute the largest group (43 percent) of all recent migrants.²⁵ At the same time, the number of residence permits issued under the EU schemes for highly skilled persons is low relative to the number of highly skilled TCNs who actually arrive in the EU.

Figure 2 – Major obstacles in job search



Source: Annex I CEPS – analysis of the EU-LFS for the EU-27 in 2014.

Highly educated TCNs (those with a tertiary degree) are more likely to work in low- or medium-skilled jobs than EU citizens (48 % versus 20 % in 2019). Male TCNs who entered the EU as asylum seekers are especially at risk of **over-qualification**.²⁶ The fact that many TCNs end up doing jobs for which they are overqualified may be due to a number of barriers, the most critical ones being related to language skills and the limited recognition of professional credentials and experience, although legal restrictions and discrimination are also noteworthy (see Figure 2). A similar pattern is evident between men and women, although men are more likely to report major obstacles. With respect to

²⁵ See Annex 1 – CEPS Section 3.3.1.

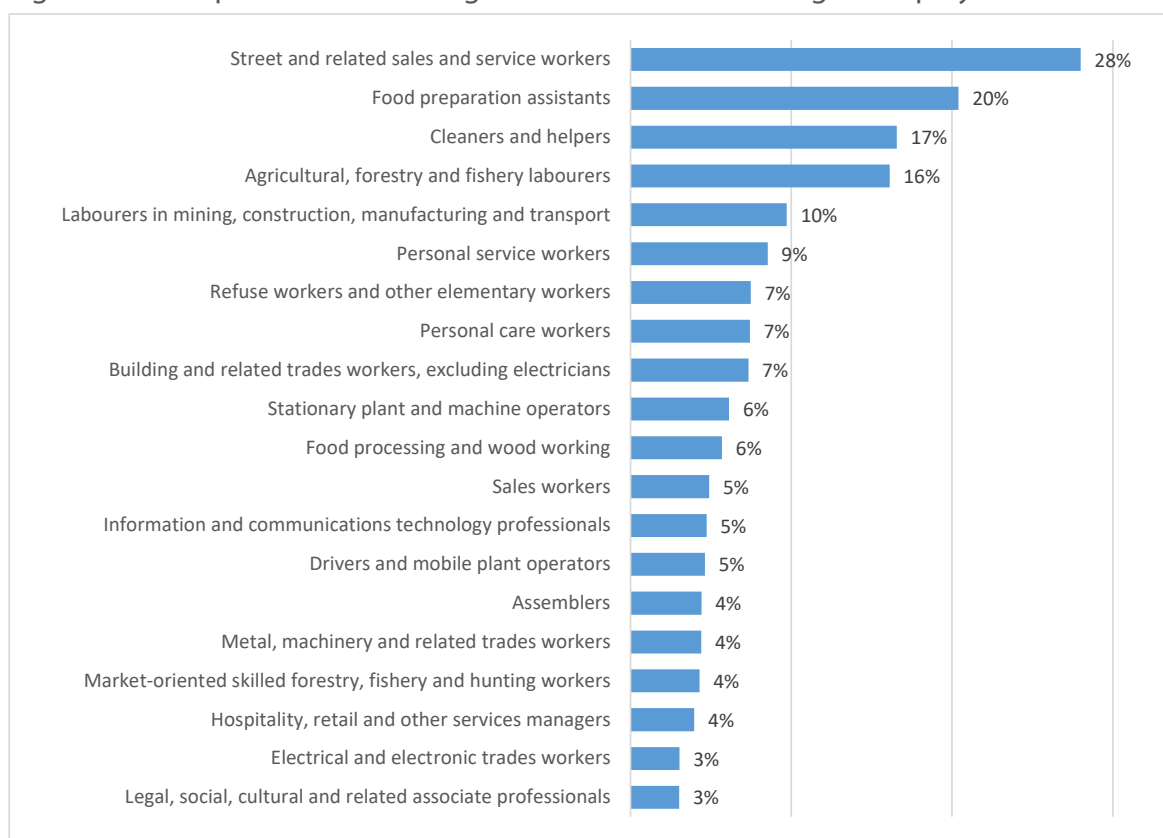
²⁶ [Indicators of Immigrant Integration 2015: Settling in](#). Organisation for Economic Cooperation and Development, 2015. The report notes: 'data indicate consistently higher overqualification rates of foreign-born as compared to native-born workers in OECD countries'.

discrimination, however, data from the Fundamental Rights Agency finds that men are at greater risk when searching for a job, when being assigned tasks and in terms of being promoted or fired.²⁷

An econometric analysis finds that employed TCNs are more likely to be over-qualified for the jobs they do, even after controlling for a multitude of factors. Within the category of employed TCNs, highly skilled TCNs are more likely to be over-qualified for their employment than medium-skilled TCNs. Fields of work where TCN workers are more likely to be over-qualified include teaching, services, health and welfare as well as humanities and social sciences in general.

TCNs are therefore **more concentrated in low-skilled professions**. Figure 3 presents the share of TCNs by occupation. Occupations with the highest share of TCNs are street- and related sales and service workers (28 %), food preparation assistants (20 %), cleaners and helpers (17 %), and agriculture, forestry and fishery labourers (17 %). Seven percent of personal service workers are TCNs. In contrast, TCN workers are less present in ICT, science and highly skilled healthcare jobs (accounting for roughly 2-3 % of those employed in these sectors). The significant contribution of TCNs to the labour market became more evident during the coronavirus pandemic. An estimated **13 % of essential workers are TCNs**.²⁸

Figure 3 – Occupations with the highest share of TCNs among all employed



Source: Annex I CEPS – analysis of the EU-LFS for the EU-27 in 2019.

Regardless of the level of skills involved in their employment, TCNs experience **worse labour conditions**. More specifically, they are less likely to have a permanent contract or be in a position

²⁷ Analysis of the FRA EU-MIDIS II (see Annex I – CEPS).

²⁸ F Fasani, & J. Mazza, [Immigrant Key Workers: Their Contribution to Europe's COVID-19 Response](#), 2020.

with supervisory tasks. TCN are also more likely to work part-time, atypical hours, and are less likely to be working from home. These findings are consistent for young and older workers. TCNs are at greater risk for **precarious work** as evidenced during the coronavirus pandemic.²⁹ Young, low-skilled and female TCNs have been at greater risk of becoming unemployed.³⁰ Refugees, in particular, have experienced more adverse outcomes.³¹ An improvement in working conditions is evident over time, but TCNs achieve labour market outcomes that are closer to the ones of “native” workers after more than 10 years of residence.

Young people often face particular difficulties during their first encounter with the labour market.³² **Error! Reference source not found.** Young TCNs are less likely to be employed, to have a permanent position or a supervising role than comparable EU nationals. They are also more likely to work part time and men are more likely to work atypical hours. Effects for young mobile EU nationals are weaker.

Relatedly, there is evidence of a negative **wage gap** between TCN workers and nationals. After accounting for personal and job-related characteristics (productivity and selection into less-paying sectors), at least 28 % of the total native-to-migrant wage gap remains unexplained.³³

Table 4 – Native-to-migrant percent unexplained wage gap after controlling for productivity differences (%)

	1995-2016	1995-2000	2001-2010	2011-2016
Austria	16.81	19.34	17.92	13.18
Czechia	1.90	4.95	2.01	-1.25
Estonia	21.42		23.40	19.44
Germany	2.58	-0.49	3.03	5.20
Greece	23.05	31.31	20.71	17.14
Ireland	6.50	2.46	4.48	12.56
Italy	11.39	4.88	11.74	17.56
Luxembourg*	23.67	19.36	21.96	29.68
Netherlands	7.83		7.88	7.78
Spain	16.33		15.52	17.14

Source: Excerpt from Cupák, A., & Kanacs, P. C. D. A. (2021).

* Note: Estimated based on Luxembourg Income Study data. Missing values imply no LIS data are available for the specific country-period.

The challenges that TCNs face in the labour market are compounded by challenges they face in other areas of life. For example, TCNs face barriers including **discrimination with regard to**

²⁹ [Precarious work from a gender and intersectionality perspective, and ways to combat it](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2020.

³⁰ Fasani, F., & Mazza, J. (2020). Being on the Frontline? Immigrant Workers in Europe and the COVID-19 Pandemic.

³¹ Y Giesing and M. Hofbauer, [How does Covid-19 Affect Migration and Integration?](#) IFO Institut, 2020.

³² See Annex 1 – CEPS. The Annex investigates the differences in employment characteristics for young people between natives and immigrants, based on the LFS Adhoc module 2016 that targeted young individuals (15-34 years old) residing in EU Member States and focused on the study-to-work transition.

³³ Cupák, A., & Kanacs, P. C. D. A. (2021). [Comparing the immigrant-native pay gap: A novel evidence from home and host countries](#), LIS Working Papers.

accessing healthcare.³⁴ TCNs are also less aware about the existence of laws protecting their rights and giving them access to justice.³⁵

2.2. Key issues

The EAVA identified five key issues in the existing EU migration policy and law in the status quo:

- key issue 1: lack of legal pathways;
- key issue 2: barriers to equal treatment and poor workers' rights protection;
- key issue 3: lack of pathways for integration and social mobility;
- key issue 4: fragmented framework;
- key issue 5: lack of a holistic approach.

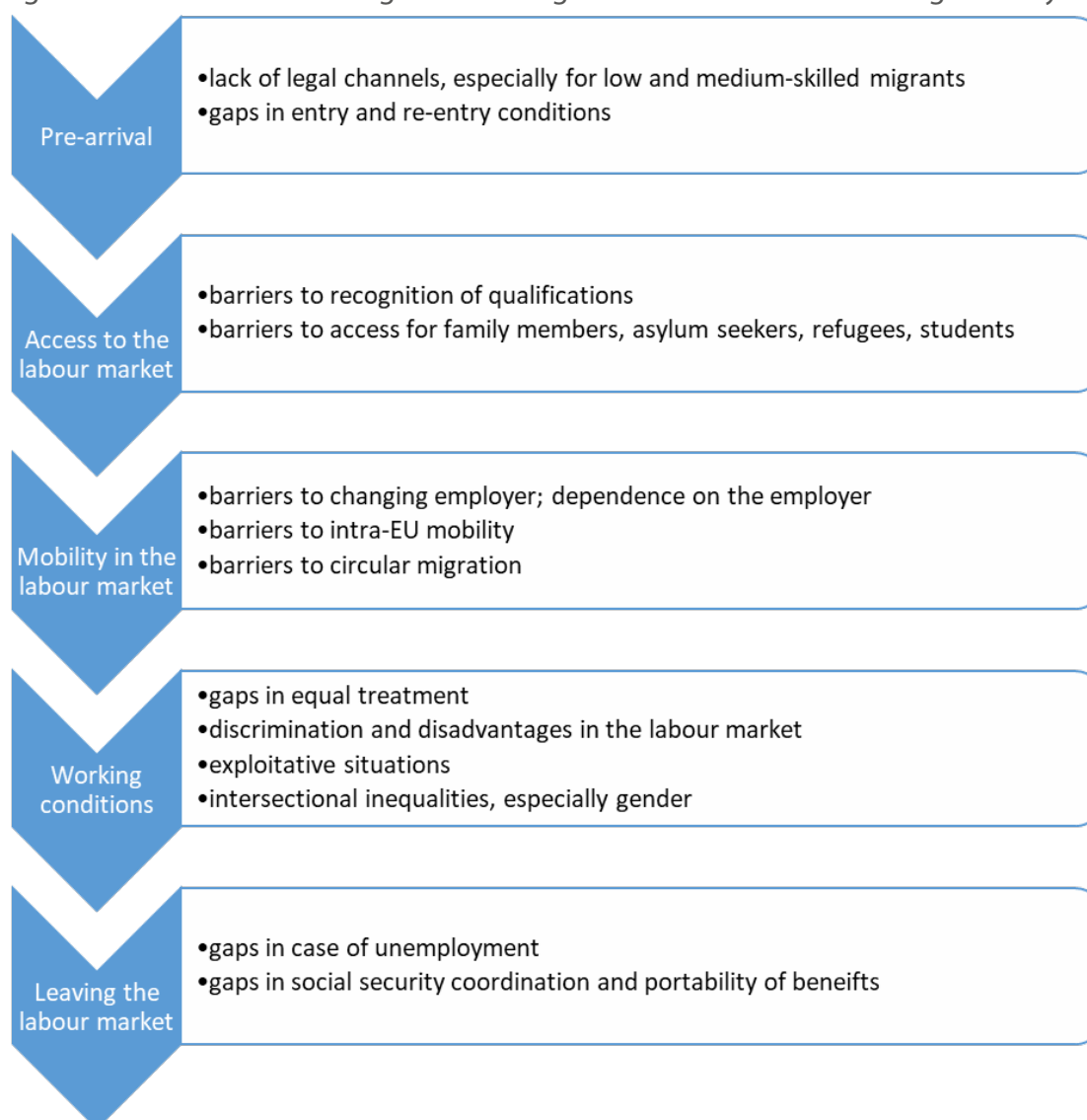
Each of these key issues is described in detail in the sub-sections below.

These issues are evident at different stages of a TCN's migration cycle, covering the time i) before their arrival in the EU, ii) when they access the labour market in the EU, iii) when they integrate into EU society, and iv) when they leave the EU labour market for shorter or longer periods (see Figure 4).

³⁴ Lebano, A., Hamed, S., Bradby, H., Gil-Salmerón, A., Durá-Ferrandis, E., Garcés-Ferrer, J., Azzedine, F., Riza, E., Karnaki, P., Zota, D. and Linos, A., 2020. Migrants' and refugees' health status and healthcare in Europe: a scoping literature review. *BMC Public Health*, 20(1), pp.1-22.

³⁵ Findings from the analysis of the EU-MIDIS II. See Annex I – CEPS.

Figure 4 – Issues related to legal labour migration in the EU over the migration cycle



Source: Compiled by the authors.

2.2.1. Key issue 1: Lack of legal pathways

The European Parliament in a recent own initiative report underlines that 'the New Pact on Migration and Asylum does not include any specific proposals on legal labour migration, despite legal labour migration being indispensable for a comprehensive migration and asylum policy'.³⁶ Indeed, despite the fact that the [UN Global Compact on Migration](#) acknowledges the need for strengthening the legal pathways for safe and regular migration, and despite the EU's commitment to reducing irregular migration and enhancing equal opportunities for all workers, according to several scholars and analysts, the existing EU migration policy and legal framework suffers of several limitations in this regard.³⁷ A few years ago, the European Parliament had also come up with a

³⁶ European Parliament, Report on new avenues for legal labour migration ([2020/2010\(INI\)](#)), See also EPRS, The European Commission's New Pact on Migration and Asylum. Horizontal Substitute Impact Assessment, 2021.

³⁷ inter alia, M. Ruhs, 2020, [Expanding Legal Labour Migration Pathways to the EU: Will This Time Be Different?](#), Istituto Affari Internazionali, and ECDPM, [The EU's migration agenda – what about legal migration pathways?](#), 2018.

legislative initiative to open a legal channel for asylum seekers via humanitarian visas.³⁸ The recently conducted evaluation of the EU Trust Fund for Africa notes stakeholders' concerns regarding 'the lack of projects that aim to provide better and more opportunities for legal migration, to address issues related to labour migration, and to make the most of migration for development'(p. 25).³⁹

A recent UNDP report,⁴⁰ studying the trajectories of African migrants who had entered the EU irregularly, argues that there is clear evidence of the lack of legal pathways for these (mostly young) migrants: the **narrowing of legal labour channels** is highlighted by the drop in the number of work permits of long duration delivered to African migrants from 80 000 to 20 000 between 2008 and 2016. The survey conducted by the UNDP shows that irregular migrants very often actually do work in the EU economy, including in otherwise regular businesses, and therefore respond to a demand in the EU labour market, though often in precarious and vulnerable conditions.

As shown in the above-mentioned EPRS report on The Cost of non-Europe on Legal Migration, **entry conditions** are the first challenging step, since there is a high number of obligatory conditions that are difficult to fulfil (the requirement for third-country nationals to apply from outside the EU; the requirement for a work contract or a binding job offer; the requirement for sufficient resources and sickness insurance; requirements for address registration, etc.). Entry barriers are also evident for the Single Permit Directive (2011/98/EU) as applications cannot be made from third countries. Additional restrictions apply in case of **re-entry options**, including the application of a cooling-off period and penalties for longer absences. Moreover, Member States often apply labour market tests (to prove search for nationals before opening to labour migrants) or use labour shortage lists, which are both tools that impose limitations and tend to end up limiting pathways to low- and medium-skilled candidates.⁴¹

Relatedly, **no specific labour migration channel is addressed to medium-skilled** workers, and the only channel designed for **low-skilled workers** is provided by the Seasonal Workers' Directive; that said, this channel is quite rarely used and only applies to a specific modality of employment. The lack of coordinated EU-level rules on attracting low- and medium-skilled TCN workers is also identified in the European Commission's inception impact assessment on the Single Permit Directive.⁴²

A specific situation where the barriers to entry are particularly restrictive is **family reunification**. The right to entry and residence for nuclear family members guaranteed by the Family Reunification Directive only applies to migrants who have prospects of settling and excludes migrants with a temporary status, generating a number of different and possibly discriminatory situations.⁴³

³⁸ [European Parliament resolution of 11 December 2018 with recommendations to the Commission on Humanitarian Visas](#), 2018/2271(INL)) and relaetd Van Ballegooij W and Navarra C., Humanitarian Visas. European Added Value Assessment, EPRS, 2018.

³⁹ Altai Consulting for the European Commission, [Learning Lessons from the EUTF - Phase 2 - Paving the way for future programming on migration, mobility and forced displacement](#), February 2021.

⁴⁰ [Scaling Fences: Voices of Irregular African Migrant to Europe](#), UNDP, 2019.

⁴¹ Ruhs M., Expanding Legal Labour Migration Pathways to the EU: Will This Time Be Different?, Istituto Affari Internazionali, 2020.

⁴² [Inception Impact Assessment - Single permit for third-country nationals to reside and work in the EU](#), European Commission, 2021.

⁴³ W. van Ballegooij and E. Thirion, [The Cost of non-Europe in the Area of Legal Migration](#), EPRS, European Parliament, 2019.

Consequences and impacts

- 1 The lack of legal pathways substantially contributes to **irregular migration** – as acknowledged by the European Parliament⁴⁴ – which in turns creates the demand for smuggling businesses. This is corroborated by research⁴⁵ and, more recently, by the Parliament's Substitute Impact Assessment of the New Pact.⁴⁶ Irregular migration is happening on a much smaller scale than regular migration. Still, its relevance lies in the lives lost in dangerous journeys and in the extreme vulnerability of people during their journey across transit countries, and at their arrival.
- 2 This creates opportunities for **smuggling and human trafficking**. Strict border controls without legal alternative pathways for migration are likely to shift the routes, introducing new steps of the journey and new transit countries, thus increasing the precariousness of the journey and the exposure of migrants to smuggling networks, extortion and violence.⁴⁷
- 3 People entering irregularly are more likely to end up in **exploitative labour conditions**.
- 4 While no specific labour migration channels are designed for medium- and low-skilled workers, some sectors that are key to the future of the EU economy (such as agriculture, manufacturing, construction, health care, and domestic care) are expected to face significant **labour shortages** in the coming years and the EU will be less able to meet **its structural needs**.⁴⁸
- 5 The lack of legal pathways, the high uncertainty and the numerous requirements to be met by TCNs on their entry lead to a **decrease in circular migration**, because of TCNs' low expectations of possibilities for re-entry.⁴⁹
- 6 The lack of legal pathways limits the capacity of the EU to have a holistic approach to migration and limits the dialogue and **cooperation with third countries**.⁵⁰

⁴⁴ Report on new avenues for legal labour migration European Parliament, Report on new avenues for legal labour migration (2020/2010(INI)), 'Enhancing proper legal migration channels would help to reduce irregular migration, undermine the business model of criminal smugglers, reduce trafficking in human beings and labour exploitation, enhance equal opportunities for all workers and offer a legal path for those considering migrating to the Union'.

⁴⁵ Andersson R. (2016). [Europe's failed 'fight' against irregular migration: ethnographic notes on a counterproductive industry](#), Journal of Ethnic and Migration Studies, 42:7, 1055-1075, UNDP, Scaling Fences, 2019. Lack of legal pathways as one of the factors fuelling smuggling of migrants is also acknowledged in Altai, op. cit., p. 19.

⁴⁶ EPRS, The European Commission's New Pact on Migration and Asylum. Horizontal Substitute Impact Assessment, 2021

⁴⁷ Hagen-Zanker, Mallett R., (2016). [Journeys to Europe: the role of policy in migrant decision-making](#), ODI Insights and Cosgrave et al. (2016). Europe's refugees and migrants: Hidden flows, tightened borders and spiralling costs, ODI Report.

⁴⁸ The COVID crisis has shown the relevance of TCN workers in "key sectors" of the economy. See section 2.3.2.

⁴⁹ Czaika, M., & de Haas, H. (2014). [The effect of visa policies on international migration dynamics](#), IMI Working Papers, Oxford.

⁵⁰ inter alia, Carrera, S., & Hernández i Sagrera, R. (2011). Mobility partnerships. 'Insecurity partnerships' for policy coherence and migrant workers' human rights in the EU. In R. Kunz, S. Lavenex, & M. Panizzon (Eds.), *Multilayered migration governance. The promise of partnership* (pp. 97-115). London: Routledge. See also Section 2.3.5.

Table 5 – Key issue 1: Specific issues and impacts

	Direct consequences	Discrimination in the labour market and exploitative situations	Structural needs of the EU economy not met	Lost productivity, innovation and tax revenues	Gaps in protection of fundamental rights	Missed cooperation and solidarity with third countries
Entry barriers	Irregular migration, room for smuggling businesses, EU not attractive destination	X	X	x	x	x
Missing channels for low and medium skilled migrants						
Re-entry barriers	Obstacles to mobility and to circular migration			x		x
Barriers for family members	Obstacles to integration, intersectional vulnerabilities	X			X	

Source: Compiled by the authors.

2.2.2. Key issue 2: Barriers to equal treatment and poor protection of workers' rights

Previous research shows that the EU's legal framework on legal migration currently provides little added value when it comes to enhancing **equal treatment** for migrants; similarly, it does not provide much harmonisation across categories of migrants or across Member States.⁵¹ This is likely to increase the risk of workers' exploitation. A report on the legal situation of TCN workers in the EU⁵² concluded that even the most privileged category of TCNs (long-term residents) does not benefit from the same, particularly extensive equal treatment rule as EU workers.

As identified by the report on The Cost of non-Europe in the Area of Legal Migration, the equal treatment provisions present in the 'first admission' directives are subject to a number of differentiated restrictions or conditions that limit their scope in practice.

Specifically in the case of the Single Permit Directive, the Commission's inception impact assessment⁵³ finds that 'the equal treatment provisions that grant single permit holders a set of rights in a number of areas are incoherent', since the numerous exceptions and the uncertainty in their interpretation undermine 'the objective of granting fair treatment and facilitating the integration of third-country workers'.

⁵¹ W. van Ballegooij and E. Thirion, [The Cost of non-Europe in the Area of Legal Migration](#), EPRS, European Parliament, 2019. None of the relevant stakeholders answered 'yes' to the question whether EU legal migration policies provide a fair common level-playing field across the EU in terms of labour rights.

⁵² Wollenschläger F., A.P. van der Mei, S. Robin-Olivier, H. Verschueren, (2018). [Analytical report on the legal situation of third-country workers in the EU as compared to EU mobile workers](#), European Commission.

⁵³ [Inception Impact Assessment - Single permit for third-country nationals to reside and work in the EU](#), European Commission, 2021.

Overall, across the directives, the restrictions are more specifically in the area of equal treatment with regard to education and training⁵⁴ and in the area of **social security**;⁵⁵ except for the Blue Card Directive, all other instruments allow Member States to restrict equal treatment especially in the case of family benefits. Provisions are also different in respect of the export and portability of benefits. Even when the directives have provisions that are relevant to migrants' social security rights, they are not instruments that **coordinate social security systems**, thus they do not guarantee the existence of social security coordination agreements between the Member States and third countries. The directives do not contain any provisions on aggregation of periods of insurance, employment or residence. As a result, TCNs who, previous to their employment in a Member State, worked in a third country where they accrued such periods, have limited portability of benefits.⁵⁶

Another major related issue is that **the EU anti-discrimination framework does not fully extend to cover the ground of nationality, including nationality of a TCN**. Despite the fact that prohibition of discrimination on the grounds of nationality is mentioned in Article 21(2) of the Charter of Fundamental Rights of the European Union,⁵⁷ nationality is not among the grounds prohibited by the anti-discrimination directives derived from Article 19 TFEU.⁵⁸ According to a 2017 Fundamental Rights Agency study,⁵⁹ this may represent an obstacle before the enjoyment of equality and fundamental rights. There are moreover general equal treatment rules in some EU association agreements, such as the EEA agreement or the Free Movement of Persons Treaty with Switzerland, or the association agreement with Turkey, which prohibit discrimination based on nationality. The lack of a general provision non-discrimination rule covering the nationality of TCNs therefore contributes to the fragmented framework in this area.⁶⁰

Previous studies have highlighted that the EU anti-discrimination framework leaves little space for addressing multiple and **intersectional forms of discrimination**. This is particularly relevant for migrants, where several forms of discrimination can take place at the same time, especially along the gender dimension together with the one of nationality, both in the labour market (especially

⁵⁴ Especially the Intra-Corporate Transfer Directive, the Seasonal Workers Directive, and the Single Permit Directive. See W. van Ballegooij and E. Thirion, [The Cost of non-Europe in the Area of Legal Migration](#), EPRS, European Parliament, 2019.

⁵⁵ See also Melin P., *The External Dimension of EU Social Security Coordination: Towards a Common EU Approach*, Studies in EU External Relations, Volume: 15, Brill, 2019.

⁵⁶ Please refer to Annex 1 – CEPS.

⁵⁷ On the impact of Article 21(2), please see: Bribosia, E., I. Rorive & J. Hilaire (2020), 'Article 21. Non-discrimination', in Fabrice Picod and alia, *Charte des droits fondamentaux de l'Union européenne*, Commentaire Article par Article (2nd ed., Bruylant, 2020) para 10, 581.

⁵⁸ Directive 2000/43 (EC) implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (2000) OJ L 180/22 and Directive 2000/78 establishing a general framework for equal treatment in employment and occupation (2000) OJ L 303/16.

⁵⁹ [Together in the EU: Promoting the participation of migrants and their descendants](#), Fundamental Rights Agency, 2017.

⁶⁰ Eisele K., *The External Dimension of the EU's Migration Policy Different Legal Positions of Third-Country Nationals in the EU: A Comparative Perspective*, Brill 2014.

regarding precarious employment⁶¹) and with respect to the vulnerability to violence.⁶² Moreover, unfavourable labour conditions and the risk of exploitative situations have an intersectional dimension, and failure to recognise it may lead to failure to identify exploitative situations, for example, in some sectors such as the **domestic care sector**, where the presence of migrant women workers is very relevant (See Box in Section 2.3.2). Only eight EU Member States have ratified the [ILO Convention 189 on domestic workers](#). Moreover, **enforcement** of equal treatment and non-discrimination principles is limited, since access to justice is often problematic for TCNs, especially in the field of employment. This, of course, occurs primarily when migrants are undocumented,

but can also happen when they are regularly residing and working, as claims in courts or other institutions threaten their relationship with their employer, on which residence permits often depend. Enforcement of rights may be also limited by other factors, e.g. freedom of association in the case of unions and professional orders can be limited by the lack of recognition of TCNs' qualifications and lack of TCNs' access to certain jobs.⁶³ Protection of workers' rights and equal treatment in employment require particular attention, since, as acknowledged by the European Parliament,⁶⁴ 'migrant workers continue to experience **unequal treatment and labour exploitation**'.

A number of gaps in the EU legal framework can exacerbate the problem. Work authorisations for TCNs may have several limitations and especially a **change in employer** is not always allowed; it is fully recognized only in the case of long-term residents, but has several limitations in the other cases. The risk of withdrawal of the permit in case of **unemployment** is another element that creates this

FRA report on the Employers Sanction Directive

The Fundamental Rights Agency recently published a [report](#) assessing the effectiveness of the [Employers Sanction Directive](#). The directive is primarily devoted to dissuading employers from recruiting migrants in an irregular situation, but it also contains provisions facilitating access to justice for exploited workers and establishes workers' rights to claim back payment of outstanding wages. It furthermore includes provisions on effectiveness of labour inspections. The directive envisages the possibility of granting such victims temporary residence permits.

Main gaps identified:

- in some Member States, migrants in an irregular situation are not using existing complaint systems because of fear of being detected; moreover, they have limited information on their rights;
- in four Member States, third parties (e.g. trade unions) cannot file complaints on behalf of the worker; trade unions and other civil society organizations play a crucial role in supporting migrant workers;
- only in a few cases, financial compensations (including back pay) have been granted under the criminal procedure;
- gaps in enforcement of payment of back pay (employers often disappear or declare bankruptcy).
- labour inspections: are a crucial tool but suffer of limited strength: in some cases their staff do not inform workers of their rights, in others they have the obligation to report irregular workers to the authorities and this discourages workers from coming forward;
- more than half of the Member States issue temporary residence permits to workers – victims of exploitation, while the others do so only in case of trafficking, which has more restrictive conditions.

Overall, there is still a great extent of heterogeneity across Member States in terms of the protection of victims of irregular employment and exploitative conditions; this limits the enforcement of anti-exploitation rules.

⁶¹ S. Buckingham and alii, (2020), '[Precarious work from a gender and intersectionality perspective, and ways to combat it](#)', November 2020, Study commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the FEMM Committee.

⁶² M. Fernandes, N. Lomba, C. Navarra with M Garcia Munoz, [Gender-based violence as a new area of crime listed in Article 83\(1\) TFEU](#), European Added Value Assessment, EPRS, 2021.

⁶³ See Annex I – CEPS.

⁶⁴ European Parliament, Report on [new avenues for legal labour migration](#) (2020/2010(INI)), 2021.

vulnerability. Only the Blue Card Directive explicitly provides for the possibility of finding alternative work in case of unemployment. The Inception impact assessment of the Commission on the Single Permit Directive⁶⁵ indeed finds that it provides insufficient protection against exploitation of third-country workers, since Member States are allowed to link the single permit with one specific employer, which can make the permit holder too dependent on that employer. The directive has no provisions on sanctions or inspections for compliance with equal treatment provisions.

Moreover, there are limitations on what concerns **enforcement, sanctions and inspections** to verify that equal treatment at work is respected. The lack of monitoring compliance with the equal treatment provisions is identified as a problem in the case of the Single Permit Directive.⁶⁶ Combatting fake subcontracting, fake self-employment, and undeclared work lies within the remit of the European Labour Authority. The agency's role in coordinating the actions of Member states and providing support to concerted and joint inspections on posting and undeclared work also covers TCNs, but its mandate does not include protection of TCNs' social rights per se.

An even greater risk of exploitation is encountered by **irregular migrants** because of their irregular status that makes them more vulnerable, giving them less bargaining power vis-à-vis exploitative employers. The Employers' Sanctions Directive should address precisely these treatment of irregular migrants by employers, by criminalizing exploitative situations of migrants with an irregular status. A 2021 FRA study analyses the limitations and especially the gaps in its enforcement. For example, some Member States do not allow third parties to defend migrants if they file a complaint. Several Member States do not actually issue work permits to migrants who file a complaint against an exploitative employer. The results of these and other gaps in the implementation is a limited effectiveness in its goal of facilitating access to justice for exploited migrant workers (see Box on FRA report on Employers Sanction Directive above).

The situation of **posted workers** poses further risks of exploitation in the EU.⁶⁷ About 10 % of posted workers in the EU are TCNs and their situation is particularly vulnerable not only because of their legal status and unstable place of work but also because their actual employer is not the user company where work is performed, but a temporary work agency.⁶⁸ Abuses related to posting are indeed often linked to subcontracting and chains of contracts, resulting in dilution of liability. Complicated and opaque structures of subcontracting or outsourcing can lead to more serious forms of exploitations.

Consequences and impacts⁶⁹

- 1 risk of **dependency on employer** and loss of rights and protection in case of loss of employment;⁷⁰
- 2 barriers to equal treatment in employment contribute to lower labour market outcomes of TCNs; these are for example an **unemployment gap and a wage gap, but also** the higher probability for a TCN of being employed at a skill level lower than his/her education;
- 3 vulnerability of workers to **exploitation**, especially for irregular or undocumented migrants;

⁶⁵ [Inception Impact Assessment - Single permit for third-country nationals to reside and work in the EU](#), European Commission, 2021.

⁶⁶ *ibid.*

⁶⁷ See Annex 1 – CEPS and Van Ballegoij and Thirion, *op. cit.*

⁶⁸ Please see Annex I – CEPS.

⁶⁹ For greater detail, see more specifically impact 1.

⁷⁰ See Annex 1 – CEPS.

- 4 exploitative situations represent also **violations of fundamental rights**;
- 5 **lack of monitoring and risk of impunity for employers who exploit** workers, also exploiting subcontracting and chains of contracts, dilution of liability
- 6 the prevalence of precarious forms of employment among TCNs creates income uncertainty, **barriers to integration, and reduced mobility/circular migration**;
- 7 this reduces the possible positive impacts of migration on development of the countries of origin;
- 8 for the EU economy, this limits the efforts to control the **shadow economy**, which escapes taxes and moreover leads to under-productive and less innovative businesses;

Table 6 – Key issue 2: Specific issues and impacts

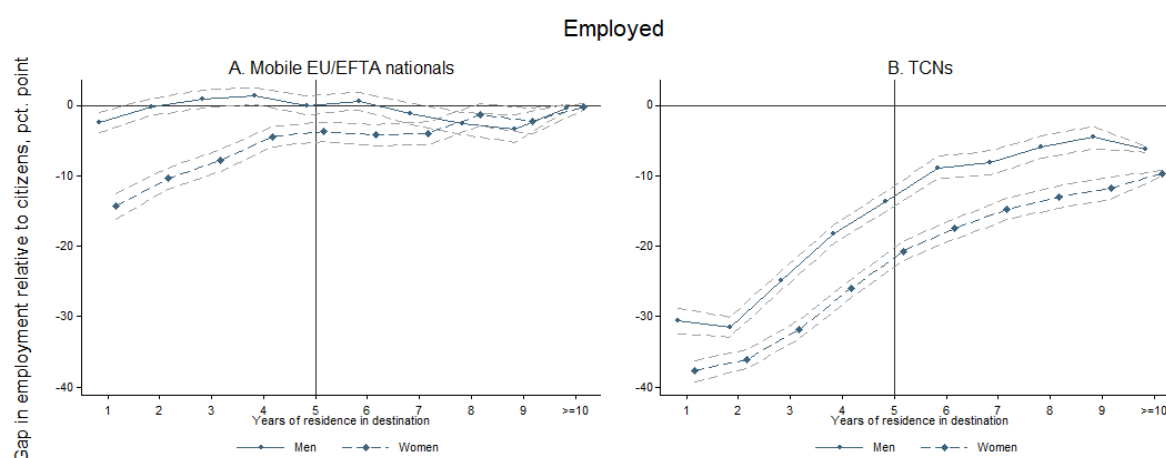
	Direct consequences	Discrimination in the labour market and exploitative situations	Structural needs of the EU economy not met	Lost productivity, innovation and tax revenues	Gaps in protection of fundamental rights	Missed cooperation and solidarity with third countries
Limitations in transposition and enforcement	Disparities of equal treatment across MS	X			X	
Problems in case of change of employer and of unemployment	Dependency on employer, loss of rights with unemployment	X		X	X	
Poor enforcement of employment and social standards	Vulnerability of workers to exploitation	X		x	X	x
Issues with posting of workers	Subcontracting and dilution of liability	X			X	
Higher risks of losing social benefits	Income uncertainty, barriers to integration, reduced mobility and circular migration	X			X	X

Source: Compiled by the authors.

2.2.3. Key issue 3: Lack of pathways for integration and social mobility

The current EU legal migration framework has a number of limitations on what concerns the possibility for TCNs' socio-economic integration and social mobility during their stay in the EU. These limitations are evident, for example, in the difference in TCNs' employment rate compared to both country nationals and EU mobile workers (Figure 5 below). This decreases over time, but male TCNs need nine years to reach the same employment levels as natives, and female TCNs do not reach the same level even after 10 years. The picture is very different for mobile EU workers, who face fewer integration and labour market barriers.

Figure 5 – Differences in employment rate between EU migrants, TCNs and country nationals by years of residence



Source: Annex 1 – CEPS based on Eurostat LFS (2010-2019 waves). Note: The sample includes individuals residing in the EU-27 between 20 and 64 years old. Mobile EU/EFTA nationals – migrants who are citizens of other EU Member States or EFTA. Baseline level – natives. Gap is conditional on age, marital status, education, field of studies, year and country of residence fixed effects.

Moreover, data show⁷¹ that about 30 percent of TCNs decide to become self-employed out of necessity (i.e. lack of other employment opportunities). This could also signal the presence of higher barriers for this group in the EU labour market.

Among integration and social mobility barriers, the focus here is on:

- limitations to intra-EU mobility;
- gaps in recognition of qualifications;
- uncertainties in the access to secure residence status;
- access to employment for non-labour migrants.

All these issues, although very different, have a negative impact on integration and social mobility and risk 'locking' migrants in vulnerable positions in the host society, limiting at the same time the potential of productivity and economic growth of their human capital.

The European Commission acknowledges the limited **intra-EU mobility** possibilities provided by the current EU legal framework, and the New Pact includes provisions on expanding these possibilities in the Blue Card and LTR Directives.⁷² As will be discussed further on, intra-EU mobility is especially limited for some categories of migrants who may strongly benefit from it, such as students and refugees. The CONE on Legal Migration⁷³ underlines the different provisions in the relevant directives that contribute to the fragmentation of the framework also in this respect. TCN workers appear to represent a non-negligible share of posted workers within the EU – a circumstance that increases their intra-EU mobility – but are in a position of vulnerability and limited transparency as regards their working conditions (see Section 2.2.2 and Annex 1 -CEPS).

⁷¹ See Annex 1 – CEPS.

⁷² See Annex 1 – CEPS.

⁷³ W. van Ballegooij and E. Thirion, [The Cost of non-Europe in the Area of Legal Migration](#), EPRS, European Parliament, 2019.

According to the CONE on Legal Migration,⁷⁴ despite the EU instruments in the field **of recognition of qualifications**, the recognition system continues to differ depending on which country is in charge. Indeed, EU legislation ensuring recognition of professional qualifications obtained in a Member State (or in a third country, under conditions), for the purpose of working in another Member State, only applies to the Member States' nationals.⁷⁵ TCNs face barriers both in having their qualifications recognised upon entry in the EU and when moving between Member States. Only migrants covered by the directives are eligible to (with limitations) the intra-EU recognition of qualifications, but only for those acquired in the EU. Last, but not least, the process of recognition of qualifications can be costly.⁷⁶ The lack of recognition of qualification occurs at different skill levels and is stronger when migrants work in regulated professions.

Access to **secure residency status** is a major factor determining the security of livelihood and labour market outcomes (see Section 2.3.3). Yet, a wide gap in access to secure residency status exists across different categories of migrants, especially because of the exclusion from the scope of the Long-Term Residence Directive of people with a 'temporary status'. Several uncertainties exist in the process of obtaining such status; for example, the requirement of having resided legally and continuously excludes a number of categories (au pairs, seasonal workers and posted workers), still neglecting the fact that people who have been allowed to reside temporarily in a Member State with such permits, may have in fact, accumulated long periods of residence within the EU. Furthermore, as shown in the Annex study, there are differences in the implementation of the EU Long-Term Residents Directive (2003/109/EC) across Member States, and most Member States rely on their national schemes for long-term residents.⁷⁷

Many skilled migrants who are legally residing in the EU meet obstacles in accessing employment or changing employers. Students continue to face important difficulties to remain in the EU for work purposes after graduation. Asylum seekers' access to employment is delayed, and TCN workers' families face many obstacles in entering the labour market. Many skilled workers who legally reside in the EU are therefore stuck in a legal status tailored for other purposes than work and there is a need for bridges between this status and the status of worker. Entering the EU for reasons different from employment lowers significantly the probability of being employed and this is true for asylum seekers, family members and students.⁷⁸

In their replies to the Labour Force Survey, TCNs report facing several barriers when searching for a job (Figure 6). Asylum seekers are most confronted by language barriers, lack of recognition of qualifications and legal restrictions to employment. These problems are less reported by family members, but still they display a significantly lower employment rate than labour migrants. While this can be partly because their motive and their choices were not work-driven, legal and informal barriers are likely to play a role since this employment gap is stronger for TCN family migrants than for intra-EU family migrants: the former are less likely to be employed and are more likely to be employed in worse conditions than EU mobile family members.⁷⁹

⁷⁴ *ibid.*

⁷⁵ Article 2(1) of the EU Directive on Professional Qualifications (Directive 2005/36).

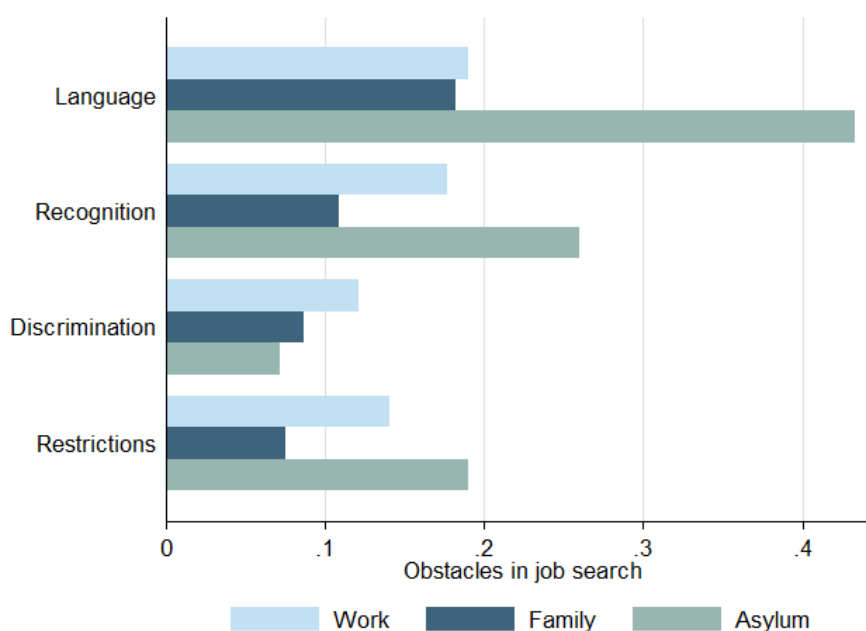
⁷⁶ For example, in Germany, the applications for recognition are subject to an administrative fee ranging up to 600 euros (Brucker et al, *op. cit.*, 2021).

⁷⁷ See Annex 1 – CEPS.

⁷⁸ See Annex 1 – CEPS, quantitative annex T7.

⁷⁹ See Annex 1- CEPS, quantitative annex T8.

Figure 6 – Obstacles in finding a suitable job or a job at all for TCNs, by reason of migration



Source: Annex 1. Note: The sample includes unemployed or overqualified TCNs between 20 and 67 years old. Data from EU LFS (2014).

As regards **access to employment for family members**, despite the fact that the Family Reunification Directive recognizes the sponsor's family right to access employment, Member States retain the power to condition and limit this access. The main sectorial directives dealing with economic migration do not grant family members a right to access employment.

Asylum seekers, who are (often) skilled workers, face important legal and practical obstacles, which prevent them from accessing the Member States' labour markets. The Reception Conditions Directive⁸⁰ excludes many asylum seekers from the labour market with little justification, because it allows Member States to delay access to work and to decide that 'for reasons of labour market policies' they may give priority to Union citizens and to legally resident third-country nationals'.⁸¹ Moreover, asylum seekers and refugees face greater difficulties in accessing the labour market because departure from their home country has interrupted their training, and because during their long journey to the EU they have lost contact with professional networks.⁸² This would require improved training, re-training and language courses to facilitate labour market integration. Both asylum seekers and refugees also face higher uncertainty in the labour market due to the duration of asylum procedures and temporary residence permits.

While issuance of permits for **students** has been steadily growing in the EU since 2010, TCNs who receive training and then graduate from education programmes in the EU face barriers in the transition to employment. Some of these barriers are produced by the EU legal framework and especially the Students' Directive, which grants Member States the right to constrain market access

⁸⁰ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), OJ L 180, 29.6.2013, pp. 96–116.

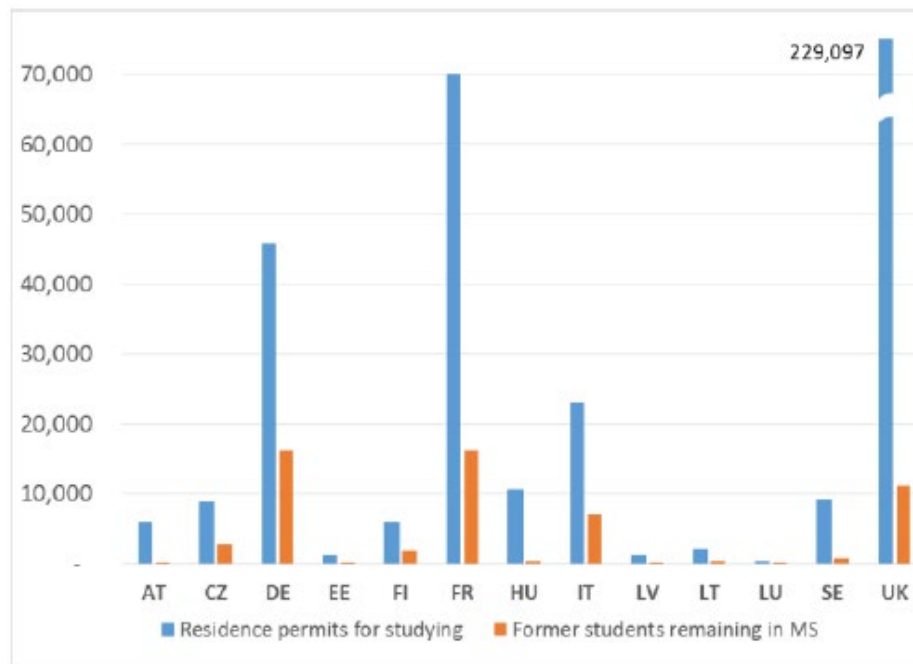
⁸¹ See Annex I – CEPS.

⁸² On interrupted trajectories and difficulties transferring human capital, Desiderio M.V. (2016).

for foreign students graduating in the EU, and sets too short a time frame over which they can seek employment after graduation.⁸³

As a result, the percentage of graduates choosing to stay in the EU after the end of their studies remains relatively low, as shown by Figure 7 below.⁸⁴

Figure 7 – Number of residence permits granted to third-country nationals for studying purposes compared to the number of former third-country national students remaining in the Member State in 2015



Source: EMN, (NB : after a change from status from education to another reason of stay).

Consequences and impacts⁸⁵

- 1 the main consequence of a non-harmonized system of recognition of qualification is the extra **overqualification** that migrants face, and this is systematically stronger for TCNs than for mobile EU workers; this impacts labour market outcomes (employment, wages) of TCNs;⁸⁶
- 2 uncertainty in the access to long term **residence** status limits the labour market outcomes of TCNs (see Figure 11 in Section 2.3.3);
- 3 the same uncertainties regarding residency status, coupled with other limiting provisions **limit intra-EU mobility**; as acknowledged by the EP⁸⁷ 'the intra-EU

⁸³ Article 25 states that after the completion of studies, students shall have the possibility to stay on the territory of the Member State that issued an authorization for a period 'of at least nine months' in order to seek employment or set up a business. Member States may also decide to set a minimum level of degree that students shall have obtained in order to benefit from the application of that Article, and are allowed to require TCNs to prove that they have a genuine chance of being hired or of launching a business (see CEPS- Annex 1).

⁸⁴ [Retaining third-country national students in the European Union : EMN Inform](#). European Migration Network, 2017.

⁸⁵ See in particular impacts 1, 2, 3.

⁸⁶ Brücker, H., Gltz, A., Lerche, A. and Romiti, A., Occupational recognition and immigrant labor market outcomes. *Journal of Labor Economics*, 39(2), 2021, pp.497-52 and Annex 1 – CEPS.

⁸⁷ European Parliament, Report on [new avenues for legal labour migration](#) (2020/2010(INI)), 2021.

mobility of TCNs is a key component of the EU's legal migration policy, as it provides clear added value that cannot be achieved at Member-State level; recalls that the free movement of workers helps to match demand with supply in the EU's labour'; therefore, missed opportunities for intra-EU mobility can give rise to economic losses;

- 4 the current framework produces **limitations to circular migration**, since only LTR and Blue Card provides a right to circular migration, which is limited for other categories of migrants. Moreover, an obstacle to circular migration appear to be the difficulty migrants encounter in making a living coupled with their poor labour market outcomes: according to the UNDP,⁸⁸ having a job, earning and being able to send remittances 'appears to yield higher confidence and readiness to state a willingness to return home'.⁸⁹ Conversely, according to the same study, the more migrants struggle in their life in the EU, the more difficult is their prospect of returning to their country of origin;
- 5 family members, asylum seekers and refugees face particularly unfavourable labour market outcomes and risk of exploitation;
- 6 this also represents a missed opportunity for social integration;
- 7 specifically on what concerns family migrants, missed integration in the labour market risks creating gender inequalities and building up **intersectional vulnerabilities**. Children and women-spouses become dependent on their sponsor's status, which hinders the integration process and makes migrant women more vulnerable.

Table 7 – Key issue 3: Specific issues and impacts

	Direct consequences	Discrimination in the labour market and exploitative situations	Structural needs of the EU economy not met	Lost productivity, innovation and tax revenues	Gaps in protection of fundamental rights	Missed cooperation and solidarity with third countries
Obstacles to qualification recognition	Overqualification and TCN disadvantage on the labour market	X	X	X		X
Obstacles to integration in the labour market for non-labour migrants	Irregular employment, barriers to integration	X	X	x	X	
Uncertainties and barriers in obtaining residence	Obstacles to integration and to intra-EU mobility	X		x	X	

Source: Compiled by the authors.

⁸⁸ UNDP, op. cit.

⁸⁹ [Scaling Fences: Voices of Irregular African Migrant to Europe](#), UNDP, 2019, page 6.

2.2.4. Key issue 4: Fragmented EU framework on legal migration

A key issue affecting the current framework is its **fragmentation**⁹⁰. The rights granted under the different directives are heterogeneous and, moreover, they exclude from their scope of application an important number of TCNs currently (or potentially) resident in the EU. These are subject to 27 different systems and labour market institutions. A major issue underlined in the literature is the lack of harmonization of the EU migration acquis for all categories of TCN workers. This fragmentation imposes several specific barriers to entry for labour migrants in the EU, as **entry conditions** depend more on the legal status of migrants (whether they fall in the categories covered by the directives) rather than on their skills and qualifications.

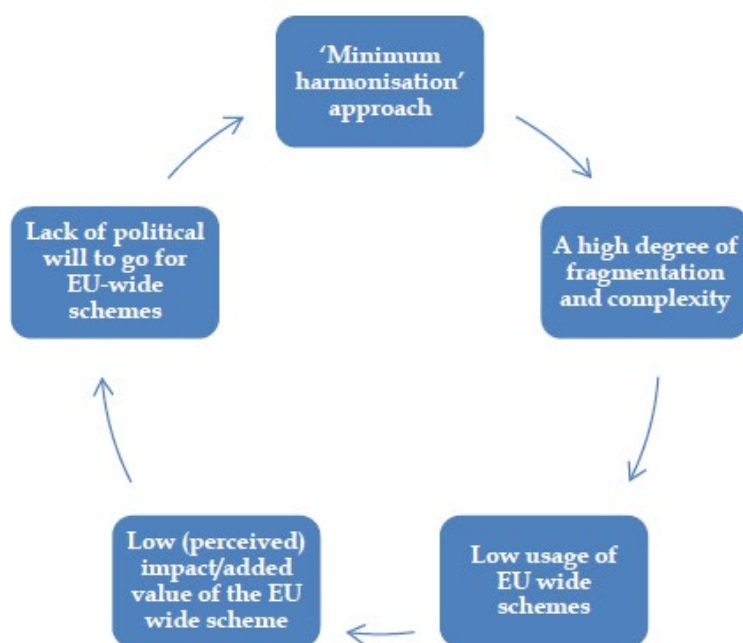
Furthermore, Member States keep the right of establishing a number of admissions and have the right to impose a labour market test requirement. Furthermore, the fragmented approach together with the limited take-up by Member States of EU tools, such as the Blue Card, create a cumbersome and unclear set of rules.

The Cost of non-Europe on Legal Migration defines this fragmentation as both the cause and the consequence of a 'minimum harmonization' loop (see Figure 8), where low harmonization at the EU level appears as a self-reinforcing mechanism leading to low usage of EU tools and more fragmentation.

The EU migration acquis only applies to the categories covered by the directives, which are restricted, skewed towards the high skilled professions, and anyway poorly taken up by the Member States.⁹¹

The Commission's Fitness Check⁹² identified several areas where addressing fragmentation would increase the EU added value in the area of Legal Migration, including:

Figure 8 – Minimum harmonisation loop in EU migration policy



Source: van Ballegooij W. and Thirion E., [The Cost of non-Europe in the Area of Legal Migration](#), EPRS, 2019.

⁹⁰ van Ballegooij W. and Thirion E., [The Cost of non-Europe in the Area of Legal Migration](#), EPRS, 2019

⁹¹ *ibid.*

⁹² European Commission, 2019. Commission Staff Working Document. Executive Summary of the Fitness Check on EU Legislation on Legal Migration. SWD (2019) 1055 final.

- the harmonisation of conditions, procedures and rights, helping to create a level playing field across the EU;
- simplified administrative procedures;
- improved legal certainty and predictability for third-country nationals, employers and administrations;
- improved recognition of the rights of third-country nationals.

The Fitness Check found that several major categories of third-country nationals are **not covered by the EU legislative framework**, for example, non-seasonal low- and medium-skilled workers and self-employed /entrepreneurs. While some categories are covered by national schemes, the lack of a consistent approach across the EU has led to a fragmented system.

This fragmentation creates gaps in the very core of EU values, such as **equal treatment**. For example, only the LTR Directive has an extensive provision for equal treatment, while the other migration directives do not contain such extensive rules.⁹³ The equal treatment provision of Article 14 of the Blue Card Directive, for instance, has a more limited scope, and it allows restrictions regarding study and maintenance grants and loans, procedures for obtaining housing, access to university and post-secondary education. Equal treatment can moreover be subjected to residence on the territory.⁹⁴ The equal treatment provision of [Directive 2014/36](#) concerning seasonal workers does not cover housing or study and maintenance grants and loans, and restrictions can apply for the benefit of rights or advantages in the field education and vocational.

As stated in a study,⁹⁵ 'this fragmentation risks infringing the equality principle both across the measures themselves and in the context of their individual implementation'. This study underlines that, for example, the ILO Convention on Migrant Workers⁹⁶ implies a more transversal and overarching approach, this indicating a gap between the EU framework and the international standards.

This situation has also increased the **administrative burden and the complexity** of the procedures TCN workers and employers have to follow.

Consequences and impacts

- 1 **risk of unequal treatment** across migrant categories and Member States;
- 2 **limited channels** for medium and low skilled migrants;
- 3 **the EU is not an attractive destination**: comparing the EU with the US (and Canada), less attractive labour market for high-skilled TCNs mainly because:⁹⁷
 - the EU is not perceived as a single labour market;
 - there is too much red tape and uncertainty;
 - SMEs and firms in smaller countries are not visible to potential TCN workers.

⁹³ See Annex I – CEPS.

⁹⁴ Art 14(2) of Directive 2009/50/EC.

⁹⁵ Cholewinski R. Eu Legal Migration Policies Since Tampere, And Their Relationship With International Standards And The Un Global Compact For Migration in Carrera S. Curtin D, Geddes A, 20 Year Anniversary Of The Tampere Programme: Europeanisation Dynamics of the EU Area of Freedom, Security and Justice, EUI, 2020.

⁹⁶ Ratified by five EU Member States.

⁹⁷ Building an EU Talent Pool. A New Approach to Migration Management for Europe, OECD, 2019.

Table 8 – Key issue 4: Specific issues and impacts

	Direct consequences	Discrimination in the labour market and exploitative situations	Structural needs of the EU economy not met	Lost productivity, innovation and tax revenues	Gaps in protection of fundamental rights	Missed cooperation and solidarity with third countries
Non-harmonization of the <i>acquis</i> for all categories of workers	EU not attractive destination, different rights according to the channel, obstacles to intra EU mobility	x	x	x		
Little take-up by MS of EU tools, fragmentation of labour markets						

Source: Compiled by the authors.

2.2.5. Key issue 5: Lack of a holistic approach

The European Parliament has recently called for a 'comprehensive Union framework for legal migration as part of a holistic approach to migration'. Nevertheless, several scholars and international organizations argue⁹⁸ that the last decade has been characterized by an **excessive focus on deterrence** of migration to the EU. Scholars⁹⁹ and analysts¹⁰⁰ argues that an 'emergency' approach impedes a proper management of migration and call for a need of a 'normalization' of the way migration is addressed in EU policies.

This '**emergency approach**' appears to be fuelled by some beliefs that are questioned by several scholars. Two are especially relevant. First, the idea that opening legal channels for migration would have 'opened the floodgates', as the effective title of a research on the topic reads.¹⁰¹ Research using EU enlargement as a case study shows that liberalisation of movements boosted circulation rather than led to a structural increase in intra-EU migration. While removing barriers can lead to increases in migration, according to these scholars, these tend to be temporary, after which **migration** becomes more **circular** and tends to consolidate at lower levels.¹⁰²

⁹⁸ Andersson R. (2016) [Europe's failed 'fight' against irregular migration: ethnographic notes on a counterproductive industry](#), Journal of Ethnic and Migration Studies, 42:7, 1055-1075, [Scaling Fences: Voices of Irregular African Migrant to Europe](#), UNDP, 2019.

⁹⁹ Andersson R. (2016) [Europe's failed 'fight' against irregular migration: ethnographic notes on a counterproductive industry](#), Journal of Ethnic and Migration Studies, 42:7, 1055-1075.

¹⁰⁰ The call for a "mid-term strategy" instead of an "emergency approach" is also made in on Altai Consulting for the European Commission, Learning Lessons from the EUTF - Phase 2 - Paving the way for future programming on migration, mobility and forced displacement, February 2021.

¹⁰¹ de Haas, H., Vezzoli, S., & Villares-Varela, M. (2019). Opening the floodgates?: European migration under restrictive and liberal border regimes 1950-2010., Working Papers, International Migration Institute.

¹⁰² de Haas et al, op. cit.

Second, at least on what concerns migration from Africa, this 'emergency approach' has been driven by the perception that African migration towards the EU is an 'exploding' phenomenon. **Scholars have contested this perception** especially putting forward the following observations: first of all, the total share of migrants as a share of the overall African population has remained stable over the past generation; second, most of Africa's international migration is within the continent and especially within its sub-regions; third, the proportion of African migrants in relation to the global migrant stock is quite low (15 %, according to UNDESA data).¹⁰³

The New Pact announces itself as representing a change with respect to this narrow view, but, as underlined by the European Parliament in its Report on new avenues for legal labour migration,¹⁰⁴ 'it does not include any specific proposals on legal labour migration, despite legal labour migration being indispensable for a comprehensive migration and asylum policy'. Interestingly, the New Pact starts from the principle that migration is normal and that people are constantly on the move and, as regards labour migration, it acknowledges that the EU's migration policy needs to reflect the integration of the EU economy and the interdependence of Member States' labour markets. However, **labour migration appears as secondary in the New Pact**, as also highlighted in the recent Substitute Impact Assessment, which identifies a 'lack of promotion of safe pathways for migration'.¹⁰⁵ Scholars¹⁰⁶ have moreover criticized the proposal to create a conditionality between cooperation on readmission with third countries and the issuance of visas to their nationals. It seems that¹⁰⁷ the New Pact's provisions on labour migration are modelled after the objectives the EU pursues in the field of other policies (asylum and returns). The risk here is to fail to recognize that legal migration channels are the first element of a logic that aims to curb irregular migration and to lower exploitation.

This narrow view reflects on how the **administrative procedures** affect the enforcement of rights. Administration dealing with migration can play a crucial role and gaps at this level may reflect on everyday operations and in particular risk leading to over-bureaucratic procedures, hostility towards migrants during the process and lengthy processes for applications.

Several scholars argue that often policy processes at both EU and Member State level do not take sufficiently into account the need for a broader approach that includes employment and not only home affairs considerations.¹⁰⁸ This is also highlighted in the Cost of non-Europe in the Area of Legal Migration, which underlines that a **'prevention and policing' approach often prevails over an approach focusing on fair and non-discriminatory working conditions**. The former is usually represented by home affairs institutions, while ministries of labour and social affairs may have another approach, more focused on fair and non-discriminatory working conditions. However, the

¹⁰³ Bjarnesen, J. (2020). Shifting the narrative on African migration: the numbers, the root causes, the alternatives—get them right!. Nordiska Afrikainstitutet.

¹⁰⁴ European Parliament, Report on new avenues for legal labour migration ([2020/2010\(INI\)](#)), 'Enhancing proper legal migration channels would help to reduce irregular migration, undermine the business model of criminal smugglers, reduce trafficking in human beings and labour exploitation, enhance equal opportunities for all workers and offer a legal path for those considering migrating to the Union'.

¹⁰⁵ EPRS, The European Commission's New Pact on Migration and Asylum. Horizontal Substitute Impact Assessment, 2021.

¹⁰⁶ Cassarino J-P., [The New Pact on Migration and Asylum: Turning European Union Territory into a non-Territory](#), EU Law Analysis, November 2020.

¹⁰⁷ See Annex 1 – CEPS, P. Garcia Andrade, (2020), [EU cooperation on migration with partner countries within the New Pact: new instruments for a new paradigm?](#), and Cassarino J-P., op. cit.

¹⁰⁸ See Annex 1 – CEPS and Andersson R. (2016) [Europe's failed 'fight' against irregular migration: ethnographic notes on a counterproductive industry](#), Journal of Ethnic and Migration Studies, 42:7, 1055-1075.

study shows that sometimes ministries of the interior have been more open to EU proposals than ministries of social affairs and labour.

Consequences and impacts¹⁰⁹

- 1 The investment in deterrence has had important **financial costs**¹¹⁰ and has largely financed the security industry.¹¹¹
- 2 **Negative narrative on migration:** a relevant amount of literature finds positive impacts of migrations on both countries of origins and destination: harnessing the benefits of the biggest financial flow (remittances), circulation of ideas, innovation, etc. The EUTF evaluation highlighted views of stakeholders who considered that 'too much focus had been placed on the "negative" aspects of migration',¹¹²
- 3 A focus on border management and returns has shaped **the external dimension** of EU migration policies, with risks in some cases of fundamental rights violations, bottlenecks in international relations and redirection of aid funds to migration management.

Table 9 – Key issue 5: Specific issues and impacts

	Direct consequences	Discrimination in the labour market and exploitative situations	Structural needs of the EU economy not met	Lost productivity, innovation and tax revenues	Gaps in protection of fundamental rights	Missed cooperation and solidarity with third countries
Focus on border control, little attention to legal migration	Dominance of a negative narrative on migration, costs of border industry			X	X	x
Administrative inefficiencies	long and over-bureaucratic procedures, EU not attractive destination	X	x	x	x	

Source: Compiled by the authors.

¹⁰⁹ See in particular impacts 4 and 5.

¹¹⁰ Cosgrave et al. (2016), [Europe's refugees and migrants: Hidden flows, tightened borders and spiralling costs](#), ODI Report.

¹¹¹ Andersson, R. (2014). *Illegality, Inc.: Clandestine migration and the business of bordering Europe*. Univ of California Press.

¹¹² Altai Consulting for the European Commission, [Learning Lessons from the EUTF - Phase 2 - Paving the way for future programming on migration, mobility and forced displacement](#), February 2021.

2.3. The impacts

2.3.1. Impact 1: Discrimination in the labour market and exploitative situations

As shown in Section 2.1, there is evidence that third-country nationals (TCNs) have poorer labour market outcomes compared to both natives and mobile EU workers. As shown in Annex 1¹¹³ TCN have lower probability to be employed than both natives and mobile EU workers, but even bigger differences are found in indicators of 'quality' of employment: lower probability of having a permanent job and a supervisory position, higher probability of working part-time and atypical hours. The probability of working from home is also reduced. Part of these results depend on the selection of immigrants into certain industries and occupations with worse labour conditions, but most results remain the same when we only compare natives and immigrants in the same industry and occupation, suggesting some form of **discrimination or reduced bargaining power** of migrant workers. Figure 9 below compares TCNs with 'native' workers (dark blue bars) and mobile EU nationals with 'natives' (light blue bars) of the same age, marital status, education, field of study and country of residence and shows the worse labour conditions of TCN workers.

TCN workers have moreover a greater probability of being overqualified: In 2019, about 48 percent of highly educated TCNs had low- or medium-skilled jobs; for natives this share constituted about 20 percent. It is noteworthy that in 2019 most high-skilled TCNs worked were working as cleaners and helpers. TCNs are about 20 % more likely to experience overqualification as compared to comparable mobile EU workers, which suggests that **limitations in qualification recognition play a major role**.¹¹⁴ The fact that it is difficult for TCNs to get their qualifications recognised is mentioned as the second most important reason why they have difficulty getting a job and why their wages are much lower. A recent study¹¹⁵ shows that three years after obtaining recognition, immigrants in Germany earn almost 20 percent higher wages and are 25 percentage points more likely to be in employment compared to similar immigrants that did not obtain recognition. Medium-skilled TCN men who report overqualification are 6.5 percentage points more likely to earn wages in the lowest decile (for women the effect is even stronger, 13.8).¹¹⁶ Moreover, **limited harmonization of rules for the recognition of qualifications at the EU level** harms intra-EU mobility of TCN workers.

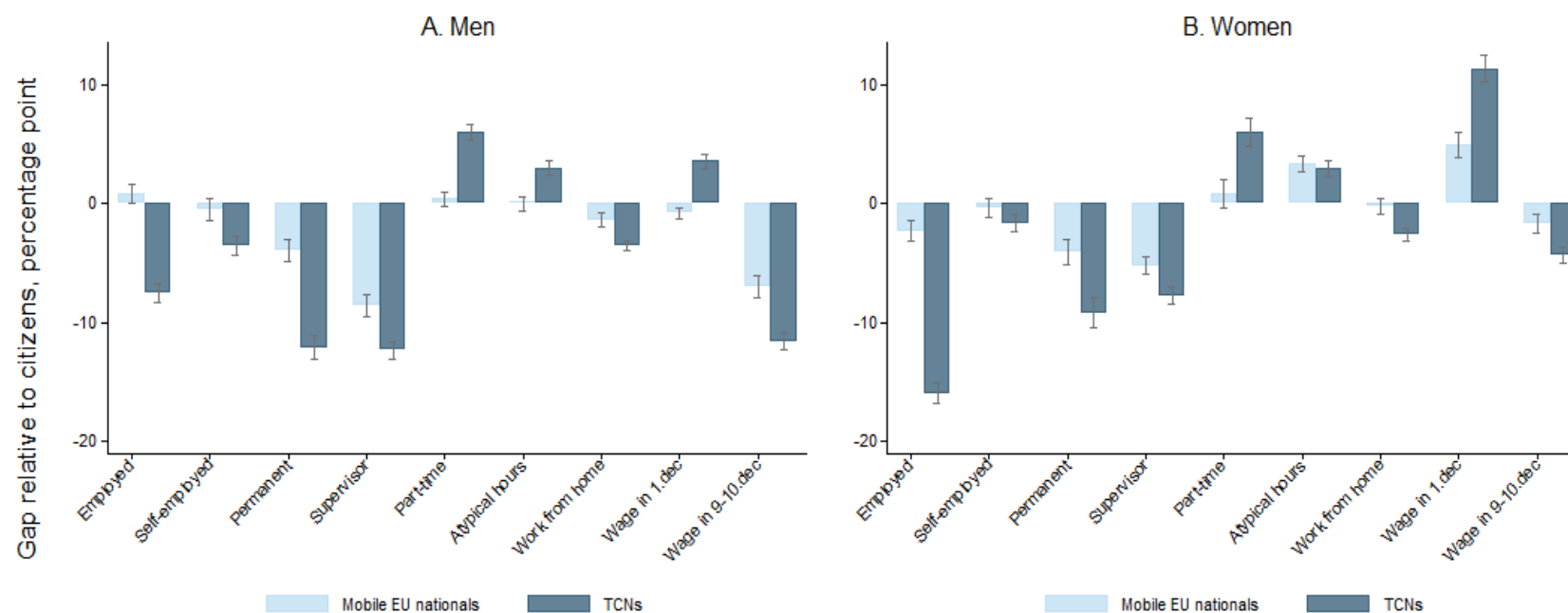
¹¹³ Please see Annex I – CEPS.

¹¹⁴ Highly skilled TCN men are 19.3 percentage point more likely to work in low- and medium-skilled occupations than comparable mobile EU nationals. highly skilled TCN women are 24.1 percentage point more likely to work in low or medium-skilled occupations.

¹¹⁵ Brücker, H., Glitz, A., Lerche, A. and Romiti, A., 2021. Occupational recognition and immigrant labor market outcomes. *Journal of Labor Economics*, 39(2), pp.497-525.

¹¹⁶ See Annex I – CEPS.

Figure 9 – Labour market differences between EU migrants, TCN and natives, 2019



Source: Annex 1 – CEPS using LFS data, 2019. Note: Sample includes individuals residing in EU-27, between 20 and 67 years old. Mobile EU nationals – migrants who are citizens of other EU Member States. Gap is conditional on age, marital status, education, field of studies, and country of residence.

TCNs face other barriers to finding a job as compared with natives or mobile EU workers; these include language barriers, restrictions in access to professions, and **discrimination**.¹¹⁷ These barriers to job search, together with the inefficiencies in formal job search services, force TCNs to make extra use of informal networks. This may contribute to a self-selection into specific sectors, often low-pay ones. It furthermore limits TCN workers' chances to enter into the economy based on their skills and leads to **segmentation of the labour market**. Working conditions can also be worse and may be influenced by a hostile environment that 'condones' discrimination, as shown in a recent study.¹¹⁸ As discussed in Section 2.2.2, for migrants, nationality combines with other discriminatory grounds increasing the risk of social exclusion or less favourable treatment, including on the labour market, where migrant women often face particularly precarious conditions. Data reflect significant labour market inequalities between TCNs and natives, including the **wage gap**. In Figure 9 above it is shown that TCNs face greater probability of being in the low end of the wage distribution and lower probability of being among the top wages. This can be due to several factors, including the selection into lower-paying sectors or occupations. After accounting for personal (e.g. education) and job-related characteristics, at least 28 % of the total native-to-migrant wage gap remains unexplained, according to a study on a selection of countries. The unexplained wage gap has increased during the last decade¹¹⁹ and can be due to discrimination, characteristics specific to the firms, higher prevalence of non-standard forms of employment among migrants, migrants' weaker bargaining power because they are less mobile and have a narrower network providing them access to alternative job opportunities. Research shows that also collective bargaining, unionization and the establishment of minimum wages can play an important role in reducing the migrants' wage gap.

Lack of pathways for integration and social mobility can also result in poorer labour market outcomes, as can be seen when looking at family members' and asylum seekers' employment rates: having entered the EU with a non-work status, they stand lower chances of finding employment. Family migrants have a lower probability of being employed with respect to labour migrants (between 12 percentage points for men and 30 percentage points for women). The same is true for asylum seekers, who have a lower probability (between 23 and 32 percentage points) of being employed as compared to migrants (men/women).

The opposite is true for long-term residents: receiving permanent residence affords one an increased probability of being employed,¹²⁰ indicating that access to integration pathways has positive economic outcomes. Research¹²¹ shows that bans on employment and long waiting periods for an asylum decision with associated periods of uncertainty about labour market status are the reason for **asylum seekers'** worse employment outcomes.

Young TCNs face especially difficult conditions on the EU labour market: they are less likely to do a job that fits well with their education, they are more likely to commute for more than one hour for a job and to report wages in the lowest decile, than comparable EU mobile young workers. Part of

¹¹⁷ **Discrimination** in job search is evident through field studies where researchers send CVs or fictitious candidates with equivalent qualifications that only differ in the ethnic group or nationality of the applicant, where minority groups have a 40 percent lower probability to be invited for a job interview, see Zschirnt, E. and Ruedin, D., 2016. Ethnic discrimination in hiring decisions: a meta-analysis of correspondence tests 1990–2015. *Journal of Ethnic and Migration Studies*, 42(7), pp.1115–1134.

¹¹⁸ D'Ambrosio, Anna and Leombruni, Roberto and Razzolini, Tiziano, 2021 'Fear is the Path to the Dark Side'. Electoral Results and the Workplace Safety of Immigrants. IZA Discussion Paper No. 14322.

¹¹⁹ Cupák, A., & Kanics, P. C. D. A. (2021). [Comparing the immigrant-native pay gap: A novel evidence from home and host countries](#), LIS Working Paper.

¹²⁰ Please see Annex I – CEPS. There is evidence of a decrease in the employment gap for TCN after five years.

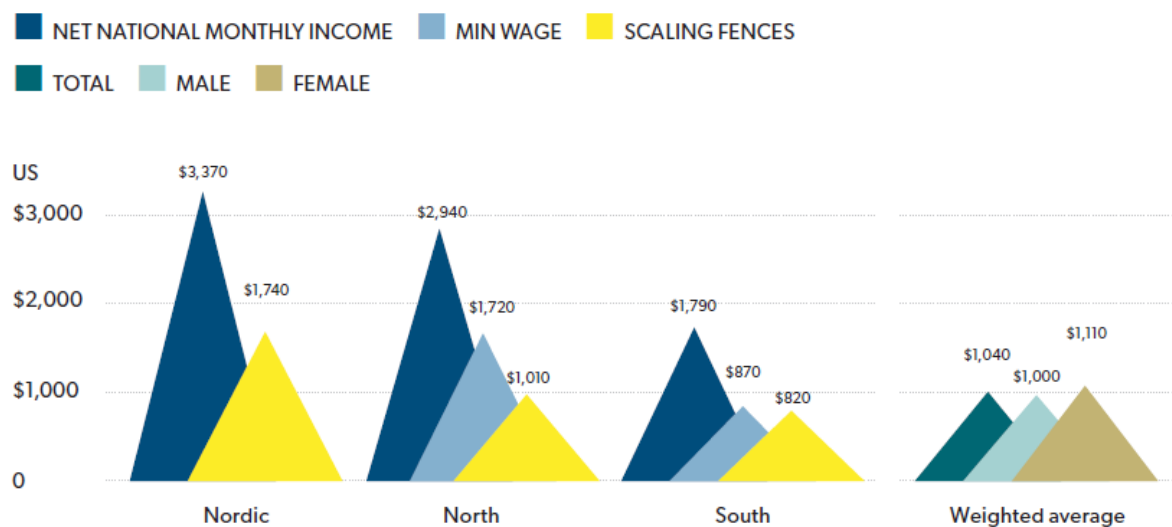
¹²¹ inter alia, Fasani, F., Frattini, T., & Minale, L. (2020). Lift the Ban? Initial Employment Restrictions and Refugee Labour Market Outcomes.

the observed gap in job quality and earnings can be attributed to a reduced time period for a job search, which puts young TCNs under pressure to accept a (suboptimal) job offer faster in order to obtain the residence permit.¹²² This is especially evident in the case of TCN **students** graduated in the EU, because of the barriers presented in Section 2.2.2.

Research and investigations have reported an increased risk for migrant workers to find themselves in **exploitative situations**. A 2019 report by the Fundamental Rights Agency¹²³ highlighted the continuous exploitation of migrant workers. This included them being paid as little as €5 a day, forced to pay debts to traffickers before earning a cent and sleeping in shipping containers with no water or electricity. The report shed light on precarious employment in various sectors, including agriculture, construction, domestic work, hospitality, manufacturing, and transport.

The **lack of legal pathways for migration**, contributing to pushing TCN workers in irregularity, contributes to the creation of the possibilities for exploitative labour conditions. Migrants entered irregularly are at much higher risk of labour exploitation and, indeed, getting a work permit improves the probability of having a remunerated activity and the level of earnings. In a study on migrants who entered EU irregularly, the UNDP¹²⁴ finds that most interviewees have a wage that is lower than the minimum wage of the host country (see Figure 10). The bargaining power of irregular workers is lowered by their status and it is less likely that they will file a complaint against the employer who is recruiting them irregularly.¹²⁵

Figure 10 – Average monthly income of undocumented migrants by region of host country, compared to host country regional average and minimum wages, and by gender



Source: UNDP, Scaling Fences, based on European Commission, Eurostat Earnings database. Latest available data on net earnings for Denmark, Norway, Sweden from 2015, rest from 2018. Minimum wages, where relevant, from 2018.

¹²² See Annex I – CEPS.

¹²³ [Protecting migrant workers from exploitation in the EU: workers' perspectives](#), Fundamental Rights Agency, 2019.

¹²⁴ UNDP, Scaling Fences, 2019.

¹²⁵ FRA Report on Employers Sanction Directive, 2021.

Migrant **undocumented workers** are an important part of the labour force at risk of exploitation in **agriculture**. According to the Italian trade union FLAI-CGIL,¹²⁶ they can get to be paid down to €1/hour. Workers suffering from exploitation in the Italian agricultural sector have no contractual guarantee and have salaries about 50 % lower than what collective bargaining would prescribe. Women earn 20 % less than men. Workers who are recruited by labour intermediaries ('*caporali*') see part of the pay deducted for their living expenses. These illegal labour intermediaries that recruit workers outside the regular channels and without the legal protections are a major source of labour exploitation that can become forced labour whenever it is accompanied by coercion.¹²⁷ According to the National Labour Inspectorate,¹²⁸ almost 55 % of the 7 000 labour inspections done in 2018 found instances of non-compliance and risks of labour exploitation. As indicated by a recent journalistic inquiry¹²⁹ focusing on the migrant workforce in France and Spain, labour exploitation and inhumane working conditions in agriculture are frequent also in other Member States. This does not only occur in southern Europe. A recent study¹³⁰ shows that in Germany, the Netherlands and Sweden too migrant farmworkers work long hours, have bad working conditions and accommodation and low pay. This is due to a complex mix of factors, including the lack of pathways for legal migration, which weakens workers' bargaining power, the process of flexibilisation and deregulation of the labour market, and the structure of value chains that produce an unfair distribution of risks and costs, compress labour costs and increase recourse to subcontracting, the 'grey zone' in which recruitment agencies often operate.¹³¹

Not only undocumented migrants work in exploitative conditions or in undeclared or 'grey' employment. A recent research on migrant work in agriculture in northern Italy,¹³² where wages are low but not as low as in the previous study (€5 or €6 /hour) shows that firms employ asylum seekers and refugees not declaring or declaring only partly their jobs to avoid taxes, apply very short contracts; cases of missed pay occur, but the interviewed migrants more often say that they do not claim this pay due to their extremely vulnerable position vis à vis the employer. In this case the **barriers to access to employment for asylum seekers and refugees** and the **lack of enforcement of control over the employers** are the main driver of TCN worker vulnerability.

For seasonal workers, exploitation, which has always been a serious issue, has worsened in the Covid-19 crisis: in addition to low wages and poor working conditions seasonal agricultural workers were sometimes locked in to limit the propagation of the virus, or quarantined at work, a situation that has been defined as close to forced labour by some analysts.¹³³

¹²⁶ FLAI-CGIL, [Quarto Rapporto Agromafie E Caporalato](#) - Osservatorio Placido Rizzotto, 2018.

¹²⁷ Ministero del Lavoro, Piano triennale di contrasto allo sfruttamento lavorativo in agricoltura e al caporalato (2020 - 2022), 2019, Rome, Italy.

¹²⁸ *ibid.*

¹²⁹ <https://www.euronews.com/2020/07/17/invisible-workers-underpaid-exploited-and-put-at-risk-on-europe-s-farms>.

¹³⁰ Palumbo L., Corrado A., [Are agri-food workers only exploited in southern Europe? case studies on migrant labour in Germany, the Netherlands, and Sweden](#), Open Society and European Policy Institute Policy Brief 2020.

¹³¹ On the issues of social standards in value chains, the European Parliament voted recently a legislative report; see European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL)).

¹³² Fondazione CRC, [lavoro migrante in agricoltura settembre 2020 i distretti della frutta e del vino nel cuneese](#), Settembre 2020.

¹³³ See Annex 1 – CEPS.

2.3.2. Impact 2: Structural needs of EU economy are not met

The Covid-19 crisis has highlighted the relevance of migrant workers in EU essential economic sectors. According to a recent study,¹³⁴ on average, 13 percent of all key workers in the EU are immigrants. In these sectors, the share of TCNs is larger than that of EU mobile workers in most destination countries. Migrant workers (and especially TCNs) are overrepresented in key professions such as personal carers, health service providers, drivers, transport and storage labourers, and food processing workers. The pandemic has therefore highlighted the importance of migrant workers in ensuring the functioning of key professions, including when it comes to medium- and low-skilled work. This is important to point out, since the migration policy debate in the EU has often focused on attracting high-skilled migrants, while this picture shows two things: the relevance of migrant workers also in low- and medium-skilled occupations, and the problems created as a result of **the lack of legal pathways for labour migrants at all skill levels. Limited harmonization in the recognition of qualifications** at the EU level, moreover, harms the intra-EU mobility of TCN workers, limiting their possibility to move where their skills would be more needed.

As shown in Section 2.1.2, the lack of legal pathways for labour migration coexists with the presence of labour shortages; that in turn can coexist with unemployment. EU firms report shortages in sectors requiring both highly skilled and lower skilled employees. There are several sectors where the situation with labour shortages is similar across different Member States. These are computer programming, construction, land transport, repair and installation services, services to buildings, employment services, and security services .

More important than the labour shortages approach is the fact that the EU economy, particularly in the context of the pandemic, is experiencing unmatched structural needs, especially in the light of the changes that the Green Deal is expected to bring to the EU labour market needs. As underlined by Ruhs,¹³⁵ the 'labour shortage approach' has led so far to few pathways for medium and low-skilled workers because of the ambiguity of how 'shortages' are defined. More relevant, according to the author, is the need – brought to the fore by Covid-19 – of 'systemic resilience' of the EU economy, which needs (and will need more in the future) to expand employment in those sectors where migrants are actually playing a major role. The International Organisation for Migration has noted the key role that migrants play in sectors that are central to the success of the Green Deal, namely agriculture and fisheries, energy, manufacturing, and construction.¹³⁶ Moreover, its ageing society and the Covid-19 crisis have shown the need for further investments in essential sectors, healthcare and elderly care, where migrants' work, as discussed, is very relevant. Public good provision and workers there involved have shown their relevance in the global pandemic. During the crisis, indeed, several EU countries have taken action to mobilize the migrant health workforce. For example, they facilitated the temporary licensing of doctors with foreign medical degrees (Italy); and the recruitment in the national health services (Spain), expedited current applications for the recognition of foreign qualifications of health professionals (Belgium, Germany, Ireland, Luxembourg, Spain) or allowed foreign-trained health workers in non-medical occupations in the health sector (France).¹³⁷ The integration of a sustainable economic perspective would help in

¹³⁴ Fasani, F., & Mazza, J. (2020). [Immigrant Key Workers: Their Contribution to Europe's COVID-19 Response](#).

¹³⁵ Ruhs M., [Expanding Legal Labour Migration Pathways to the EU: Will This Time Be Different?](#), Istituto Affari Internazionali, 2020.

¹³⁶ [Migration and the European Green Deal](#), International Organization for Migration.

¹³⁷ [Managing international migration under Covid-19](#), OECD brief, 2020.

considering also a public good perspective in defining labour market needs both in the country of destination and in the country of origin.

Irregular employment in domestic care work

A sector where there is an unmet labour demand that is related to a structural need of the EU economy is domestic care work. This is represented by both the structural consideration of an ageing society, and by the evidence of a demand that is not met by the existing labour supply.

This showcases a situation where a **structural need is met by persons engaging in precarious work conditions that may also be irregular**. Workers in this sector are most often women, which indicates that there is an intersectional dimension of their vulnerabilities.

A 2011 FRA [report](#) underlined that migrants in an irregular situation employed in domestic work are at heightened risk of exploitation and abuse, including sexual abuse.

A crucial issue is enforcement of rights recognized on paper. In practice, illness, accidents or pregnancy of the migrant worker often lead to job loss. Fear of deportation, limited rights awareness and difficulties in accessing legal support are some of the obstacles faced by migrants in an irregular situation.

As underlined in the case of the Employer's Sanction Directive, trade unions can play a major role in helping migrant workers in irregular situations to claim their rights.

Heterogeneity across Member States and great dependency on actual respect of rights by the employer create an extreme variability of situation and little harmonization of rights across the EU.

A recent call for the inclusion of domestic work in national migration schemes and for the ratification by all Member States of ILO Convention C189 on Domestic Workers and ensure the application of all employment standards to domestic workers comes from the [European Trade Union Confederation](#) in March 2021.

The **lack of legal pathways for labour migration to the EU and the lack of pathways for integration and social mobility** also contribute to the structural needs of the EU economy being often filled by workers in precarious and vulnerable conditions, or in exploitative conditions, as shown in the previous section. Domestic care work (See Box on the left) and agricultural work are sectors where labour demand is met by workers very often that work for very low salaries and with poor protection of their rights. They may be people who migrated for humanitarian reasons and that actually need to work, but are employed in a 'grey' area between declared and undeclared work. The lack of channels for these workers to be employed regularly, **barriers to equal treatment** and poor enforcement of labour rights play a central role in leaving these workers

in such vulnerable conditions. Indeed, UNDP underlines that the ageing population and structural needs of EU economy would open opportunities for benefits from migration. The survey shows that irregular migrants very often actually do work in EU economy, including in otherwise regular businesses, and therefore respond to a demand in EU labour market. Still, they do so in precarious and often exploitative labour conditions because of their irregular status; therefore, if legal pathways were made available, migrants would be less vulnerable, and the EU economy would benefit more of their human capital and professional skills.

2.3.3. Impact 3: Lost productivity, innovation and tax revenues

There is a fairly strong body of research¹³⁸ focused on the **positive economic impact of migration**, according to which labour migration can boost productivity, growth and job creation. The potential for creation of new jobs counters the argument that there is a 'fixed pool' of jobs, and migrants will necessarily limit the access of 'natives' to those jobs. Most often, studies find small or no impact of

¹³⁸ For a review, please see Geddes, A, et al. Migration and Mobility in the European Union, Macmillan Education UK, 2020.

migration on employment and wages of 'native' workers.¹³⁹ Moreover, in addition to expanding labour supply, immigration can also increase the demand for labour, since migrants expand consumer demand for goods and services and in the medium/long run, migration can be expected to lead to more investment. A famous study on the US¹⁴⁰ found that migration leads to increased productivity, employment and income per worker.

Insofar, where economists have observed a downward pressure on wages or a displacement effect, these tend to be limited to specific sectors or occupations. They can nevertheless be borne disproportionately by low-skilled workers, but will depend to a large extent on how flexible is the labour market, how well is equal treatment guaranteed, and how well enforced are the controls on possible violations (especially regarding irregular employment). For example scholars argue that a high minimum wage and generous employment benefits can mean less scope for migration to push down wages or displace already present workers.¹⁴¹

Migration can moreover have positive economic impacts through **innovation**. Several studies have identified positive economic outcomes of cultural diversity (productivity,¹⁴² wages,¹⁴³ sectoral variety of newborn firms, as a measure of the width of the range of economic activities and opportunities available¹⁴⁴).

Lack of legal pathways, limitation in equal treatment and protection of workers' rights and limited pathways for social mobility analysed in section 2.2 not only produce impacts at the individual level as disadvantage of TCN workers on the labour market, labour market segregation and overqualification (as analysed in Section 2.3.1). They are missed economic opportunities for the EU economy.

The Cost of non-Europe in the Area of Legal Migration¹⁴⁵ quantifies the costs of a number of gaps in the EU legal migration framework, both in terms of lost income for TCNs and **lost tax revenues** for the Member States. These figures are summarised below.

¹³⁹ Ruhs, M., & Vargas-Silva, C. (2015). The labour market effects of immigration. The Migration Observatory.

¹⁴⁰ Peri, G. (2010), 'The Effect Of Immigration On Productivity: Evidence From U.S. States'. Review of Economics and Statistics, 94(1), 348-358, for other references see also Cosgrave et al. (2016), [Europe's refugees and migrants: Hidden flows, tightened borders and spiralling costs](#), ODI Report.

¹⁴¹ Geddes, A, et al. Migration and Mobility in the European Union, Macmillan Education UK, 2020.

¹⁴² Bellini, E., Ottaviano, G. I. P., Pinelli, D., & Prarolo, G. (2013), 'Cultural Diversity and Economic Performance: Evidence from European Regions'. In Crescenzi, R. and Percoco, M. (eds.), Geography, Institutions and Regional Economic Performance (pp.121-141). Berlin: Springer.

¹⁴³ Ottaviano, G. I., & Peri, G. (2006). The economic value of cultural diversity: evidence from US cities. Journal of Economic geography, 6(1), 9-44.

¹⁴⁴ Colombelli A., D'Ambrosio A., Meliciani V. & Quatraro F. (2020) Newborn Firms and Regional Diversification Patterns: The Role of Cultural Diversity, Economic Geography, 96:4.

¹⁴⁵ W. van Ballegooij and E. Thirion, [The Cost of non-Europe in the Area of Legal Migration](#), EPRS, European Parliament, 2019.

Table 10 – Costs of selected gaps in the status quo

Issue	Gap/barrier in EU framework	Channel	Lost TCN income	Lost tax revenues for MS
Lack of legal pathways and Barriers to equal treatment and poor workers' rights protection	Entry conditions, work authorization in case of change of employer and unemployment	Lost income	1.1-2.3 billion EUR	445-891 million EUR
Barriers to equal treatment and poor workers' rights protection	Equal treatment	Lost employment and income	21 billion EUR	8 billion EUR
Lack of pathways for integration and social mobility	Intra EU labour mobility	lost employment	31.2 million EUR	8.5 million EUR
	Recognition of qualification	Lost employment	3.2-5.3 billion EUR	1.4-2.3 billion EUR
	Family reunification	Lost employment	6.9-8.7 billion EUR	2.6-3.2 billion EUR

Source: W. van Ballegooij and E. Thirion, [The Cost of non-Europe in the Area of Legal Migration](#), EPRS, European Parliament, 2019.

The net fiscal effect of migration is a contested field of study: a recent paper from the European Commission's Joint Research Centre¹⁴⁶ finds contrasting results according to the method used; a very recent study on the US,¹⁴⁷ using an updated methodology, finds that effects are positive even for a non-high skilled migrant that receives an average subsidy from the public sector. Interestingly, the Cost of non-Europe mentioned above finds that lower discrimination would bring greater tax benefits.

As shown in Sections 2.1.3 and 2.3.1, TCNs face worse outcomes in the labour market, which translates into missed opportunities for the entire economy. For example, **access to residency** has positive employment effects: being long-term residents increases the probability of being employed of 5 percentage points for men TCN and 7 percentage points for women TCN (see also Figure 11 below). **Discrimination** in recruitment, which is a major barrier for job search for TCN workers (more than for EU mobile workers), also leads to a sub-optimal allocation of skills and competences. Barriers to allocation of skills across occupations and Member States limit the economic prosperity of the EU and are indeed higher for TCNs because of **barriers to recognition of qualifications, limited intra-EU mobility** (including because of lack of harmonization of recognition of qualifications within the EU). This evidence indicates that **poor integration and opportunities for migrants have costs of the entire society**. Better 'use' of skills can improve productivity and innovation. Moreover, higher wages increase GDP and lead to a higher tax income thus improving macroeconomic outcomes.

A specific loss of skills is due to **poor labour market integration of TCNs residing in the EU for non-employment purposes: family members, asylum seekers and students**. As seen in Section

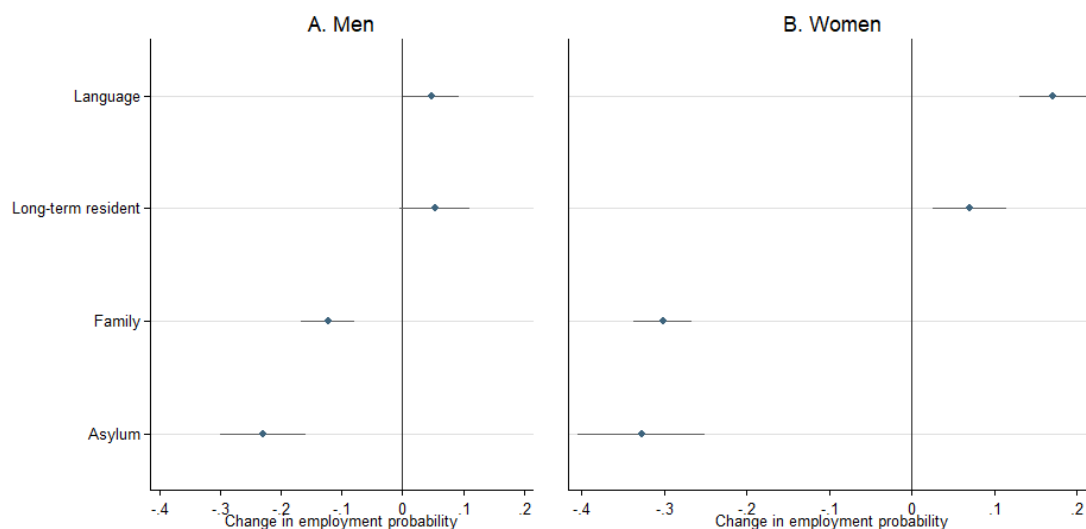
¹⁴⁶ Christl, M., Bélanger, A., Conte, A., Mazza, J., & Narazani, E. (2021). *The fiscal impact of immigration in the EU* (No. 814). GLO Discussion Paper.

¹⁴⁷ Clemens M. The Fiscal Effect of Immigration: Reducing Bias in Accounting Estimates, forthcoming 2021.

2.2.2, they face barriers to access regularly labour market and their skills are a 'missed opportunity' for EU economy. A study estimates the cost of the 'ban' imposed to asylum seekers to EUR 37.6 billion of output loss in Europe during the 2015 refugee crisis.¹⁴⁸ Whether these workers are employed irregularly, they face vulnerable (and possibly exploitative) conditions and there is a tax revenue loss for Member States. The loss is particularly evident in the case of students, who have been trained in the EU, but face barriers in accessing EU labour market.

Figure 11 below shows the increased probability of being employed for long-term residents and the lower probability of being employed for family migrants and asylum seekers.

Figure 11 – Determinants of employment among TCNs



Source: Annex 1 -CEPS based on EU LFS (2014). Note: Plotted coefficients (selected) from regressions, which in addition control for marital status, age, education, field of studies, country of residence, years of stay, and other reasons of migration. Language – knowledge of German at least B2 level. Long-term resident – a dummy equal to one if years of stay in a destination ≥ 5 (used as a proxy for a long-term residence permit). The sample includes TCNs between 20 and 64 years old.

Poor recognition of qualifications, together with a **fragmented and cumbersome system** and little opportunities for family members also **decrease the attractiveness of the EU** as a destination for high skilled workers and discourage circular migration.¹⁴⁹

¹⁴⁸ Fasani, F., Frattini, T., & Minale, L. (2020). Lift the Ban? Initial Employment Restrictions and Refugee Labour Market Outcomes.

¹⁴⁹ de Haas, Hein, Vezzoli, Simona and Villares-Varela, Maria (2019) Opening the floodgates?: European migration under restrictive and liberal border regimes 1950-2010 International Migration Institute Network; and Gomez, R., M. Gunderson, X. Huang, & T. Zhang (2015). Do immigrants gain or lose by occupational licensing? Canadian Public Policy 41:S80–S97. The authors noted that in the case of Canada, potential new immigrants who are choosing their favourite destination may be discouraged by worries about lengthy and complicated recognition processes.

2.3.4. Impact 4: Gaps in the protection of fundamental rights

Most of the key issues identified can contribute to gaps in the protection of fundamental rights of TCN in the EU.

Lack of legal pathways has been identified as one of the factors leading to the persistence of irregular migration and smuggling businesses¹⁵⁰ contributing, that in turns puts in danger the lives and limits the physical integrity of migrants, as discussed in the case of asylum seekers in a previous study.¹⁵¹ Barriers to entry can have especially impacts on women and more vulnerable people, thus underlying the intersectional dimension of discriminations and vulnerabilities. Limited access to labour market for family members risk creating a situation where especially children and women spouses become dependent on their sponsor's status, hindering the integration process: this makes migrant women more vulnerable, especially in case they are victim of domestic violence. This highlight the intersectional dimension of the impacts that sets of rules have and the intersectional nature of discrimination that may be created even by norms that appear as 'neutral'.

Equal treatment indeed is a general principle of EU law, and so is non-discrimination on the basis of nationality.¹⁵² Prohibition of discriminations on nationality is also mentioned in Article 21(2) of the Charter of Fundamental Rights of the European Union. Moreover, lack of equal treatment undermines the consistency with international and EU human rights principles and labour standards. However, equal treatment between EU workers and workers from third countries is not yet fully achieved and this is partly due to the issues identified in Section 2.2.2. One of the key findings of *The Cost of non-Europe in the area of Legal Migration*¹⁵³ was indeed that existing gaps regarding the secure residence status and limitations to changing employers, especially for low- and medium-skilled temporary workers, together with barriers related to different enforcement capacity at national level, lower TCN workers' bargaining power and are likely to increase **labour exploitation**. Equal treatment is moreover hindered by the **fragmentation of the EU legal framework** across the 7 directives that have different provision on the matter. The case of migrant domestic workers illustrates the precarious situation of people to covered by any of the 'first entry' directives (see Box on Irregular employment in domestic care work in Section 2.3.2).

Research shows that **access to justice** is often problematic for TCNs, not only when they are undocumented workers, but more generally, as claims in courts or other institutions threatens the relationship with their employer, on which residence and work permits depend.¹⁵⁴

Regarding the access to **social protection**, the current framework allows for some limitations to equal treatment. Especially, Article 11(4) of the Directive on Long Term Residents gives the possibility for Member States to limit equal treatment in respect of social assistance and social protection, to 'core benefits'. Article 34 of the Charter of Fundamental Rights lays down the right to social and housing assistance to ensure a decent existence for all those who lack sufficient resources. As a result, all benefits that fulfil the purpose set out in Article 34 of the Charter constitute core

¹⁵⁰ For the case of Africa see inter alia the assessment carried out for the European Commission, Altai Consulting for the European Commission, [Learning Lessons from the EUTF - Phase 2 - Paving the way for future programming on migration, mobility and forced displacement](#), February 2021: "In Africa, the extent and persistence of TIP and SOM are rooted in state fragility (including total state collapse in Libya), mass conflict-driven forced displacement, limited legal migration options and poverty." (p.19).

¹⁵¹ C. Navarra and W. van Ballegooij, [The Cost of non-Europe in Asylum Policy](#), EPRS, European Parliament, 2018.

¹⁵² Case C-179/90 *Merci Convenzionali Porto di Genova* (1991) EU:C:1991:464, para 11.

¹⁵³ W. van Ballegooij and E. Thirion, [The Cost of non-Europe in the Area of Legal Migration](#), EPRS, European Parliament, 2019.

¹⁵⁴ *ibid.*

benefits under the Long-Term Residents Directive. This rule has limited the power of Member States to restrictively interpret the right to equal treatment, regarding social assistance and social protection of long term residents. In this light, the limitation enshrined in the LTR Directive may be problematic, even if not called into question until now.¹⁵⁵

The **lack of a holistic approach and the focus on border control and returns** has played an important role in shaping those policies that have been defined in the academic literature of 'externalisation of border control'.¹⁵⁶ Several scholars and human rights advocates have risen major concerns on the risks of violation of fundamental rights of migrants in these policies.¹⁵⁷ As underlined in the Cost of non-Europe in Asylum Policy,¹⁵⁸ especially in some transit states, proper scrutiny of actual standards of respect of migrants' fundamental rights is problematic, while in some cases abuses have been actually identified and brought to light, as in the Libyan case.¹⁵⁹ For example, the EUNAVFOR Med Operation Sophia, launched in June 2015, was tasked – among other issues – with sharing information and training the Libyan coast guard in dealing with migrant smugglers. This cooperation indeed worries several human rights defenders, as the Libyan coast guard disembarks migrants in Libya, a country not considered safe by the EU.¹⁶⁰

2.3.5. Impact 5: Missed cooperation and solidarity with third countries

Despite the changes announced with the New Pact, the European Parliament¹⁶¹ has underlined that it puts **relatively little emphasis on legal migration**; research corroborates this claim and shows that the New Pact keeps a **focus on incentivising third countries to retain possible irregular migrants or to accept returns**.¹⁶² For example, it proposes to create a conditionality between cooperation on readmission¹⁶³ with third countries and the issuance of visas to their nationals, despite evidence that these conditionalities have proven problematic and with limited effectiveness.¹⁶⁴

This focus on border management and returns has shaped **the external dimension** of the EU migration policy: in the portfolio of the EU Trust Fund for Africa, funding for labour migration and migration for development is about 2 % of total EUTF funding (€75 million); an assessment

¹⁵⁵ See Annex 1 – CEPS.

¹⁵⁶ "A process through which the European Union outsources a share of the control of its borders beyond its own territory" in Fondation Robert Schuman, [European Union/African Cooperation: the externalisation of Europe's migration policies](#), 2018.

¹⁵⁷ Challenges for ensuring the continued applicability of refugee and human rights law have been for example underlined by Pijnenburg, A., Gammeltoft-Hansen, T., & Rijken, C. (2018). Controlling migration through international cooperation. *European Journal of Migration and Law*, 20(4), 365-371.

¹⁵⁸ C. Navarra and W. van Ballegoij, [The Cost of non-Europe in Asylum Policy](#), EPRS, European Parliament, 2018.

¹⁵⁹ ['Detained and Dehumanised, Report On Human Rights Abuses Against Migrants In Libya'](#), United Nations Support Mission in Libya, Office of the United Nations High Commissioner for Human Rights, December 2016.

¹⁶⁰ [The external dimension of the new pact on migration and asylum A focus on prevention and readmission](#), EPRS, 2021.

¹⁶¹ Report on [new avenues for legal labour migration](#) (2020/2010(INI)), European Parliament, 2021.

¹⁶² [The external dimension of the new pact on migration and asylum A focus on prevention and readmission](#), EPRS, 2021.

¹⁶³ Another development in recent years is the informalisation of agreements dealing with readmission and returns, which had a number of important implications, such as the lack of the possibility to start legal proceedings in a court. See Eisele, K. (2019). The EU's readmission policy: of agreements and arrangements. In *Constitutionalising the External Dimensions of EU Migration Policies in Times of Crisis*. Edward Elgar Publishing.

¹⁶⁴ Cassarino J-P., [The New Pact on Migration and Asylum: Turning European Union Territory into a non-Territory](#), EU Law Analysis, November 2020.

commissioned by the European Commission¹⁶⁵ acknowledges that this level of funding is 'limited compared to other thematic areas'.

Indeed, this approach has in some cases led to bottlenecks in international relations, to changes in directions of aid funds and to side effects that may be in contrast to the very aims of development cooperation.

The EU and its Member States have made several arrangements with third countries for border management, with the aim of tackling irregular migration to the EU, discouraging departures to the EU and fostering returns. As discussed in Section 2.3.4, in 2016 the bodies enforcing the common security and defence policy were tasked with sharing information and training the Libyan coast guard; this raised concerns relative to fundamental rights protection. Other examples of international cooperation tools devoted to migration management and border control are the [EU-Turkey Statement](#) (the Facility for Refugees in Turkey amounted to overall €6 billion), and the [EU Trust Fund for Africa](#), amounting to €4 billion from 2015 to 2018, for several thematic areas, including 'improved migration management' and development projects aimed at 'addressing the root causes of migration'. The Cost of non-Europe in Asylum Policy estimated the **costs incurred by the EU in the attempt to prevent and deter migration through external action** at €1.7 billion /year (only considering the share that could be ascribed to potential asylum seekers).¹⁶⁶

Several other 'migration partnership frameworks', launched by the Commission in June 2016 under the European Agenda on Migration, have contributed substantially to the **externalization of asylum and migration policies**. The externalisation of asylum and migration procedures represents a cost and poses some serious problems. First, the scrutiny of the Parliament is limited in the case of trust funds. Second, especially in some transit states, proper scrutiny of actual **standards of respect of migrants' fundamental rights** is problematic; as discussed in the above section, the United Nations High Commissioner for Human Rights and several NGOs have denounced human rights violations in the Libyan case. The same worries regarding Libya not being a 'safe' country have been raised regarding the EUTF, which supports the activities of the Libyan Coast Guard and Navy related to search and rescue operations.

Third, scholars underline that they risk **distorting political cooperation** with third countries, both in the EU and in third countries. On one hand, the EU risks being subjected to imbalanced diplomatic pressure by third countries.¹⁶⁷ On the side of third countries, it has been underlined by researchers¹⁶⁸ that the 'emergency' perception and approach (see Section 2.2.5) provides strategic incentives to sub-Saharan African leaderships to legitimise themselves as implementers of restrictive migration policies inspired by potential destination states in the EU.

Fourth, there is a risk of **diverting aid funds from the aims of development cooperation** (and especially poverty eradication), to containment and limitation of migration. The EUTF, for example, did not mobilize new sources of financing at the EU level, instead pooling together existing amounts from the European Development Fund (EDF), the Neighbourhood Instrument (ENI), DCI and others, while the Member States pledged complementary amounts. Relatedly, externalisation policies, while having on paper objectives aligned with development cooperation, risk having impacts on

¹⁶⁵ Altai Consulting for the European Commission, [Learning Lessons from the EUTF - Phase 2 - Paving the way for future programming on migration, mobility and forced displacement](#), February 2021.

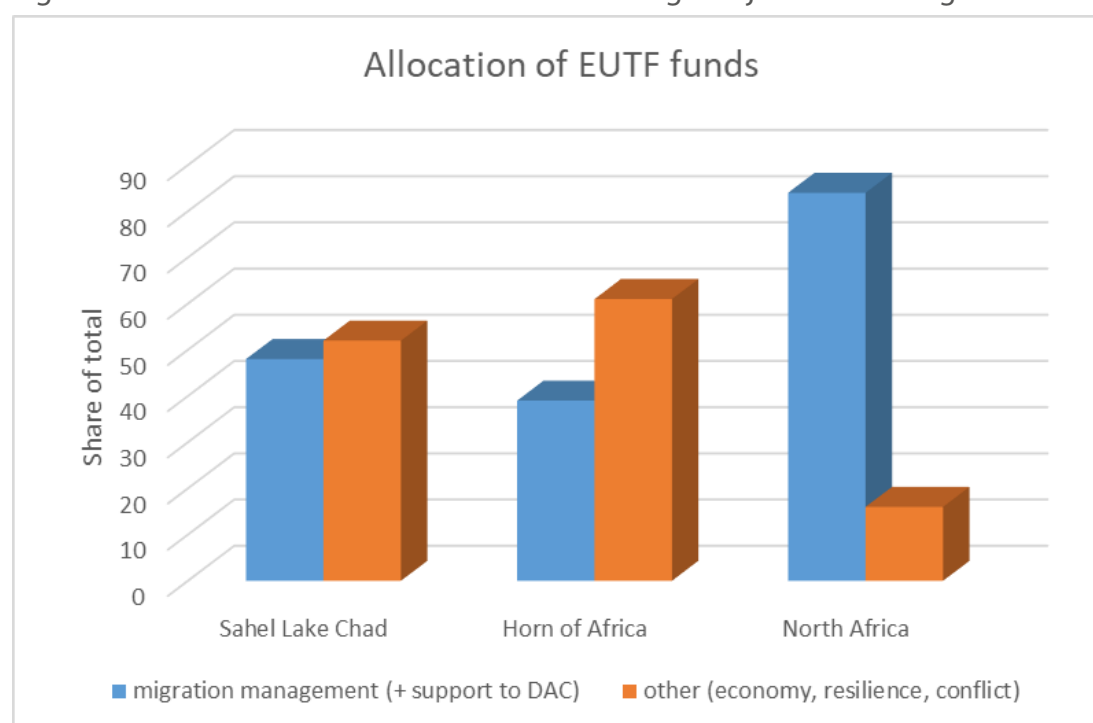
¹⁶⁶ C. Navarra and W. van Ballegooij, [The Cost of non-Europe in Asylum Policy](#), EPRS, European Parliament, 2018.

¹⁶⁷ Pastore F. (ed), 2017, *Beyond the Migration and Asylum Crisis, Options and Lessons for Europe*, Aspen Institute Italia, 2017.

¹⁶⁸ Pastore, F., & Roman, E. (2020). Migration policies and threat-based extraversion. Analysing the impact of European externalisation policies on African polities. *Revue européenne des migrations internationales*, 36(1), 133-152.

the ground that go against them. Scholars have shown that countries or sub-region within countries have been left out of funding allocation, not being relevant in the migration routes.¹⁶⁹ As reported in the Commission's evaluation of the EUTF, some countries have benefitted more than others from the EUTF and this may contribute to 'creating or worsening regional/continental imbalances that could in turn worsen the mobility and migration situation in Africa' (p. 216).¹⁷⁰ It has been underlined, moreover, that in some cases, externalisation of borders has been at odds with neighbourhood objectives. As shown in the allocation of funds below, funds of the EUTF allocated to North Africa comprise almost exclusively migration management objectives, showing that the area is only seen as a transit area and also possibly obstructing intra-regional cooperation and the creation of a 'broader Neighbourhood'.¹⁷¹ This was even more evident looking at data up to 2019, where North Africa and the Cross Window exclusively received funding for projects within the thematic area of migration management.¹⁷²

Figure 12 – Allocation of EUTF funds across strategic objectives and regions



Source: Compiled by the authors based on information from Altai Consulting for the European Commission, Learning Lessons from the EUTF - Phase 2 - Paving the way for future programming on migration, mobility and forced displacement, February 2021. DAC = displacement affected communities. 'Other' includes greater economic and employment opportunities, improved governance and conflict prevention, strengthening resilience.

¹⁶⁹ Zardo F. (2020) The EU Trust Fund for Africa: Geopolitical Space Making through Migration Policy Instruments, Geopolitics.

¹⁷⁰ Altai Consulting for the European Commission, [Learning Lessons from the EUTF - Phase 2 - Paving the way for future programming on migration, mobility and forced displacement](#), February 2021.

¹⁷¹ Zardo F. (2020) The EU Trust Fund for Africa: Geopolitical Space Making through Migration Policy Instruments, Geopolitics.

¹⁷² *ibid.*

A recommendation of the EUTF evaluation¹⁷³ is to 'make free-movement protocols a reality' and support mobility in Africa, avoiding that EU migration management priorities hinder local development processes based on mobility. Interestingly, the evaluation acknowledges the positive economic impacts of cross-border mobility and the negative consequences of an excessive focus on securitizing the border-management agenda. Excessively strict border management can moreover increase borderland communities' vulnerabilities, the case of the partnership with Niger is particularly relevant in this respect. The EU, through the migration partnership frameworks tool, indeed decreased migratory flows to the EU, as Niger is mainly a country of transit. However, research has found that the strengthening of border and movement controls has had a negative impact on several areas of the local economy, such as transport and trans-border activities, with specific impacts on the Agadez area, risks hindering the mobility of people within the ECOWAS (the Economic Community of West African States), who were previously enjoying free movement – risking to damage regional integration – and could pose potential threats to internal stability.¹⁷⁴

Conflicting migration policies and practices have arisen from the **divergent priorities between the EU and the African Union**, creating bottlenecks in international relations. This is partly produced by the fact that the EU and its Member States are focused on returns while African countries and the AU prioritize free movement on the continent and on negotiating regular migration channels towards the EU.¹⁷⁵ Scholars underline that the lack of implementation of the promises of expanding labour migration opportunities 'has been a major source of frustration among African countries, thus undermining EU efforts to encourage greater cooperation on irregular migration and other migration issues.'¹⁷⁶ Studies that observe allocation of funds, also warn about the risk that funding migration management via development cooperation funds actually weakens the EU coordination and serves more to consolidate bilateral relationships.¹⁷⁷

Finally, it has to be acknowledged that migration plays a role in development processes. its role is complex, but involves several development-enabling factors, starting from the huge amount of financial flows constituted by remittances (see Figure 13), that have become in recent decades a prominent financial flow towards the Global South, as compared with other flows. Especially in some countries, they can represent an amount greater than both FDIs and development aid; research shows that it can have multiple effects, but that overall it may help reduce local economic vulnerabilities.

¹⁷³ Altai, op. cit.

¹⁷⁴ [La mise en oeuvre du nouveau cadre de partenariat avec les pays tiers Le cas du Niger](#), EPRS, 2019.

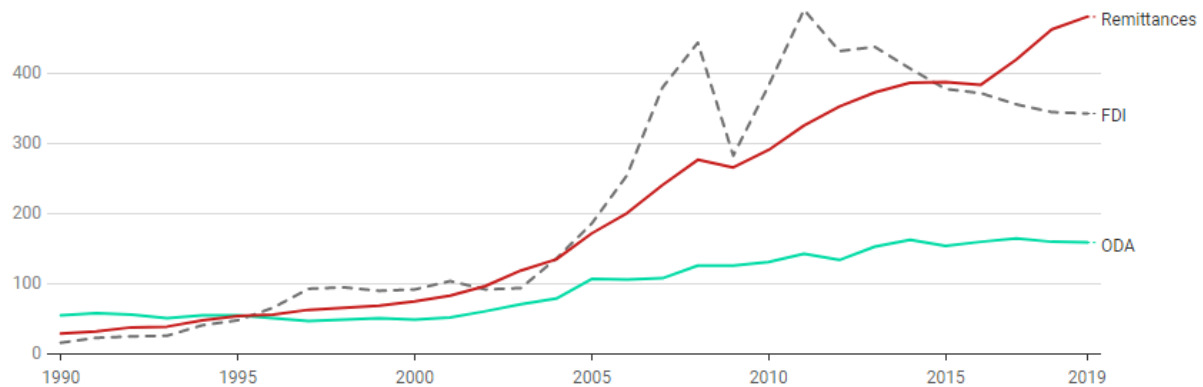
¹⁷⁵ Bisong, A. (2020). Migration Partnership Framework and the Externalization of European Union's (EU) Migration Policy in West Africa: The Case of Mali and Niger. In *Regional Integration and Migration Governance in the Global South* (pp. 217-237). Springer, Cham.

¹⁷⁶ Ruhs M., [Expanding Legal Labour Migration Pathways to the EU: Will This Time Be Different?](#), Istituto Affari Internazionali, December 2020

¹⁷⁷ Zardo F. (2020) op. cit.

Figure 13 – Financial flows to low- and middle-income countries over time

Remittance flows to Low- and Middle-Income countries (excluding China) are now larger than FDI and Development Assistance



FDI = foreign direct investment. ODA = Official Development Assistance; Data for 2018 are estimates and data for 2019 are forecasts

Source: <https://blogs.worldbank.org/opendata/money-sent-home-workers-now-largest-source-external-financing-low-and-middle-income>

Recent economic research has investigated positive economic consequences of migration for countries of origin, especially through - beyond remittances- diaspora investments, transfer of knowledge and skills (that can be itself related to intensification of innovation activities), human capital and investments brought by returnees (that crucially depends on human capital and savings accumulated in the migration country¹⁷⁸), creation of trade and business networks,¹⁷⁹ incentives to education due to the prospects of migration.¹⁸⁰ Importantly, researchers underline the relevance of policies in determining the actual impact of migration on economic growth of countries of origin¹⁸¹. Researchers in recent years have also focused on other dimensions in the migration-development nexus, such as the involvement of diaspora organizations and the 'collective remittances' that may support local public goods in countries of origin, and the so-called 'social remittances',¹⁸² i.e. the circulation of social norms and ideas, that have complex and multifaceted impacts on the ground, but that contribute to global connections and exchanges.

¹⁷⁸ Wahba, J., Who benefits from return migration to developing countries?, IZA World of Labor 2015.

¹⁷⁹ Rapoport, H. (2016). 'Migration and globalization: what's in it for developing countries?', *International Journal of Manpower*.

¹⁸⁰ Docquier, F., & Rapoport, H. (2004). Skilled migration: the perspective of developing countries. The World Bank.

¹⁸¹ de Haas, H. (2020), 'Paradoxes of migration and development', In Routledge *Handbook of Migration and Development* (pp. 17-31). Routledge.

¹⁸² Levitt, P., & Lamba-Nieves, D. (2011), 'Social remittances revisited', *Journal of Ethnic and Migration Studies*, 37(1), pp. 1-22.

Table 11 – Summary of key issues and impacts

Key issue broad	Key issue specific	Direct consequences	Social and economic impacts				
			Discrimination on the labour market and exploitative situations	Structural needs of the EU economy not met	Lost productivity, innovation and tax revenues	Gaps in protection of fundamental rights	Missed cooperation and solidarity with third countries
Lack of legal pathways	Entry barriers	Irregular migration, room for smuggling businesses, EU not attractive destination	X	X	x	x	x
	Missing channels for low and medium skilled migrants						
	Re-entry barriers	Obstacles to mobility and to circular migration			x		x
	Barriers for family members	Obstacles to integration, intersectional vulnerabilities	X			X	
Lack of equal treatment and workers' rights protection	Limitations in transposition and enforcement	Disparities of equal treatment across MS	X			X	
	Problems in case of change of employer and of unemployment	Dependency on employer, loss of rights with unemployment	X		X	X	
	Poor enforcement of employment and social standards	Vulnerability of workers to exploitation	x		x	X	x
	Issues with posting of workers	Subcontracting and dilution of liability	x			X	
	Higher risks of losing social benefits	Income uncertainty, barriers to integration, reduced mobility and circular migration	x			X	X

Key issue broad	Key issue specific	Direct consequences	Social and economic impacts				
			Discrimination on the labour market and exploitative situations	Structural needs of the EU economy not met	Lost productivity, innovation and tax revenues	Gaps in protection of fundamental rights	Missed cooperation and solidarity with third countries
Lack of pathways for integration and social mobility	Obstacles to qualification recognition	Overqualification and TCN disadvantage on the labour market	X	X	X		X
	Obstacles to integration in the labour market for non-labour migrants	Irregular employment, barriers to integration	X	X	x	X	
	Uncertainties and barriers in obtaining residence	Obstacles to integration and to intra-EU mobility	X		x	X	
Fragmented and cumbersome framework	Non-harmonization of the <i>acquis</i> for all categories of workers	EU not attractive destination, different rights according to the channel, obstacles to intra EU mobility	x	x	x		
	Little take-up by MS of EU tools, fragmentation of labour markets						
Lack of a holistic approach	Focus on border control, little attention to legal migration	Dominance of a negative narrative on migration, costs of border industry			X	X	x
	Administrative inefficiencies	long and over-bureaucratic procedures, EU not attractive destination	x		x	x	

Source: Compiled by the authors.

3. Enabling factors and avenues for EU action

The European added value assessment identifies four enabling factors for the EU to act on the issues highlighted in Section 2.2. Each is described below.

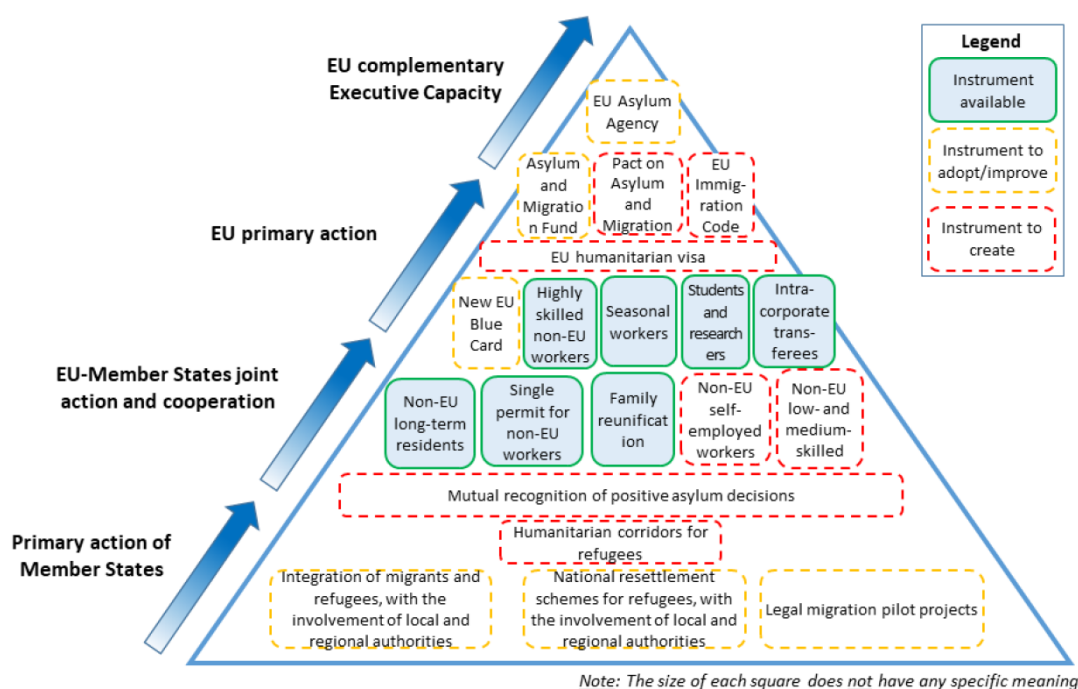
3.1. Enabling factor 1: There is additional potential within the established legal basis for legal labour migration

EU action in the area of legal labour migration to date (the seven directives noted in Section 1.1) is mainly based on Title V of the Treaty on the Functioning of the European Union (TFEU). **Article 67(2) TFEU** states that the Union shall establish a common immigration policy 'which is fair towards third-country nationals'. **Article 79(2) TFEU** provides a legal basis for EU action in several areas namely the regulation of entry and residence conditions including long-term residence permits. **Article 79(4) TFEU** allows for EU support of Member States on the integration of TCNs. A limitation of EU competence is highlighted in **Article 79(5) TFEU**, which states that Member States remain solely responsible for determining the volumes of TCNs they admit for the purpose of work.

While Article 79 TFEU is central to supporting EU action in the area of labour migration, other articles can play a supporting and reinforcing role in tackling the issues identified in Section 2.2.

EU action can take various forms: from joint action and cooperation to primary action to complementary executive capacity (see Figure 14). This action can leverage existing instruments such as the existing directives on legal labour migration, as well or consider the development of new instruments.

Figure 14 – Instruments at the disposal of the EU and Member States to tackle deficiencies in migration policy



Source: [Towards a more resilient Europe post-coronavirus: Capabilities and gaps in the EU's capacity to address structural risks](#), European Parliament Research Service, 2020.

The EU's legal framework on labour migration is also informed by the **EU Charter of Fundamental Rights** (EU CFR). Articles 15(3) and 31 note that every worker has the right to 'equivalent', 'fair' and 'just' working conditions. Article 45 EU CFR provides a legal basis for intra-EU mobility of TCNs.

Discussions on revisions on EU labour migration policy are underway. In September 2020, the European Commission proposed the **New Pact on Migration and Asylum**.¹⁸³ Despite the proposal's name, labour migration is only addressed in a cursory manner. It makes reference to the adoption of several recast directives including the Blue Card Directive (2009/50/EC)¹⁸⁴ and the strengthening of existing schemes including the Single Permit Directive 2011/98,¹⁸⁵ and the Long-Term Residents Directive 2003/109. It also calls on Member States to fully comply with the recently revised Students and Researchers Directive. The pursuit of 'talent partnerships' is not provided a legal basis, but is a soft law and would take the form of non-binding instruments.

3.2. Enabling factor 2: Coherence with soft legal instruments of the EU

In 2016, the European Parliament called for a **European Pillar of Social Rights** to reinforce social rights and deliver a positive impact by 'upholding the Treaties' social objectives, supporting national welfare states, strengthening cohesion, solidarity and upward convergence in economic and social outcomes, ensuring adequate social protection, reducing inequality, [and] achieving long overdue progress in reducing poverty and social exclusion.'¹⁸⁶ The European Pillar of Social Rights was adopted in 2017 alongside an action plan.¹⁸⁷ The pillar has three components: i) **social protection and inclusion**, ii) **equal opportunities and access to the labour market**, and iii) **fair working conditions**. A set of rights are defined within each area. These rights, particularly with respect to the fair working conditions and equal opportunities and access to the labour market, resonate with the issues concerning legal labour migration to the EU as set out in Section 2.2. EU action to support the access of TCNs to the labour market and fair working conditions could promote the implementation of the European Pillar of Social Rights.

¹⁸³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions, on a New Pact on Migration and Asylum, COM/2020/609 final.

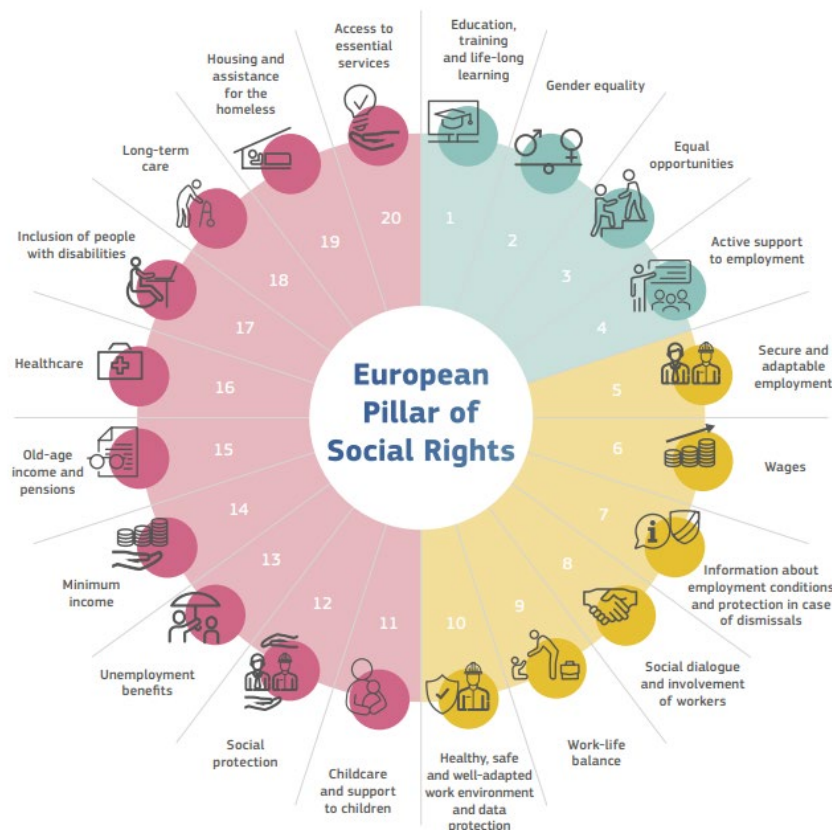
¹⁸⁴ On 17 May 2020, the European Parliament and the Council have reached a provisional agreement on the main elements of the recast Blue Card Directive.

¹⁸⁵ This dDirective has not achieved its objective to simplify the admission procedures for all third-country workers. The goal is now to simplify and clarify the scope of the legislation, including admission and residence conditions for low and medium skilled workers.

¹⁸⁶ [European Parliament resolution of 19 January 2017 on a European Pillar of Social Rights](#) (2016/2095(INI)).

¹⁸⁷ [The European Pillar of Social Rights Action Plan](#), European Commission, 2017.

Figure 15 – European Pillar of Social Rights



Source: [The European Pillar of Social Rights Action Plan](#), European Commission, 2017.

In November 2020, the European Commission launched the **EU Action Plan on Integration and Inclusion** (2021-2027).¹⁸⁸ The action plan updates the 2016 plan and builds on the experience from the coronavirus pandemic. Its objectives are to enhance the short- and long-term participation of migrants in society. The actions mainly concern inclusive education and training, improving employment opportunities and skills recognition and promoting access to health and affordable housing. The **European Skills Agenda** specifically acknowledges the contribution of legally staying migrants to promoting the dynamism of the EU labour market.¹⁸⁹

3.3. Enabling factor 3: Coherence with the sustainability agenda

EU action in the EU's legal labour migration framework has a limited correspondence to sustainable development objectives. The **Green Deal**, which is the cornerstone of the European Commission's agenda on sustainability, seeks to promote the energy transition, sustainable food value chains, and resilient health care systems. These objectives will undoubtedly have implications on the labour market needs of the EU's economy. The International Organisation for Migration has noted the key role that migrants play in sectors that are central to the success of the Green Deal, namely agriculture

¹⁸⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Action plan on Integration and Inclusion 2021-2027 COM(2020) 758 final, pp. 11.

¹⁸⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. European Skills Agenda for sustainable competitiveness, social fairness and resilience. COM(2020)274.

and fisheries, energy, manufacturing, and construction.¹⁹⁰ Yet, the communication on the Green Deal makes just one reference to migration.¹⁹¹ Revisions to the EU's policy on legal labour migration could support the implementation of the Green Deal and the sustainability agenda. According to some scholars, doing so would also shift the EU from a short-term perspective to a 'new narrative for EU migration policy, based on sustainability instead of the current narrative of labour migration for economic growth'.¹⁹²

3.4. Enabling factor 4: Citizens approve of the EU's role in labour migration

The European Commission launched a **public consultation** in 2020 on the topic of legal labour migration. The majority of respondents held the view that the EU should undertake action in the area of legal migration that includes legislative and practical measures. About three out of four respondents (73 %) agreed or strongly agreed that the EU should adopt a comprehensive legal migration code that would replace all the current directives. With regards to practical measures, respondents were most supportive of the EU promoting information on legal pathways (92 %), improving systems to recognise or validate professional qualifications and skills (92 %), and establishing EU priorities and guidelines to improve the coordination of national migration policies (80 %).¹⁹³

The views gathered in the public consultation are aligned with the findings from a special Eurobarometer carried out in 2018.¹⁹⁴ Respondents to the survey considered that language courses (88 %) and measures to promote job search (83 %) were effective in supporting the integration of immigrants in the EU. A majority of respondents in all Member States considered that **the European Union has an important role in promoting integration**. About 70 % consider that integration is a necessary investment and that both society and immigrants themselves are responsible to achieve this objective.

3.5. Possible avenues for EU action

Based on the consideration of the issues in the status quo and the enabling factors, this European added value assessment identifies avenues for EU action in three areas, which are reviewed in the subsequent sections:

- harmonise rules for recognition of qualifications (Section 4)
- facilitate access to regular work for TCNs already present in the EU (Section 5)
- introduce new legal channels for labour migration to the EU (Section 6)
- improve TCN workers' rights and employment conditions (Section 7)

¹⁹⁰ [Migration and the European Green Deal](#), International Organization for Migration.

¹⁹¹ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, [The European Green Deal](#), COM/2019/640 final, p. 21.

¹⁹² T. de Lange, 'A new narrative for European migration policy: Sustainability and the Blue Card recast', *European Law Journal*, April 2021.

¹⁹³ [Report on the consultation on the future of EU legal migration](#), European Commission, 2021.

¹⁹⁴ [Integration of immigrants in the European Union](#), Special Eurobarometer 469 Report, 2018.

4. Policy option 1: Promote the recognition of qualifications

4.1. The problem

As noted in Section 2, highly-educated TCNs (those with a tertiary degree) are more likely to work in low- or medium-skilled jobs than EU citizens (including intra-EU migrant workers), a phenomenon known as **over-qualification**. The drivers of over-qualification are multiple and include the limited recognition of professional qualifications. The recognition of TCN professional qualifications is primarily determined according to national rules, which vary significantly across the EU.

EU law addresses this problem only to a limited extent. The EU Directive on the Recognition of Professional Qualifications (Directive 2005/36/EC) only applies to EU nationals. Some of the EU directives on legal migration recognise the professional qualifications of TCNs.¹⁹⁵ Among over-qualified TCNs with tertiary education, recognition of qualifications is the most commonly reported barrier to finding a suitable job – 40 % report facing this obstacle; in comparison, 21 % report facing the obstacle of language skills.¹⁹⁶

This policy option would draw on EU action to promote the recognition of professional qualifications of TCNs.

The policy option would address the lack of pathways for the integration and social mobility of TCNs, which is one of the key issues noted in the status quo (see Section 2, Key Issue 3). The impacts of this 'key issue' include discrimination of TCNs in the labour market, lower achievement of the economy's structural needs, lost productivity, innovation and tax revenues, and missed cooperation and solidarity with third countries. **The EU can tackle this issue and in doing so, can generate benefits for TCNs and the EU.**

4.2. Possible EU action

The policy option could encompass one or more sub-options as follows.

Sub-option 1: The EU could proceed to develop **common rules on a sectoral basis** for the recognition of qualification skills and previous educational attainments of TCNs. This would include the recognition of a TCN's qualifications both upon their entry into the EU and for the purposes of their intra-EU mobility. This approach could follow the approach taken in the revision of the Blue Card Directive.¹⁹⁷ Articles 79 and 79(2)(b) TFEU could provide an appropriate legal basis.

This sub-option could initially prioritise sectors related to **'essential' work** or **structural needs driven by the Green Deal** and then expand to other sectors. Prioritising the recognition of professional qualifications for construction workers could be justified in relation to the coronavirus

¹⁹⁵ Article 11(1)(c) Directive 2003/109/EC (Long-term residents), Article 14(1)(d) Directive 2009/50/EC (EU Blue Card), Article 12(1)(d) Directive 2011/98/EU (Single Permit), Article 23(1)(h) Directive 2014/36/EU (Seasonal workers), Article 18(2)(b) Directive 2014/66/EU (Intracorporate transfers), and Article 22(1)(3) and (4) Directive 2016/801/EU (Researchers, students et al). Only Directive 2003/86/EC (Family reunification) contains no provision regarding the recognition of professional qualifications.

¹⁹⁶ See Annex I – CEPS.

¹⁹⁷ The revision of the Blue Card Directive plans to cover recognition of qualifications and skills of highly skilled workers from the ICT sector, with a requirement of three years of professional experience. The exact professions that benefit from a mandatory recognition of skills are identified on the basis of their classification in the International Standard Classification of Occupations (ISCO), mentioned in an annex to the directive. A review clause was agreed on, according to which the Commission will assess every two years whether the list should be revised.

pandemic as well as to issues concerning the posting of workers. A similar case could be made for healthcare professions, linked to the fact that Member States have been introducing measures to facilitate the entry of health professionals with foreign medical degrees. For example, applications for the recognition of foreign qualifications of health professions were expedited in Belgium, Germany, Ireland, Luxembourg and Spain, and other measures for this profession in other Member States.

To ensure coherence with other policies, the sub-option should take into consideration that some trade agreements negotiated at EU level can include reservations on access to regulated professions.¹⁹⁸ The sub-option may focus initially on a selection of third countries within the framework of the EU's neighbourhood policy. To facilitate access to work of health professionals from third countries, the EU intervention could aim to support Member States in handling compensation measures: intensive trainings, and/or tests to check qualifications could be worked out and/or supported (financially) by the EU, for instance.

Sub-option 2: The EU could **extend the applicability of Directive 2005/36 to TCNs**. This change would allow TCNs who obtained a qualification in a Member State to have their qualifications recognised in another Member State and would apply to regulated professions.¹⁹⁹ A majority of respondents (72 %) to a public consultation in 2020 agreed or strongly agreed on the importance of improving the intra-EU mobility of TCNs.²⁰⁰ This step is also in line with the current proposal to reform the directive concerning asylum seekers' reception conditions.²⁰¹ The legal basis for this action could be Article 79 TFEU or the same legal basis as Directive 2005/36.²⁰²

Sub-option 3: The EU could issue a directive to set up a system led by the European Training Foundation and supported by a network of national bodies to facilitate the recognition of qualifications obtained in third countries. The system could initially focus on TCNs from countries with a special relationship with the EU. The system could include '**fast-track schemes**' for recognition and '**one-stop shops**' for facilitation of information and applications.²⁰³ The directive would have the same legal bases as sub-options 1 and 2.

The system could draw inspiration from the Lisbon Convention on the **Recognition of Qualifications concerning Higher Education in the European Region**²⁰⁴. It could also build on the experience of Germany's reforms in 2012. As a result of these reforms, migrants to Germany have the right to have an evaluation of their professional qualifications within three months of arrival and to receive a certificate of equivalency.²⁰⁵

¹⁹⁸ Howard Davies (2016), EUA Special Update on EU trade agreements and on the Recognition of professional qualifications.

¹⁹⁹ Under the dDirective, the recognition concerns only regulated professions but for situations not covered by Directive 2005/36, recognition is also required for EU nationals by the case law the CJEU (see Annex 1 – CEPS).

²⁰⁰ [Report on the consultation on the future of EU legal migration](#), European Commission, 2021.

²⁰¹ Proposal for a Directive of the European Parliament and of the Council laying down the standards for the reception of applicants for international protection, 2016/0222. Recital 37: The preamble of the proposal indicates that 'once applicants are granted access to the labour market, a Member State should recognise professional qualifications acquired by an applicant in another Member State in the same way as those of citizens of the Union and should take into account qualifications acquired in a third country in accordance with Directive 2005/36/EC of the European Parliament and of the Council'.

²⁰² Articles 46, 53 and 62 TFEU.

²⁰³ [Making Integration Work: Assessment and Recognition of Foreign Qualifications](#), OECD, 2017.

²⁰⁴ [Lisbon Convention on the Recognition of Qualifications concerning Higher Education in the European Region](#)

²⁰⁵ Rietig V. Moving beyond crisis, Germany new approach to integrating refugees to the labour market. Migration Policy Institute, 2016.

4.3. Assessment of policy option

Sub-options 1-3 can build on existing legislation and institutions in the EU, for example, the European Training Foundation in the case of sub-option 3.

The approach to **sub-option 1** can draw on the example of the Blue Card Directive, and sectoral Directives adopted in the 1970s in order to facilitate free movement of EU professionals (doctors in medicine, nurses, dental practitioners, etc.). Key design issues would be the setting of minimum training requirements for each profession and the extent to which the EU would support Member States in handling compensation measures. Sub-options 2-3 can be expected to have initial set-up costs that could be offset by **potential efficiency gains** in transitioning from a 'dual track' system for EU nationals and TCNs to a 'single track' system.

The **target group** are mainly overqualified medium- and highly skilled TCNs, especially those (48 % of highly educated TCNs) who work in low- or medium-skilled jobs and those who self-report overqualification (34 % of all TCNs). In terms of impacts, the sub-options would promote the **fundamental rights of TCNs** in particular the principle of equality and non-discrimination (Articles 20 and 21 CFR), freedom to choose an occupation and right to engage in work (Article 15 CFR) and freedom to conduct a business (Article 16 CFR). At the international level, it would enhance the coherence of EU action with the ILO's Declaration on Fundamental Principles and Rights at Work and Convention 97 on Migration for Employment.²⁰⁶ The conclusions of the ILO Tripartite Technical Meeting on Labour Migration (2013) also called for skills recognition, including among other actions to '...explore mechanisms for mutual recognition of skills, and certification of credentials (...)'.²⁰⁷

The main economic impact is a reduction in the barriers to occupational choice for TCNs, which improves employment probabilities and wages. It would allow for a better allocation of talent and improved wages and employment outcomes for TCNs. A recent study from Germany found that immigrants were 25 % more likely to be in employment and earned 20 % higher wages three years after obtaining recognition of professional qualifications.²⁰⁷ The study found that professional recognition was especially beneficial for TCNs with a doctoral degree or with professions where recognition is necessary in order to practice them, e.g. pharmacists and veterinarians. Studies from other countries, professions and time periods confirm the positive impact of policies that promote professional recognition. For example, a recent study from Australia finds that licensing increased hourly wages by about 20 %.²⁰⁸

The potential direct effect of this policy option is to reduce overqualification of TCNs. TCNs in the EU face a greater likelihood of being overqualified than mobile EU workers, and this can be considered being mostly due to lack of recognition of qualification, since TCNs and mobile EU workers face very different regimes. Taking this into account, this policy option can reduce overqualification of TCNs by 30 %. Relatedly, employment probability and wages are expected to increase by 25 % and 20 %

²⁰⁶ According to its Article 4, 'Measures shall be taken as appropriate by each Member, within its jurisdiction, to facilitate the departure, journey and reception of migrants for employment'.

²⁰⁷ Brücker, H., Glitz, A., Lerche, A. and Romiti, A., , 'Occupational recognition and immigrant labor market outcomes', *Journal of Labor Economics*, 39(2), 2021, pp.497-525.

²⁰⁸ Tani, M., '[Occupational Licensing and the Skills Mismatch of Highly Educated Migrants](#)', *British Journal of Industrial Relations*, 2021.

respectively.²⁰⁹ These improved labour market outcomes would apply to the share of TCN workers who are currently overqualified 'in excess' with respect to mobile EU workers.²¹⁰

Positive impacts are expected for the entire EU economy. First, Sub-option 1 has potential to attract talent by lowering the relative cost of professional qualifications in the EU relative to other countries such as the US and Canada.²¹¹ Second, macro-economic models suggest that a better allocation of talent can improve productivity and innovation while higher wages can lead to higher tax revenue for Member States. More competition in licenced occupations could also reduce consumer prices.

In the macro-economic assessment, this policy option is represented by decreasing costs of education (decreased gap in cost of schooling between migrants and natives). The assessment indicates that this option could importantly increase human capital in the economy and the level of productivity per migrant worker. The increase in productivity in medium- and high-skill sectors more than compensates the downward pressure on wages (the result on wages is positive for both migrants and natives). The long-run aggregate impact on the GDP would be 0.11 % or €15.3 billion per year.²¹²

Table 12 – Assessment of Policy option 1: Promote the recognition of professional qualifications

	Assessment
Impacts	Higher intra-EU mobility of TCNs Reduction in the barriers to occupational choice for TCNs Lower over-qualification of TCNs
Benefits	Greater labour market integration of TCNs, better employment and wage outcomes Better attraction and allocation of talent Greater matching of structural needs of EU labour market Enhanced productivity and innovation and greater tax revenues expected from higher earnings Greater protection of fundamental rights of TCNs (Art. 15, 16, 20, 21 CFR) Greater coherence with COE and ILO
Costs/limitations	Initial costs to the EU and MS to modify procedures that would likely be offset by efficiency gains from transitioning to a dual track system for EU nationals and TCNs to a single track system with lower administrative burden for TCNs and MS Possible costs for compensation measure. Not all professions may be affected Resistance from professional orders

²⁰⁹ See CEPS, Annex 1.

²¹⁰ Based on the Eurostat LFS, it appears that 9 % of medium-skilled TCN men, 20 % of high-skilled TCN men, 5.5 % of medium-skilled TCN women and 6.9 % of high-skilled TCN women fall in this category and could benefit from professional recognition. Please see Annex I – CEPS for more information.

²¹¹ The importance on the cost of obtaining recognition in the choice of destination country is highlighted in Gomez, R., M. Gunderson, X. Huang, & T. Zhang (2015); Do immigrants gain or lose by occupational licensing? Canadian Public Policy 41:S80–S97.

²¹² See EPRS and JRC, Annex 2.

Quantitative economic impacts	Decrease overqualification by 30 %, increase the probability of employment by 25 %, increased wage gains by 20 % – for the share of TCN workers that experience overqualification 'in excess' with respect to mobile EU workers Increased human capital, productivity and GDP (0.11 percent) or €15.3 billion per year.
European added value	Enhanced harmonisation across MS in labour market policy Greater efficiency in the labour market Enhanced scale of impact in attracting talent Increased EU GDP, productivity and human capital

Source: Compiled by the authors.

5. Policy option 2: Facilitating access to regular work for TCNs already present in the EU

5.1. The problem

As noted in Section 2, the majority of residence permits – more than four out of five – issued in the EU are not for work reasons. The TCNs to whom they are issued are not granted the same right to work as other TCNs and EU nationals. Rather, the rights they have as well as their access to the labour market vary by Member State.

This policy option would facilitate access to regular work for three groups of TCNs that are already present in the EU – **students, family members and asylum seekers**. These three groups are TCNs who, regardless their status upon entry to the EU, are documented migrants at a certain point in time (either for study, family reunification, or for humanitarian reasons - having lodged an asylum application, or having obtained refugee status). More broadly, this policy option is related to regularisation policies. There is a **high degree of public support** for such range of options. A public consultation carried out in 2020 found a high support for the **regularisation** of TCNs – 65 % agreed or strongly agreed with the idea that the EU should support and coordinate national approaches to developing regularisation measures.²¹³ As illustrated in Annex 1, there is substantial evidence of the positive economic impacts of regularisation and legalisation of migrants' status: regularisation increases access to employment,²¹⁴ has positive impacts on tax revenues²¹⁵ and aggregate consumption,²¹⁶ and lowers crime rates.²¹⁷ During the coronavirus pandemic, some Member States introduced a number of regularisation programmes, encouraged by the acknowledgment of the role played by migrants – including undocumented ones – in essential economic sectors, and by the need to greater integration for access to healthcare.²¹⁸ Domestic work is a sector where access to residence and regular employment could be particularly important for fostering integration and avoiding exploitative situations (see Box in Section 2.3.2). There have been calls in this direction also for agricultural work, especially the call to amend the Seasonal Workers Directive so that it also applies to undocumented migrants already in an EU Member State.²¹⁹

The policy option would address the **lack of legal channels** and the **lack of pathways for integration and social mobility**, which are two key issues identified in the status quo (see Section 2, Key Issues 1 and 3). These issues lead to a range of negative impacts including discrimination on the labour market and exploitative situations, poor protection of fundamental rights and lost human capital and productivity. These **detrimental impacts are concentrated among migrant women**

²¹³ [Report on the consultation on the future of EU legal migration](#), European Commission, 2021.

²¹⁴ Devillanova, C., Fasani, F. and Frattini, T., 2018. Employment of undocumented immigrants and the prospect of legal status: evidence from an amnesty program. *ILR Review*, 71(4), pp.853-881 and UNDP, op. cit.

²¹⁵ Monras, Joan and Vázquez-Grenno, Javier and Elias Moreno, Ferran, Understanding the Effects of Legalizing Undocumented Immigrants (February 13, 2018). Upjohn Institute Working Paper No. 18-283,

²¹⁶ Dustmann, C., Fasani, F., & Speciale, B. (2017), 'Illegal migration and consumption behavior of immigrant households', *Journal of the European Economic Association*, 15(3), 654-691.

²¹⁷ Baker, S. R. (2015), 'Effects of immigrant legalization on crime', *American Economic Review*, 105(5), 210-13.; Mastrobuoni, G., & Pinotti, P. (2015), 'Legal status and the criminal activity of immigrants', *American Economic Journal: Applied Economics*, 7(2), 175-206; Pinotti, P. (2017), 'Clicking on heaven's door: The effect of immigrant legalization on crime', *American Economic Review*, 107(1), 138-68).

²¹⁸ PICUM, [Regularising undocumented people in response to the COVID-19 Pandemic](#), 1 July 2020.

²¹⁹ Palumbo L., Corrado A., [Are agri-food workers only exploited in southern Europe? case studies on migrant labour in Germany, the Netherlands, and Sweden](#), Open Society and European Policy Institute Policy Brief 2020.

who are disproportionately represented among recipients of family reunification visas, thus increasing intersectional discrimination. There may be local displacement effects on EU national workers, but research show that, where they exist, these effects are usually small (see Section 2.3.3 for more information).

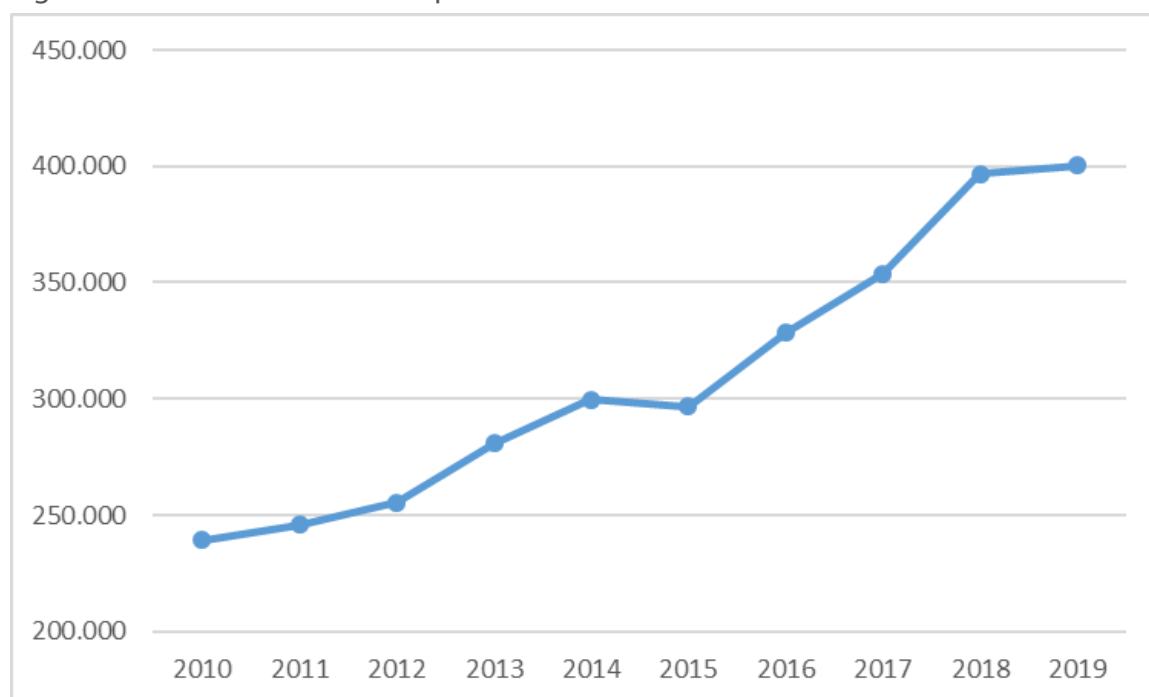
A possible EU action for each group of TCNs (students, family members and asylum seekers) is discussed below.

5.2. Policy option 2a: Facilitating access to regular work for students

5.2.1. Possible EU action

The issuance of permits for students has been steadily growing in the EU since 2010 (see Figure 16). In 2019, the EU issued 400 190 work permits for education reasons. TCNs who train and graduate from education programmes in the EU face **barriers in their transition to employment**. As a result, the percentage of graduates choosing to stay in the EU after the end of their studies remains relatively low.²²⁰ TCNs are less likely to work while studying and this may be due to restrictions determined by the type of visa they hold. This lack of work experience during the tertiary education might explain why job entry is harder for migrants.

Figure 16 – First-time residence permits for education reasons



Source: compiled by the authors based on migr_resfirst. First-time residence permits issued in the EU-27 for education reasons.

This policy option would **amend Article 25 of the Students and Researchers Directive** (2016/801) in three ways. First, the time constraint would be relaxed to allow students a period of 18 months to

²²⁰ [Retaining third-country national students in the European Union : EMN Inform](#). European Migration Network, 2017.

find a job in the EU (instead of the current nine months).²²¹ Second, the three-month deadline to prove that a TCN has 'a genuine chance of being engaged or of launching a business' would be extended to six months, which would be more in line with what is considered acceptable for EU job seekers.²²² Third, the EU would issue guidance on how to interpret 'a genuine chance of being engaged' that is in line with case law concerning EU job seekers.

These amendments can have a legal basis in Article 79(2)(a) TFEU, which grants the EU competence to adopt measures that define 'the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits'.

The policy option could also consider a revision of Article 25(1) to allow students **the possibility to look for a job in the whole territory of the EU**.

The policy option should consider other measures that can support TCN students in **acquiring work experience during studies**, which can support the transition to employment later. As noted in Section 2, young TCNs are substantially less likely to obtain paid or unpaid work experience during their studies relative to similar citizens. They are also less likely to directly approach EU employers when searching for a job and instead rely more on networks of friends and relatives.

5.2.2. Assessment

The policy option would reduce the pressure that young TCNs face to secure a job; it would furthermore promote their chances of acquiring work experience during their studies. As such, the policy option will support young TCNs in securing **employment that is well-suited for their qualifications** and **reduce their risk of exploitation**.

The **target group** would be TCN students present in the EU, i.e. 800 000 people residing in the EU-27 as of 2019.

As shown in Section 2, young TCNs are less likely to work in a job that fits well their education, more willing to commute for more than one hour for a job, and more likely to report wages in the lowest decile than citizens and mobile EU nationals with similar characteristics. Part of the observed gap in job quality and earnings can be attributed to a reduced time span for job search, which puts young TCNs under pressure to accept a (suboptimal) job offer faster in order to obtain the residence permit. The policy option can potentially counteract all these disadvantages. For example, in Germany, the introduction of the Blue Card increased entry-level wages for new TCN graduates.²²³ More evident job prospects may help to retain qualified young TCNs in the EU and boost the attractiveness of the EU's labour market.²²⁴

Employers on the other hand would have **more opportunities to recruit skilled workers having European qualifications**, a knowledge of the language of at least one Member State and established links to its society. Less bureaucracy and better labour market prospects can attract a

²²¹ This position was taken by the European Parliament in 2015. On 25 February 2014 the European Parliament adopted a [first reading position](#), which also served as a mandate, for the negotiations with the Council, of the directive proposal.

²²² ECJ, 26 February 1991, Antonissen, C-292/89.

²²³ Kraft and Quendrae study.

²²⁴ Many blogs and websites, easily accessible on the internet, compare post-study work options. See Survey says post-study work options a major factor in choice of destination, 2015, <https://monitor.icef.com/2015/09/survey-says-post-study-work-options-a-major-factor-in-choice-of-destination/>.

larger pool of prospective TCNs willing to study and later to work in the EU. Restrictive immigration policy can deter high-ability international students.²²⁵

With respect to fundamental rights, the policy option is coherent with the International Covenant on Economic, Social and Cultural Rights and various instruments of the ILO to promote the employability of young workers.²²⁶

To be more effective, this policy option should be implemented together with Policy option 1 concerning the recognition of qualifications.

Table 13 – Assessment of Policy option 2a: Students

	Assessment
Impacts	<ul style="list-style-type: none"> Reduced barriers to occupational choice Reduced barriers to labour market integration Lower over-qualification of young TCNs Incentive to invest more in destination-specific skills
Benefits	<ul style="list-style-type: none"> Greater retention and labour market integration of young TCNs in the EU: better employment and wage outcomes Reduce labour market exploitation Better allocation of skills and increased productivity Greater attraction of high-potential students Contribution to EU policy aiming at protecting fundamental rights (Articles 5, 15 and 31 CFR) and social rights and to respect of international standards
Costs	<ul style="list-style-type: none"> Measures to ensure adequate living standards during job search; Put in place tools to favour transition between studies and employment. Risk of trade-off between intra-EU mobility and investment in destination-specific skills Does not solve the problem of limited qualification recognition if not linked with policy option 1
Quantitative economic impacts	<ul style="list-style-type: none"> Entry wages of TCN graduates are expected to increase potentially up to 7 percentage points
European added value	<ul style="list-style-type: none"> Enhanced harmonisation across MS in labour market policy and positive impact on single market Greater efficiency in the labour market Greater internal and external coherence

Source: Compiled by the authors.

²²⁵ Kato, T. and Sparber, C., 2013. Quotas and quality: The effect of H-1B visa restrictions on the pool of prospective undergraduate students from abroad. *Review of Economics and Statistics*, 95(1), pp.109-126.

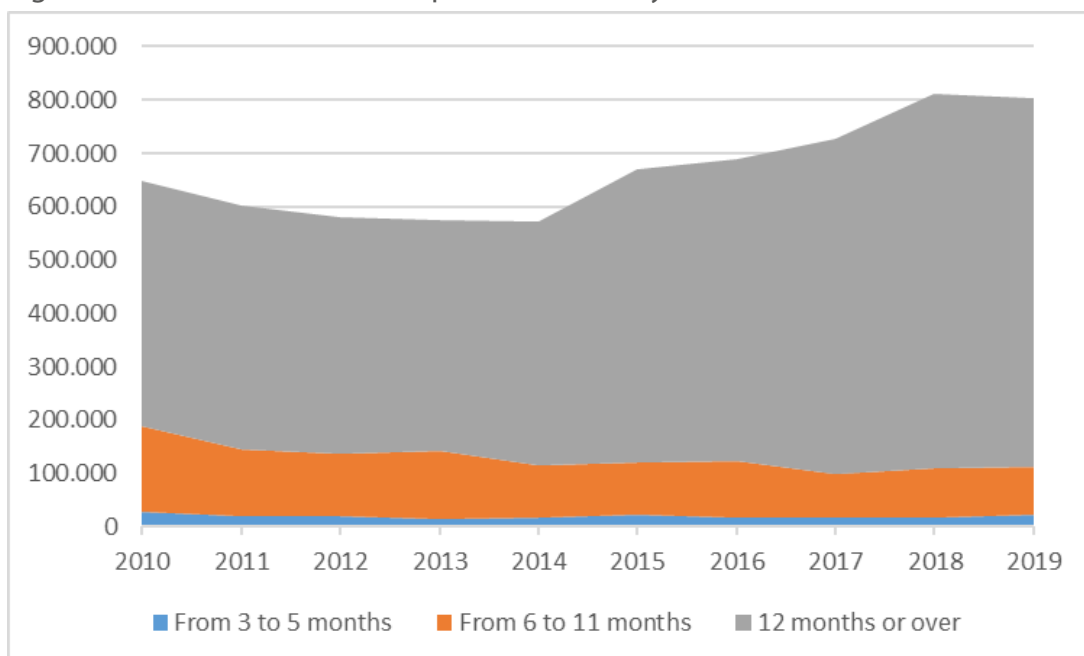
²²⁶ For example, the Employment Policy Convention, 1964 (No. 122) ; Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169).

5.3. Policy option 2b: Facilitating access to regular work for family members

5.3.1. Possible EU action

The most common reason for the issuance of a residence permit is family reunification and the number of these permits issued has increased over time (see Figure 17). In 2019, such permits represented 38 % of all residence permits. At the same time, as discussed in Section 2 (key issues and impacts), migrants entering for family reasons have lower probability of being employed: TCN family migrants (both men and women) are 10 % less likely to be employed have poorer labour market outcomes (e.g. lower wages and higher probability of working atypical hours) compared to intra-EU family migrants, indicating that legal barriers may play a role. Even if these restrictions are temporary, they can have negative long-term implications.²²⁷

Figure 17 – First-time residence permits for family reunification



Source: compiled by the authors based on migr_resfirst. First-time residence permits issued in the EU-27 for family reunification reasons.

This policy option would **amend the Family Reunification Directive** (Council Directive 2003/86/EC), in particular Article 14. While Article 14(1) entitles family members to accessing employment, Article 14(2) allows Member States to decide 'according to national law the conditions under which family members shall exercise an employed or self-employed activity'. The policy option would remove the prohibition in Article 14(2) and by doing so, would directly confer upon TCN workers' family members a subjective **right to work**. The policy option would also entail revisions of other directives that have a derogation to Article 14 of the Family Reunification Directive.²²⁸

²²⁷ See Annex 1 – CEPS.

²²⁸ Article 26(6) of the Students and Researchers' Directive. If the revised Blue Card Directive is finally adopted - in its current formulation- Article 16 would also have to be amended.

EU action could be based on Article 79 TFEU. Ensuring family members' access to work can be deemed to ensure 'the efficient management of migration flows', 'fair treatment to third-country nationals residing legally in Member States', and 'the prevention of illegal immigration', mentioned at Article 79(1). As the action would consist in granting new rights to TCNs legally residing in a member States, EU action can also be based on Article 79(2): the European Parliament and the Council shall adopt measures which define the 'b) (...) rights of third-country nationals residing legally in a Member State'.

5.3.2. Assessment

This policy option could improve the economic and social integration of TCNs in several ways. First, it provides additional **financial security** to a TCN household in case the sponsor (the spouse who first enters the EU, e.g. for work or research reasons) loses a job, wants to change his or her job or further invest in human capital. By making the TCN household **less dependent on the work contract of the sponsor**, this policy option could increase directly income of TCNs households by fostering employment opportunities for family migrants and indirectly, by allowing sponsors more flexibility on the job market. Second, this policy option can **reduce the vulnerability of family migrants who are predominantly women** in case of unforeseen family situations, such as divorce, sickness or death of a spouse.²²⁹ Given its contribution to enhancing women's autonomy and possibility of self-realization by work, it is also fully consistent with EU social policy in favour of work-life balance, which aims at fostering the ability of women to pursue their careers and gain financial independence, without being held back by family life obligations.²³⁰ This policy is also consistent with the objectives of the UN Convention on the Elimination of All Forms of Discrimination against Women.

Increased access to employment for family members is expected to **reduce the scope for irregular employment**, thus improving working conditions and wages of TCN (which in turn stimulates the economy) and increasing tax revenues (because of the reduction in the scope of the shadow economy).

According to the OECD, the status granted to family members is one of the most important elements to attract talent.²³¹ Considering the importance of work, for the person's well-being and the family's wealth, one may expect that increasing family members' opportunities to access employment can improve the attractiveness of the EU. Reduced rights for TCNs' family members limit the EU attractiveness, as highly skilled workers would select another destination which offers more favourable perspectives to the whole family.²³² By reducing future uncertainty (residence and work permits of a family member no longer depend on the residence of the spouse) this option could **stimulate human capital investments** of family migrants in relevant skills for the destination.

The **target group** is composed by family members of TCNs in the first year since arrival: between 147 000 and 162 000 are the TCNs who enter the EU-27 annually to join non-EU partner or spouse. At the same time, it is difficult to estimate how many would enter the labour market if allowed to, since other factors seem more relevant than legal restrictions in limiting access of family members

²²⁹ 67 % of TCNs who arrived to the EU for family reasons are women (EU LFS 2014).

²³⁰ See namely, Directive 2019/1158 of 20 June 2019 on work-life balance for parents and carers, OJ L 188, 12.7.2019, p. 79.

²³¹ [How do OECD countries compare in their attractiveness for talented migrants?](#) OECD, 2019.

²³² This aspect (with others) has justified the EU's decision to reform the Blue Card Directive.

to the labour market. About 8 % of unemployed or inactive family migrants identify legal restrictions as a major obstacle to finding a job.²³³

In the **macroeconomic modelling**,²³⁴ this policy option is assessed together with policy option 2C (facilitated access to labour market for asylum seekers). The expected impact of this policy option is to **reduce hiring barriers** for firms for these two categories of migrants and, as a consequence, increase employed workers from these two groups. This increase takes into account the number of family members who are inactive, unemployed or overqualified, and that declare facing restrictions in access to the labour market.

The main impacts are an increase in real wages for both native and migrant workers increase (by 1.08 % and 2.61 % respectively), an increase overall in firm productivity (especially for firms owned by nationals). The gain in terms of GDP is substantial (+1.12 %), or 15.3 billion/year.

Table 14 – Assessment of Policy option 2b: Family members

	Assessment
Impacts	<p>Higher employment among TCN family members</p> <p>Reduced vulnerability and greater self-sufficiency of family members who are predominantly women</p> <p>Greater financial security for TCNs</p> <p>Lower risk of irregular work and better working conditions</p> <p>More investments in human capital</p>
Benefits	<p>Greater social and labour market integration of TCNs</p> <p>Greater attractiveness of the EU</p> <p>Greater tax revenues due to lowering irregular employment</p> <p>Higher protection of workers' rights</p> <p>Better use of skills in the economy</p> <p>Contribution to EU social policy in favour of work-life balance and anti-discrimination policies</p> <p>Contribution to the protection of fundamental rights (Articles 21, 23 and 24 of the CFR)</p>
Costs/Limitations	<p>This policy option would not address other factors that may limit more than legal restrictions family migrants' labour market participation</p>
Quantitative economic impacts	<p>Potential to address the employment gap (10 % as compared to intra EU mobile family members) and the gaps in labour market outcomes (especially wages (e.g. 5 %-11 % less likely to receive wage in top decile).</p> <p>The positive economic impacts are substantial, especially in terms of GDP (1.11 %), increase in real wages (1.08 % for migrant workers and 2.61 % for native workers) and productivity (0.14 %).</p>
European added value	<p>Enhanced harmonisation across MS in treatment of family members</p> <p>Greater efficiency in the labour market</p> <p>Economies of scale in attracting a larger pool of skilled workers</p> <p>Substantial increase in aggregate welfare in the EU economy, 15.3 billion/year</p>

Source: Compiled by the authors.

²³³ See Annex 1 – CEPS.

²³⁴ See EPRS and JRC, Annex 2.

5.4. Policy option 2c: Facilitating access to regular work for asylum seekers and refugees

5.4.1. Possible EU action

In 2020, there were 416 600 first-time applicants for asylum in the EU. The number peaked during the 2015 crisis and has fallen since then. At present, Member States can delay access to the labour market and can give priority to EU nationals and legally resident TCNs.²³⁵ There is evidence that asylum seekers face greater barriers to job search, including legal restrictions (key issue 2) and have lower probability of being employed (between 20 and 30 percentage points than labour migrants). On what concerns refugees, the [renewal of the European Partnership for Integration](#) with social and economic partners and the Action Plan on integration and inclusion for 2021-2024 adopted in January 2021 highlights the importance of integrating refugees into the labour market.²³⁶

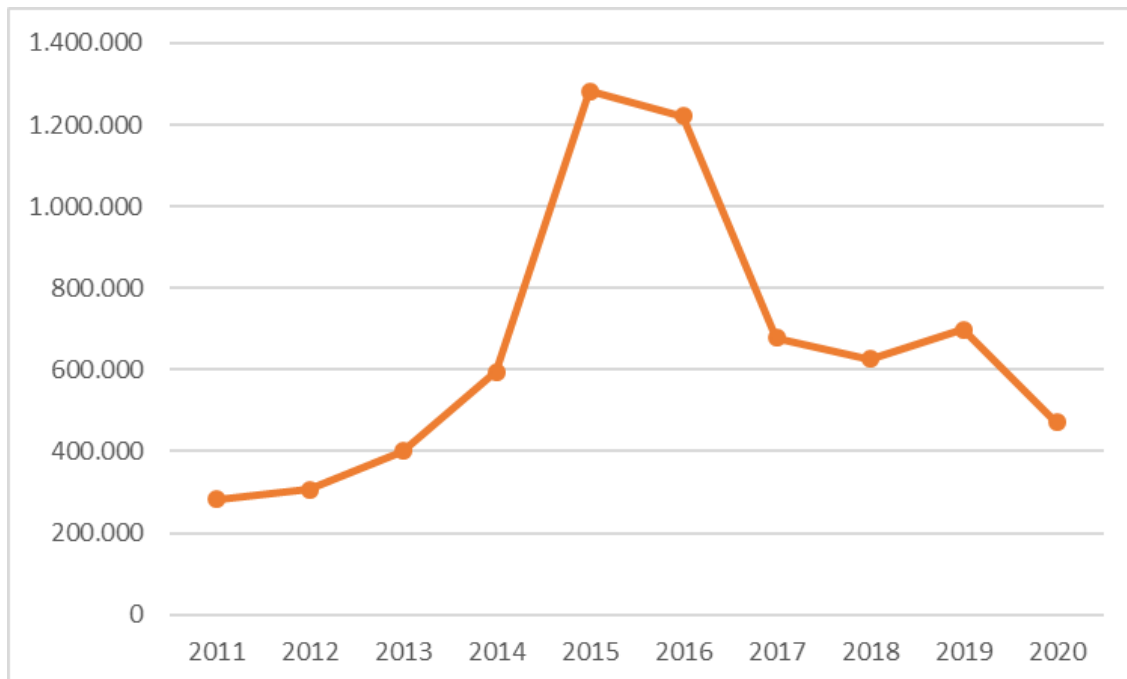
This policy option would amend Article 15 of the Reception Conditions Directive (2013/33/EU): a limited version of the amendment consists in prohibiting Member States from cumulating the two limits that the Directive allows them (delay access to work and limiting it to give priority to citizens and residents), while a more ambitious option would be **to remove the limits to access employment** and effectively allowing asylum seekers to apply for a work permit immediately after their asylum claim has been lodged. The experience of other countries demonstrates the viability of this option. In Canada for example, asylum seekers can usually apply for a work permit immediately after their asylum claim has been lodged. It is also coherent with the recognition that access to employment is beneficial for both asylum seekers and the host state.²³⁷

²³⁵ The Reception Conditions Directive states: 'Member States shall ensure that applicants have access to the labour market no later than 9 months from the date when the application for international protection was lodged'. Secondly, Member States shall decide that 'for reasons of labour market policies' they may give priority to Union citizens and to legally resident third-country nationals'.

²³⁶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, [Action plan on integration and inclusion 2021-2027](#). SWD(2020) 290 final.

²³⁷ In the proposal for a recast directive, the EU acknowledged that work guarantees 'a dignified standard of living to asylum seekers'. The proposal states that in order to promote the self-sufficiency of applicants and to limit wide discrepancies between Member States, it is essential to avoid 'imposing conditions that effectively hinder an applicant from seeking employment': preamble of the directive, para 34.

Figure 18 – First-time applicants for asylum in the EU-27



Source: compiled by the authors based on Eurostat migr_asyappctza. Asylum and first time asylum applicants for the EU-27.

The policy option can be based upon Article 78(2) TFEU, which is the legal basis for the Reception Conditions Directive. Article 78(2) provides that 'for the purposes of paragraph 1' (*i.e.* with a view to offering appropriate status to any third-country national requiring international protection), the European Parliament and the Council shall adopt measures for a common European asylum system comprising: '(f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection'.

The policy option would also call for the adoption of measures to facilitate the access of asylum seekers to the labour market already present in the EU to the labour market. A key area concerns **language skills**, which are a notable obstacle to securing employment when asylum seekers speak neither the host state's language nor English. The EU, through its different funds, including the European Training Foundation and the European Social Fund, could support Member States in the provision of language courses for asylum seekers. Another key area concerns the **recognition of qualifications**. The Member States, with the help of the EU, could evaluate asylum seekers' skills as soon as possible, ideally in parallel with the asylum application. A number of countries provide examples. For example, in Norway and Sweden, reception authorities provide skills screening services. While useful to support asylum seekers in access employment, skills evaluation should not affect the assessment of the asylum application. It is crucial to maintain a separation between the entities in charge of evaluating the asylum application and skills.

A related policy option is based on the model of '**track changes**', as, for example, implemented in Sweden. This tool allows migrants who are legally working during their asylum process or a limbo phase to obtain legal residency even if their asylum gets rejected (in the Swedish case, this for example involves 11 % of rejected asylum application).

5.4.2. Assessment

Policy option 2c would introduce the possibility for asylum seekers in the EU to access the labour market. This policy option would reduce the incentives to engage in irregular work and reduce the incentive for secondary movements within the EU.²³⁸ The policy option can promote self-sufficiency and integration in the EU while potentially limiting the costs to Member States for reception facilities. It would reduce uncertainty for the employer that the person that is hired during the asylum process can stay at work also in case of a rejected asylum application, and it provides more incentives to integration to the TCN. It would moreover reduce uncertainty for the TCN, thus encouraging human capital accumulation.

The policy option would align the EU's position with that of the UNHCR, which has consistently promoted asylum seekers' access to employment.²³⁹ It would also be aligned with Articles 1 and 18 of the CFR concerning the full respect for human dignity and Article 6(1) of the International Covenant on Economic, Social and Cultural Rights, which provides for a right to work, and includes the right of everyone to the opportunity to gain their living by work which they freely choose or accept.

Economic studies suggest that quicker access to the labour market can enhance the probability of employment and integration. A study from Switzerland found that one additional year of waiting for the asylum decision reduces the subsequent employment rate by 4 to 5 percentage points.²⁴⁰ Another study from Italy finds that immigrants who are potentially eligible for legal status under an amnesty program in Italy have a significantly higher probability of being employed relative to undocumented immigrants who are not eligible.²⁴¹ Researchers estimate that bans imposed on asylum seekers who arrived in Europe during the 2015 refugee crisis generated an economic loss of €37.6 billion.²⁴² The macroeconomic benefits of labour market integration policies towards asylum seekers and refugees outweigh the costs of implementation, especially if seen in the long run (GDP gains for the economy can get up to 1.6 % in the most ambitious scenario in the long run). These benefits quite soon outweigh the costs for training.²⁴³ This policy option is expected to decrease irregular employment and to avoid situations of exploitation, such those observed in the agricultural sector (see Impact 1).

The **target group** could be the asylum seekers in their first year since arrival (in 2020 there were about 284 500 thousand first-time asylum applicants (18-64 years old) in the EU-27) and recently recognized refugees (about 346 500 people between 18 and 64 years old, between 2018 and 2020). If we consider also the 'track change' option – which is not detailed here – also rejected asylum seekers could be potential beneficiaries (they are (about 635 000 in the 18-64 age range, between 2018 and 2020). Their likelihood to take up a job if given the possibility seems higher than for their

²³⁸ Brekke J.P., G. Borchman (2015), 'Stuck in Transit – Secondary Migration of Asylum Seekers in Europe, National Differences, and the Dublin Regulation', *Journal of Refugee Studies*, Vol. 28(2), 145-163.

²³⁹ UNHCR, UNHCR's Response to the European Commission's Green Paper on the Future Common European Asylum System, September 2007, available at: <http://www.unhcr.org/refworld/docid/46e159f82.html>; then UNHCR Annotated Comment to the Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast).

²⁴⁰ Hainmueller, J., Hangartner, D. and Lawrence, D., 2016. When lives are put on hold: Lengthy asylum processes decrease employment among refugees. *Science advances*, 2(8), p.e1600432.

²⁴¹ Devillanova, C., Fasani, F. and Frattini, T., 2018. Employment of undocumented immigrants and the prospect of legal status: evidence from an amnesty program. *ILR Review*, 71(4), pp.853-881.

²⁴² Fasani, F., Frattini, T. and Minale, L., 2020, 'Lift the Ban? Initial Employment Restrictions and Refugee Labour Market Outcomes', *Journal of the European Economic Association*.

²⁴³ Kancs, D. A., & Lecca, P. (2018). Long-term social, economic and fiscal effects of immigration into the EU: The role of the integration policy. *The World Economy*, 41(10), 2599-2630.

family members: about 20 % of the inactive, unemployed and overqualified declared being limited in their job search by restrictions.²⁴⁴

At the macro-economic²⁴⁵ level, this policy option has been assessed together with the previous one (family migrants). The aggregate impact on welfare, wages and productivity is positive. It is substantially positive in the case of aggregate welfare. This increase takes into account the number of asylum seekers who are inactive, unemployed or overqualified, and that declare facing restrictions in access to the labour market.

Table 15 – Assessment of Policy option 2c: Asylum seekers

	Assessment
Impacts	Promote self-sufficiency of asylum seekers Reduce irregular work and improve working conditions. Reduce secondary movements Reduce uncertainty on the residence status with positive labour market consequences
Benefits	Greater labour market integration of asylum seekers, improved employment rate and wages Protection of fundamental rights of TCNs (Articles 1 and 18 of the CFR) Increased tax revenues due to a reduction in irregular work Better use of skills in the economy Higher protection of workers' rights Greater incentives to human capital formation/accumulation
Costs	Increased costs for language classes and skills screening Lower reception costs for MS
Quantitative economic impacts	Estimates of cost of bans imposed on asylum seekers in EU (2015 refugee crisis) €37.6 billion The positive economic impacts are substantial, especially in terms of GDP (1.11 %), increase in real wages (1.08 % for migrant workers and 2.61 % for native workers) and productivity (0.14 %).
European added value	Enhanced harmonisation across MS in asylum policy and workers' rights Greater efficiency in the labour market Greater external coherence (UNHCR) Substantial increase in aggregate welfare in the EU economy, 15.3 billion/year

Source: Compiled by the authors.

²⁴⁴ See Annex 1 – CEPS, and Annex 2 for the estimated numbers of asylum seekers and family members who may enter the labour market thanks to the policy options.

²⁴⁵ See EPRS and JRC, Annex 2.

6. Policy option 3: Introducing new legal channels for migrants to enter the EU

6.1. The problem

As noted in Section 2, there is a **lack of legal channels to the EU** and a **lack of a holistic approach** to addressing the needs of the EU economy through legal labour migration (see Section 2, Key Issues 1 and 4). The impacts are significant and include lost productivity and missed cooperation with third countries. This policy option would introduce new channels for TCNs to enter the EU for employment reasons. Being aware of the need for a harmonization of possibilities and conditions of entry for TCN workers, but within the constraints of the current framework, we focus on selected groups of TCNs that are identified as particularly deprived of avenues for accessing the EU: **start-up entrepreneurs, medium- and low-skilled workers, and youths**. A possible EU action for each group is discussed below.

6.2. Policy option 3a: Mobility schemes for entrepreneurs

6.2.1. Possible EU action

Countries around the world are introducing start-up visas to ease the recruitment of foreign entrepreneurs and investors.²⁴⁶ Stakeholder opinion in the EU, as registered through consultations undertaken by the European Commission, would appear to be strongly in favour of greater EU action to promote the admission and rights of TCN entrepreneurs and the founding of start-up companies by such people.²⁴⁷

This policy option envisions a new EU legal instrument to create an **EU visa for entrepreneurs** and/or could define **EU support to existing national schemes**. The legal basis for this policy option could be found in Article 79 TFEU, or more precisely Article 79(2) TFEU as it concerns visa and residence permits. EU support to existing national schemes could be based on the idea of mutual recognition to allow for intra-EU mobility. The legal instrument could set forth the conditions that an entrepreneur should fulfil in order to have the right to move to another Member State.

The design of the new instrument could draw inspiration from national initiatives both within and outside of the EU²⁴⁸ and require an 'active' entrepreneurial component such as a business plan or hiring of workers. An EU visa scheme for entrepreneurs could be based on the **Australia** model, which is linked with investments, (requires an ownership interest of at least 30 % in the venture) or on the **New Zealand** model, which is conditioned upon accreditation. Another possible model, which combines investments and accreditation, is the **UK** 'Start-up and Innovator visas' scheme, which replaced Entrepreneur and Graduate Entrepreneur visas in March 2019. In the EU, **the Netherlands** has a model for essential personnel of start-ups, which does not require capital investment. There is also a 'Start-up Employee Visa' programme in **Lithuania** to attract entrepreneurs in the technology sector. These national schemes seek to **fill a gap in immigration policies** by offering an **avenue for younger, less experienced entrepreneurs with limited**

²⁴⁶ See for example, OECD (2020), International Migrations Outlook and Patuzzi, L. (2019), Start-up visas : A passport for innovation and growth, Migration Policy Institute.

²⁴⁷ [Report on the consultation on the future of EU legal migration](#), European Commission, 2021.

²⁴⁸ Patuzzi, L. (2019), Start-up visas : A passport for innovation and growth, Migration Policy Institute.

resources. These schemes support national goals of promoting innovation and entrepreneurship.²⁴⁹

An EU visa for entrepreneurs should define admission criteria (conditions concerning candidates and their business, need for a local sponsor or partner, etc.), the assessment of applications and the type of support or incentives (e.g. training, funding, access to facilities and network) associated with the programme. The scheme should be clear and precise in its requirement of 'active', human capital investments from the applicant and not 'passive', financial investments. The latter is the focus of another legislative initiative of the European Parliament.²⁵⁰

6.2.2. Assessment

There is evidence that self-employed TCNs and SMEs run by TCNs face greater obstacles than self-employed nationals, with the former experiencing greater financial constraints and barriers to finding client networks.²⁵¹ This may also be due to difficulties TCNs encounter in entering the EU as entrepreneurs. This policy option can contribute to addressing these barriers. National schemes currently exist²⁵² but have not involved big numbers of entrepreneurs so far.

The strongest argument in favour of a EU single model for start-up visas is the observation that national programs cannot overcome territorial limits: entrepreneurs concerned by national schemes have no access to free movement, and cannot reap the full benefits of the single market.²⁵³

This policy option can support innovation and [Europe's Digital Decade](#). It could promote the intra-EU mobility of entrepreneurs in the EU via national schemes and enhance their access to the single market. The policy option could also draw new entrepreneurs to the EU and help make the EU a global leader in the competition for talent and investment. Overall, this policy option could promote innovation and long-term economic productivity in the EU. Recent literature shows a positive impact of cultural diversity among entrepreneurs, e.g. in terms of sectorial variety of newborn firms.²⁵⁴

It is challenging to predict the scale of potential entrepreneurs willing to migrate to the EU. Taking as benchmark the Dutch start-up program and assuming this to be scaled up to EU level, an estimated number of start-up entrepreneurship visas between 2 400 and 4 000 in the first year, then growing up to a certain level and then stabilising.²⁵⁵

This policy option is expected to **reduce entry barriers for migrant entrepreneurs** in the EU economy. The macroeconomic modelling²⁵⁶ finds out positive impacts of this policy option on the fraction of migrant-owned firms, on wages of both migrant (0.46 %) and 'native' workers (0.28 %). The overall increase in aggregate productivity is 0.12 %, and GDP increase is of 0.09 %, or €12.52 billion per year.

²⁴⁹ European Commission, [Migratory Pathways for Start-Ups and Innovative Entrepreneurs in the European Union](#), EMN Synthesis Report for the EMN Study 2019, December 2019.

²⁵⁰ The European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE Committee) is drawing up a legislative own-initiative report (INL) on 'Citizenship and residence by investment schemes' (2021/2026 (INL)).

²⁵¹ Please see Annex I – CEPS.

²⁵² See Annex 1 – CEPS, Table 10.

²⁵³ See AAnnex 1 – CEPS and [Commission Impact Assessment](#) on the recast Blue Card Directive!, where this was considered as an option, but then not adopted.

²⁵⁴ Colombelli A., D'Ambrosio A., Meliciani V. & Quatraro F., Newborn Firms and Regional Diversification Patterns: The Role of Cultural Diversity, *Economic Geography*, 96:4, 2020.

²⁵⁵ See EPRS and JRC, Annex 2.

²⁵⁶ See EPRS and JRC, Annex 2.

Table 16 – Assessment of EU-level policy option

	Assessment
Impacts	Enhanced intra-EU mobility of entrepreneurs and/or greater attraction of entrepreneurs to the EU Lower barriers before TCNs to start a business
Benefits	Greater innovation and productivity Help address the structural needs of the economy Coherent with skill attraction in Digital Decade strategy Greater competitiveness of EU economy Coherent with UN Global Compact on open safe and legal migration channels
Costs	Financial resources for support measures and/or incentives Currently little take-up of national schemes. Need to define rules to avoid problems as in CNI/RBI: clearly monitor active entrepreneurial element and not passive investment.
Quantitative economic impacts	Measured positive impact on sectorial diversity (Italy); greater entrepreneurship rates among immigrants in the US. Wages of both migrant (0.46 %) and 'native' workers (0.28 %) increase. The aggregate productivity is 0.12 %, and GDP increases by 0.09 %
European added value	Enhanced harmonisation across MS and economies of scale due to the possibility of free movement Economies of scale in innovative activities Increase in GDP of the EU economy is expected to be €12.52 billion per year.

Source: Compiled by the authors.

6.3. Policy option 3b: Skilled refugees' mobility scheme

6.3.1. Possible EU action

This policy option would introduce a **private sponsorship scheme** for skilled refugees that would be complementary to EU action in the area of resettlement. This scheme would take the form of public-private partnership in which private partners (NGOs, civil societies, faith communities, employers etc.) provide financial, social and/or emotional support while the EU would facilitate legal admission (i.e. allows entry and residence).

The action thus concerns admission (i.e. visa and residence permit), and **skilled refugees are conceived as labour migrants**. As such, the legal basis for this action could be Article 79(2)(c) TFEU. The legal basis could not be in Article 78 TFEU, which mostly deals with protection and on asylum seekers' rights. Article 78(2) TFEU does not provide a basis supporting refugees' admission to the EU.

The EU action could take the form of a recommendation with **guidance to Member States** on how to implement private sponsorship schemes and that is supported by EU-coordinated provision of capacity-building for civil society actors and dissemination of information and good practices. The EU could also **provide financial support** through the Asylum and Migration Fund. The EU could, for example, reimburse employers for visa fees and the costs of having to certify educational or vocational qualifications. The EU could engage in **monitoring**: this policy option should ensure that private sponsors have a supplementary role and not a driving one, and should avoid that refugees are dependent from their employers. A legal framework to avoid abuses could be created. Public

monitoring could help to mitigate this challenge. Employers hiring from the scheme may also be required to enter a **corporate social responsibility partnership** with the EU.

This policy option would require an effective system to identify skilled refugees and assess their professional qualifications. The policy option therefore has strong complementarities with policy option 1 (Recognition of professional qualifications) and policy option 3d (EU Talent Pool).

6.3.2. Assessment

This policy option would offer a new legal channel to the EU and could reduce the incentive for **irregular migration**. A similar potential impact was identified in the assessment of an EU scheme on humanitarian visas.²⁵⁷ The policy option does not only create a new legal pathway, but eases access to work. In doing so, the policy option is fully consistent with international norms, including, the **1951 Convention on the Status of Refugees**. Article 17 of the convention requires that contracting states accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment. Its third paragraph makes reference to **programmes of labour recruitment or immigration schemes for refugees**.²⁵⁸

This policy option would be coherent with the EU action in favour of resettlement of refugees. In 2020, the European Commission announced financial support for Member States that collectively pledged more than 30 000 resettlement places. Still, sponsorships to access the labour market are under-developed in contrast with other countries such as Canada. A EU private sponsorship scheme for skilled refugees could confirm the EU's leading commitment to offering durable solutions for beneficiaries of protection.

Refugee mobility schemes could also help to address some **structural needs of the EU economy**. There is an overlap in the skill profile of refugees with job vacancies registered in the EU.²⁵⁹ The private sponsorship would also improve refugees' **integration into the labour market**.²⁶⁰

The Canadian experience also suggests that precautions are required. In the last decade alone, the number of privately sponsored refugees has become much greater than the number of government-assisted refugees. The EU should take this evolution seriously, in particular because there is a clear risk²⁶¹ that a preferential treatment is given to the group composed of skilled refugees, at the expenses of others with similar or higher protection needs. A limitation of this policy option is that it generates preferential pathways on the basis of economic needs of the destination countries, and not on the basis of protection needs of the refugee.

²⁵⁷ W. van Ballegooij and C. Navarra. [European Added Value Assessment - Humanitarian visas](#), EPRS, 2018.

²⁵⁸ Article 17(3) requires that the Contracting parties 'give sympathetic consideration' to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, 'in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes'.

²⁵⁹ Please see Annex I – CEPS.

²⁶⁰ The services they can provide range from legal and administrative advices (suitable for skills recognition procedures in particular), language training, support to those asylum seekers and refugees who want to work as entrepreneurs and need financial support, not to mention moral support which is crucial for people who need international protection.

²⁶¹ Leboeuf L. (2021), [Legal Pathways to Protection: Towards a Common and Comprehensive Approach?](#).

The **target group** are the highly skilled refugees in third countries. They can be estimated at about 105.000²⁶², which is considered as an upper bound, since some of them could apply for other schemes (e.g. the Canadian one).

Table 17 – Assessment of EU-level policy option

	Assessment
Impacts	Improve legal pathways to EU residency and labour market
Benefits	International credibility in the area of resettlement coherent with the EU strategy in favour of the resettlement of refugees Greater integration of refugees in the labour market Reduced irregular migration Greater human capital and needed skills in the EU economy Greater protection of fundamental rights (Articles 15 and 18 of the CFR)
Costs/Limitations	Measures to support and monitor overall functioning, respect of fundamental rights, and employers' behaviour Risk of prioritizing destination countries' economic needs over protection needs of the individual refugee Risk of dependency on the employer – in Canada private sponsorships are becoming more relevant than government refugee schemes
Quantitative economic impacts	Based on the Canadian experience, potential higher wages for refugee
European added value	Enhanced harmonisation across MS in resettlement policy Greater efficiency in the labour market Greater monitoring on private sponsorship schemes and on their risks

Source: Compiled by the authors.

6.4. Policy option 3c: Supporting skill mobility partnerships

6.4.1. Possible EU action

Skill mobility partnerships (SMPs), a **mechanism that links training and skilled migration**, have developed rapidly around the world – at least 70 such partnerships exist, although the training component varies substantially.²⁶³ The EU should take its part in the development of SMPs, which are considered to generate benefits for countries of origin, countries of destination as well as migrants involved in the SMPs.²⁶⁴

EU action could **promote and facilitate the development of SMPs in Member States** through the sharing of information and good practices through networks and reflection groups. The EU could contribute to identifying those sectors and professions in which SMPs would be especially beneficial, and also **monitor the development of SMPs**. Some argue SMPs are best suited to

²⁶² Based on UNHCR figures of potential refugees in upcoming years and on the assumption that 40% of them are in working age and that 18 % of them have tertiary education - See Annex 1 – CEPS.

²⁶³ [Skilled Mobility Partnerships \(SMPs\). Towards a Global Approach to Skills](#), IOM, 2020.

²⁶⁴ Clemens M. (2009), [Skill Flow: A Fundamental Reconsideration of Skilled-Worker Mobility and Development](#). CGD Working Paper 180, Center for Global Development. Washington, DC.

professions, such as that of a nurse, for example, as there is a very large gap in the price of nursing services between countries of origin and countries of destination,²⁶⁵ but more broadly they have the characteristics to target **medium- and medium-low skilled workers**.

As underlined by recent research,²⁶⁶ the most promising model of SMP – the so-called **Global Skill Partnerships** – require the involvement of the destination country in **providing vocational training** in the countries of origin, not only for people who want to migrate, but also for potential workers who plan to stay in the country. This would support the education/vocational training system in poorer countries and limit brain drain, since it would enhance skill development not only for the destination country's benefits.

These programs should be devised to limit the drawbacks identified in guest-work programs, especially by weakening the attachment between guest workers and their sponsors (to limit the power firms have on workers), and by setting and enforcing high **wage and labour standards**,²⁶⁷ avoid ties with a single employer, privilege permanent over temporary permits, and promote involvement of diaspora organizations and trade unions in the development of the programs.

This policy option could have several legal bases. First is Article 79 (1) TFEU, which allows the EU to take measures in order to develop a **common immigration policy** aimed at ensuring 'the efficient management of migration flows', 'fair treatment of TCNs residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration (...)'. Another is Article 166 TFEU which grants the EU competence in **vocational training**. Lastly Article 166(3) TFEU incites the EU and Member States to 'foster **cooperation with third countries** and the competent international organisations in the sphere of vocational training'.

EU action could focus on promoting and exchanging information (the Commission could adopt a recommendation, in which guidelines would be provided in order to disseminate the information on good practices, and orientate the Member States' action towards efficient schemes), providing financing, monitoring of coherence and fairness, supporting the 'europeanization' of the schemes, promoting multilateral rather than bilateral partnerships.

6.4.2. Assessment

This policy option contrasts with traditional approaches to skilled migration in two ways. First, it policy option has potential to generate benefits in the EU as well in countries of origin, in particular to **limit 'brain drain'**. Second, traditional approaches typically target high-skilled migrants, but the analysis of the state of play has identified a gap in the lack of migration avenues for other skill levels. SMPs could instead be directed towards low- and medium-skilled migrants in relation to **skills shortages** in the EU.

By providing a legal channel to employment where there is significant demand, the policy option could mitigate **irregular migration**. The training component and possibility to match jobs with skill level can also promote the **fair treatment of TCNs**. In addition, as the experience with the recent pilot projects has evidenced, the schemes can provide an avenue for employers to build their

²⁶⁵ Clemens (2015) shows that it also costs 5-8 times as much to train a nurse in Western Europe as it costs in North Africa.

²⁶⁶ Clemens M. Dempster H., Gough K, Maximizing the Shared Benefits of Legal Migration Pathways: Lessons from Germany's Skills Partnerships, Centre for Global Development, 2019.

²⁶⁷ Norlander, P. Do guest worker programs give firms too much power?. IZA World of Labor 2021.

networks in the partner country and to identify avenues for expanding their future business operations.²⁶⁸

The direct benefits generated by SMPs is likely to be constrained by the number of workers and employers. Training and cooperation require time, money and infrastructure. Employers may prefer to recruit workers more rapidly through other channels. It is crucial that SMP do not come with a strong tie of the worker with respect to a single employer and that labour standards are high and properly enforced.

The **target group** is difficult to identify. According to a newly released database and to the data of vacancies in the sectors where most SMP have been activate in EU Member States,²⁶⁹ it is possible to construct three scenarios where the potential TCN workers involved are between 97 000 and 412 000 per year.

However, the policy option may offer other **less tangible, but not insignificant benefits**. Skill Mobility Partnerships are in the EU agenda since 2007, but scholars have argued that their central aim is to offer legal migration channels in exchange of cooperation in tackling irregular migration.²⁷⁰ The legal migration component appeared to several observes as lacking.²⁷¹ According to a 2015 observation, the existing SMP had not increased the number of first residence permits in the EU to nationals of the partner countries.²⁷² Agreements between the EU and third countries are increasingly perceived as instruments for the externalisation of migration control that are unbalanced and unfair to low-income countries and migrants.²⁷³ As scholars²⁷⁴ have underlined, the New Pact on Asylum and Migration includes a proposal to create a conditionality between cooperation on readmission with third countries and the issuance of visas to their nationals despite the limitations of such conditionalities have been highlighted by the Commission itself.²⁷⁵ If devised in a different way and free from such conditionalities, SMPs in contrast can be viewed as offering a more balanced approach of the EU-third countries' relationship in the field of migration. To fulfil this purpose, these agreements should not be subjected to conditionalities on other aspects of the migration agenda, such as returns, or border management. This would moreover pose risks in terms of fundamental rights protection, would reduce the potential economic benefits, and undermine the very role of opening legal pathways, which is the very first step of a migration management approach.

From a macroeconomic perspective,²⁷⁶ this policy option is expected to decrease the productivity gap between migrant and natives workers, by **providing to migrant workers the same education**

²⁶⁸ Hooper K. (2019), [Exploring New Legal Migration Pathways: Lessons from Pilot Projects](#), MPI Paper.

²⁶⁹ See Annex 2 and <https://gsp.cgdev.org/>.

²⁷⁰ Reslow, N. (2015). EU "Mobility" Partnerships: An Initial Assessment of Implementation Dynamics', *Politics and Governance*, 3(2), 117-128.

²⁷¹ Carrera, S., & Hernández i Sagrera, R. (2011), 'Mobility partnerships. "Insecurity partnerships" for policy co-herence and migrant workers' human rights in the EU'. In R. Kunz, S. Lavenex, & M. Panizzon (Eds.), *Multilayered migration governance. The promise of partnership* (pp. 97-115). London: Routledge.

²⁷² Reslow, op. cit.

²⁷³ Brozca S., K. Paulhart (2015), 'EU mobility partnerships: a smart instrument for the externalisation of migration control', *European Journal of Futures Research*, Volume 3, No°15; Frelick B., I. M. Kysel, & J. Podkul (2016), 'The impact of externalization of migration controls on the rights of asylum seekers and other migrants', *Journal on Migration and Human Security*, 4(4), 190–220.

²⁷⁴ Cassarino J-P., [The New Pact on Migration and Asylum: Turning European Union Territory into a non-Territory](#), EU Law Analysis, November 2020.

²⁷⁵ [Impact Assessment](#) accompanying the proposal for an amendment of the Common Visa Code.

²⁷⁶ See EPRS and JRC, Annex 2.

and training that is received by native workers. Migrant workers then enter the EU labour market in **selected sectors, where there is an excess labour demand with respect to the supply.**

This policy option has a small, but positive effect on the real wage of native and migrant workers (0.03 % and 0.05 %, respectively), and on GDP (0.02 %, that is €2.78 billion per year). The relatively smaller effect is due to the small number of new workers that are expected to enter the EU labour market. This is set at the level that would cover in one year 10 % of the vacancies²⁷⁷ in the sectors that are currently targeted by the existing bilateral skill partnerships implemented by EU Member States.²⁷⁸

Table 18 – Assessment of EU-level policy option

	Assessment
Impacts	Provides legal pathways for labour migration to the EU at different skill levels Increases in human capital for young workers, especially improved education in countries of origin
Benefits	Reduce skill shortages in destination and origin countries and help address structural needs of the EU economy Provide legal channels for migration to medium and low-medium skilled workers – Coherent with UN Global Compact on open safe and legal migration channels Improved external relations of the EU with third countries Reduced irregular migration Less brain drain on countries of origin Lower exploitation and deskilling, promote fair employment conditions for TCNs
Costs/Limitations	Vocational training measures in countries of origin: costs of training per person between 1 400 and 3 200 € ²⁷⁹ + fixed costs for implementation Set up of programs and scaling up the existing ones Risks of tying of workers to a single employer and of low bargaining power of TCN workers
Qualitative economic assessment	Existing SMPs very heterogeneous: can fill between less than 1 % to more than 50 % of vacancies in relevant sectors ²⁸⁰ Small but positive effect on the real wage of native and migrant workers (0.03 % and 0.05 %, respectively), and GDP (0.02 %).
European added value	Enhanced harmonisation across MS in SMPs Greater efficiency in the labour market Economies of scale through the exchange of best practices, the harmonisation of curricula and training requirements, could reduce fixed costs Greater support to training component via funding to improve training in the countries of origin not only to the benefit of the country of destination, thus contributing to education (SDG 4) Setting framework to avoid potential risks Increase in aggregate welfare of the EU economy of €2.78 billion per year.

Source: Compiled by the authors.

²⁷⁷ Calculated using Eurostat data in 2019Q1.

²⁷⁸ Agriculture, forestry and fishing, Industry and construction, Accommodation and food service activities, Information and communication, Human health and social work activities.

²⁷⁹ See EPRS and JRC, Annex 2.

²⁸⁰ See EPRS and JRC, Annex 2.

6.5. Policy option 3d: Promoting youth mobility schemes

6.5.1. Possible EU action

In OECD countries, the general tendency has been to expand and strengthen the 'Working Holiday Maker' and youth mobility schemes. These schemes' rationale is to **encourage young people to work, study and travel**. The objective is to offer young workers and students a possibility to gain work experience abroad.

EU action could take two forms: a recommendation for benchmarking national YMPs and disseminate best practices, and creating a EU YMP, including an intra-EU mobility clause (the models for these schemes are the Australian Working Holiday Maker (WHM), the New-Zealand Working holiday visa and the Canadian International Experience (IEC) programme).²⁸¹ Second, the EU could incite its Member States to have a more 'European' action.

The legal basis for EU action could be Article 79 TFEU and the EU would define the conditions to be granted visa, residence and work permit

Finally, the EU could intervene to articulate Member States' youth mobility schemes with the EU's external policy in the field of migration and to incite its Member States to **conclude agreements with low-income countries**, which are important EU partners.

6.5.2. Assessment

Supporting or creating youth mobility schemes is expected to contribute to providing legal migration pathways for young TCNs, to reducing EU labour shortages, but also to contributing to the EU's endeavour to increase the skills of people residing in the EU, whatever their nationality is, as in the framework of Erasmus +.

These programs are expected to mix study and work activities. So far, the known experiences show that about half participants work at least half of the time.²⁸² They often work in sectors where there are skill shortages and need for seasonal work. The challenges are to guarantee fair working conditions to these young workers and not to overlook the formative aspect of the mobility experience.

Table 19 – Assessment of EU-level policy option

	Assessment
Impacts	Create a legal labour migration pathway with a focus on youth Support human capital formation and accumulation
Benefits	Reduce skill shortages in destination and origin countries Improve employment outcomes of young TCNs Supporting intraEU mobility of young TCNs Increased skills and human capital of young people regardless the nationality Coherent with UN-Global Compact on open safe and legal migration channels Contribution to protection of fundamental rights (Articles 14 and 15 of the CFR)
Costs/Limitations	Set up and support the program

²⁸¹ See Annex 1 – CEPS.

²⁸² Australina case, cited in Annex 1 – CEPS.

	Assessment
	Need for monitoring against the risk of exploitative situations especially in seasonal work
Qualitative economic assessment	From previous experiences, 55 % of programme participants spend more than half or more of their time working; sectors are often where more skill shortages are
European added value	Enhanced harmonisation across MS in YMP Greater efficiency in the labour market Promotion of intra EU mobility Coherent with EU's endeavour to increase skills of people residing in the EU, whatever their nationality is, see Erasmus + and EU Youth Strategy

Source: Compiled by the authors.

6.6. Complementary instrument: EU Talent Pool

6.6.1. Possible EU action

Several of the options under Policy Option 3 are based on the idea of identifying pathways for categories of TCN who could have facilitated access to the EU. In order to actually implement this approach, a possible complementary tool is a 'roster' composed of migrants who wish to immigrate to a EU country for work purposes, as suggested in a [resolution from the European Parliament](#). This would follow the 'expression of interest' model of which there are examples such as those in New Zealand, Australia and Canada. Their central objective is to deal with queues of highly skilled migrants awaiting visas. This would not be the objective of a 'EU Talent Pool', which would not aim at managing queues since no backlog in highly qualified applications exist as of today. The EU tool would be centered on increasing the attractiveness of the EU for talented migrants, and addressing labour shortages.²⁸³

The instrument would require the adoption of a Regulation determining the aim of the system and the approach. This action could be based on Article 79 (1) TFEU, which gives the EU competence to develop a common immigration policy aimed at ensuring, at all stages, the **'efficient management of migration flows'**. Member States would nevertheless maintain competence on the number of migrant workers that could enter their territory according to Article 79(5) TFEU).

This would essentially be an **instrument to complement and enhance efficiency of other measures**, rather than a migration policy itself. Therefore it should be seen in association with other measures. The success of the policy option is contingent on several factors. First, is the EU's attractiveness as a destination for skilled migrants that would require other measures to be implemented. **Intra-EU mobility rights** would be key in this respect. Second, the pool should allow employers to easily identify skilled candidates. The **recognition of professional qualifications of skills** would thus be important as well as the portability of these qualifications across the EU.²⁸⁴

In its most extensive conception, the EU Talent Pool could cover all sectors of employment for low-, medium- and highly skilled workers, employees and self-employed labour, including in small and medium-sized enterprises and start-ups. Alternatively, the EU Talent Pool could focus on a selection of sectors. Selecting sectors where harmonisation of qualifications is already in place (health

²⁸³ See Annex 1 – CEPS.

²⁸⁴ As mentioned in OECD (2019), more specifically p. 21.

professionals or IT engineers, for instance) could allow for a **European pre-screening of candidates** including assessments of their qualifications at EU level that could subsequently allow for intra-EU mobility rights (see Policy option 1). The sectorial EU Talent Pool approach could be combined with a **skill development component**, when training is needed to ensure that candidates fill the criteria for the pool. Within the framework of this policy option it could also be possible to conceive a pathway for refugees (see Policy option 3b).

6.6.2. Assessment

The tool could increase the **attractiveness of the EU** as a destination for skilled migrants, through facilitating job matching, and access to work and residence permits. Allowing the migrants to have intra-EU mobility rights could enhance the level of job matching and hence lead to greater productivity impacts.

In so far as it would facilitate access to employment in the EU and limit administrative burden of multiple national procedures, the policy option could be considered a contribution to the right to good administration, protected by Article 41 of the CFR. It could from increased protection on the basis equal treatment and better enforcement of migrants' rights. One may also consider that the proposed policy action is both **coherent and compatible with international law**. The fifth objective of the Global Compact for Migration is to 'enhance availability and flexibility of pathways for regular migration'.

7. Policy option 4: Improving worker rights and work conditions for third-country nationals

7.1. The problem

As noted in Section 2, TCNs suffer barriers to equal treatment and poor workers' rights protection (see Key Issue 2). An analysis of the Labour Force Survey found that TCNs experience **worse labour conditions** regardless of the skill-level of their employment and controlling for other factors. TCNs are less likely to have a permanent contract and more likely to work atypical hours. TCNs are at greater risk for **precarious work** various sectors, including agriculture, construction, domestic work, hospitality, manufacturing, and transport.²⁸⁵ As a result, TCNs suffer greater discrimination on the labour market and **exploitative situations** and poorer protection of fundamental rights.

This policy option would draw on **EU action to improve worker rights and work conditions for TCNs**. The policy option would consider three aspects namely expanding the rights of TCN workers to align with the rights of EU nationals, strengthening enforcement of labour laws, and improving the clarity in access to long-term residence in the EU. The assessment for each is presented below.

7.2. Policy option 4a: Aligning the rights of third-country nationals with those of EU nationals

7.2.1. Possible EU action

EU law, specifically the anti-discrimination directives derived from Article 19 TFEU, does not prohibit discrimination on the grounds on nationality.²⁸⁶ The EU could take action in a range of ways to promote the alignment of the rights of TCNs with those of EU nationals. The applicability of Article 18 TFEU to TCNs is also controversial,²⁸⁷ but several scholars argue in favour of an interpretation that includes TCN²⁸⁸ and that more broadly claim that third-country nationals should generally be entitled to equal treatment in EU law.²⁸⁹

One option is to **amend the equal treatment rule** in all the legal migration directives to approximate the equal treatment rule in the Long-Term Residence Directive. The equal treatment rule is the strongest at present in the Long Term Residence Directive. These amendments could be adopted using Article 79 TFEU as a legal basis.

²⁸⁵ [Protecting migrant workers from exploitation in the EU: workers' perspectives](#), Fundamental Rights Agency, 2019.

²⁸⁶ Directive 2000/43 (EC) implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (2000) OJ L 180/22 and Directive 2000/78 establishing a general framework for equal treatment in employment and occupation (2000) OJ L 303/16.

²⁸⁷ Elise Muir, 'Enhancing the protection of third-country nationals against discrimination: putting EU Anti-Discrimination law to the test', 18 *Maastricht Journal of European and Comparative Law* (2011), 136; Kees Groenendijk, 'Are third-country nationals protected by Union law prohibition of discrimination on grounds of nationality?', in: K.Barwig and R. Dobbelstein(eds.), *Den Fremden Akzeptieren - Festschrift für Gisbert Brinkmann* (Nomos, Baden-Baden 2012), 131.

²⁸⁸ Groenendijk, K. (2012). Are third-country nationals protected by the Union law prohibition of discrimination on grounds of nationality? (pp. 131-142). Nomos Verlagsgesellschaft mbH & Co. KG.

²⁸⁹ McCormack-George, D. (2019), 'Equal Treatment of Third-Country Nationals in the European Union: Why Not?', *European Journal of Migration and Law*, 21(1), pp. 53-82.

Another option could be to **expand the personal scope of Regulation 492/2011**, which seeks to ensure the free movement of workers, to include TCN workers.²⁹⁰ Alternatively, the EU could adopt a Regulation similar to Regulation 492/2011, but with a focus on TCNs. Such an instrument would guarantee that TCN workers benefit from equal treatment for all social advantages. Article 79 TFEU, Article 45 TFEU (free movement of workers) or Article 153 (1)(g) TFEU, which gives the EU competence to adopt minimal requirement concerning 'conditions of employment for third-country nationals legally residing in Union territory', could also provide a legal basis.

Third, **EU anti-discrimination law** (either Directive 2000/43 or Directive 2000/78) could be amended to **cover the ground of nationality including nationality of TCNs**. A possible legal basis would be Article 18 TFEU, which states that 'Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited... the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt rules designed to prohibit such discrimination.'²⁹¹ Another possible legal basis could be Article 153(1)(g) TFEU which grants the EU competence to adopt minimum requirements concerning the 'conditions of employment for third-country nationals legally residing in Union territory'. National bodies could be created or the mandates of existing bodies could be expanded to support the implementation of this legislative change. These national bodies may be equality bodies or, alternatively, independent bodies of the same nature of equality bodies in charge of migrants' rights.

Lastly, the EU could push for Member States to **ratify the ILO Convention on Migration for Employment**, which states that there should be equal treatment and non-discrimination on the basis of nationality.

These policy options relate to the 'binding immigration code' proposed in the CONE on Legal Migration, and envisage the adoption of measures that cover all TCNs, regardless of their skills status, including an equal treatment rule.

7.2.2. Assessment

EU action would promote the **fundamental rights of TCNs** in particular those under Article 15 of the CFR (freedom to choose an occupation and right to engage in work), under Article 20 of the CFR (equality) and under Article 21 of the CFR (non-discrimination).²⁹² It can also be deemed coherent and compatible with international law. Equal rights for migrants, is pursued by the Council of Europe and the International Labour Organization namely through Convention 97. There is also a body of case law from the European Court of Human Rights on non-discrimination on nationality, based on Article 14 of the ECHR.

The **target group** is composed potentially of all TCN workers, especially those who experience discrimination (15.8 % of men and 11.7 % of women according to self-reported data; the extent of discrimination towards people of ethnic minority background can be even larger, since experimental research shows a 40 % lower probability for such people to be invited to a job interview). The alignment of TCNs' rights to those of EU nationals would lead to **improved working conditions** and diminish **the disadvantage faced by TCN workers on the labour market**. This

²⁹⁰ Regulation 1612/68, which was replaced by Regulation 492/2011. The amendment could be made in Article 1(1).

²⁹¹ See Annex 1 – CEPS, Section 8.1.1.1 for a discussion on this legal basis.

²⁹² It is moreover consistent with several other provisions of the CFR: Article 27 (Workers' right to information and consultation within the undertaking), Article 28 (Right of collective bargaining and action) Article 29 (Right of access to placement services) Article 30 (Protection in the event of unjustified dismissal), Article 32 (Prohibition of child labour and protection of young people at work), Article 34 (Social security and social assistance).

disadvantage is expressed in terms of lower employment rates, lower wages and greater overqualification (and therefore deskilling) of TCNs with respect to EU 'natives' and EU mobile workers. Migrant workers declare facing discrimination in job search more than similar EU citizens. While some studies underline that anti-discrimination measures alone may have limited impact, they underline that greater information and awareness and more standardized hiring practices can improve the effectiveness of the measure.²⁹³

Because of discrimination, but also because of network effects that compensate for a weaker outreach of formal services to TCNs, TCNs tend to concentrate in some sectors, often low-pay ones (the sector in the EU featuring more TCNs – both overall and among high-skilled workers – is the one of cleaners and helpers). This segmentation may be reduced by measures that align the rights of TCNs and EU citizens. This is expected to lead to better sorting of workers in the labour market and enhanced **productivity**. Also other elements of working conditions can be dependent on equal treatment or be due to discriminatory practices, for example the risk of injuries at the workplace. Protection of TCNs fundamental rights, in particular their social rights, can also contribute to creating a **level playing field for EU enterprises**, ensuring fair competition.

The harmonisation of working conditions could also support the single market. Lastly, the policy option could support the **portability of benefits** such as social security benefits for TCNs who move to another country. This possibility may strengthen the attractiveness of the EU. For migrants who plan to move back, or move to other countries, equal rights as EU nationals for exportation of social security benefits, and the possibility of obtain aggregation of periods of work or social contribution, should also contribute to foster circular migration.

In the macro-modelling exercise, this option is modelled as the elimination of the selection effects of migrants in some sectors because of social norms and path dependence of informal social networks. The assessment shows a positive impacts on productivity and long-run GDP (about 0.07 % or €9.8 billion per year). The impact on wages is small, but positive at all skill levels.²⁹⁴

Table 20 – Assessment of EU-level policy option

	Assessment
Impacts	<p>Less discrimination in the hiring process and in working conditions</p> <p>Harmonised and improved working conditions</p> <p>Lower barriers in access to occupations</p>
Benefits	<p>Better protection of fundamental rights (esp. social fundamental rights (art. 15, 20 and 21, 27 to 34 CFR)) and international labour standards</p> <p>Increased opportunities for circular migration and portability of benefits</p> <p>Lower over-qualification</p> <p>Wage gap reduction</p> <p>Integration and greater attraction of TCN workers</p> <p>Less segmentation of the labour market</p> <p>Better protection of workers' rights</p> <p>Better skills matching and therefore higher productivity</p>
Costs/limitations	<p>Expansion of national bodies and training to actors concerning discrimination on the grounds of nationality</p>

²⁹³ See Annex 1 – CEPS.

²⁹⁴ Please refer to See EPRS and JRC, Annex 2 for more information.

	Assessment
	Anti-discrimination laws alone may have limited impact, therefore need for greater information and awareness and more standardized hiring practices
Quantitative economic assessment	Expected decrease in wage gap and in limitations to occupations choice Increase in productivity and GDP (0.07 %) or €9.8 billion per year.
European added value	Greater coherence in EU anti-discrimination legislative framework Greater coherence with international law and labour standards Better functioning of the internal market Economies of scale through joint enforcement and monitoring Positive externalities if anti-discrimination law makes the EU a more attractive destination for talent

Source: Compiled by the authors.

7.3. Policy option 4b: Strengthen enforcement of TCN workers' rights

7.3.1. Possible EU action

At present, EU legislation in the area of legal labour migration offers limited procedural guarantees for TCN workers. These guarantees mainly concern their legal status and not their employment rights. The main exception is the Seasonal Workers Directive (2014/36) which has a provision on the facilitation of complaints.²⁹⁵ Seasonal workers may lodge complaints against their employers either directly, or through third parties which have a legitimate interest in ensuring compliance with the directive, or through a competent authority of the Member State where they are employed.

This policy option would consider several approaches to enhancing the enforcement of employment rights for TCN workers. The majority of respondents to a public consultation (77 %) strongly agreed or agreed on the importance of developing **horizontal EU roles on labour inspectorates and employer sanctions**.²⁹⁶ In order for the rights of workers to be properly enforced, workers must be in a position to 'use' those rights, for example to **change employer**. At present, TCNs risk losing their legal status by doing so. The EU could intervene both by strengthening judicial enforcement and by strengthening enforcement supported by third parties. One possible EU action would be to **extend the protective provisions of the Seasonal Workers Directive to all TCN workers** with the aim to expand the enforcement of rights in the courts. Article 79 TFEU would be the appropriate legal basis. Some elements of the Employer Sanctions Directive (Directive 2009/52), ensuring protection of 'illegally staying third-country nationals', could be extended to legal migrants; examples of such elements include the right to 'back payment' to be made by employers and mechanisms to ensure that illegally employed third-country national can file a complaint.

The EU could also take actions to **reinforce the role of trade unions** and other associations in charge of migrants' rights. This action could take inspiration from the Commission's proposal for a

²⁹⁵ This provision is provided for in Article 25 of the Seasonal Workers Directive.

²⁹⁶ [Report on the consultation on the future of EU legal migration](#), European Commission, 2021.

directive on adequate minimum wage.²⁹⁷ The EU could also **foster sectoral negotiations between social partners**, at national level, on the enforcement of TCN employment rights via trade unions.

The policy option could also consider an **expansion in the mandate of the European Labour Authority** (ELA). At present, the ELA's role is limited to the enforcement of EU rules on labour mobility and social security coordination. It does not include protection of TCNs' employment rights *per se*, but it does not exclude protection of their rights either. The ELA's mission, which includes cases of posted workers and undeclared work, touches to some extent already on TCNs. The expansion of the ELA's mandate could also consider an amendment to the scope of its tasks related to **cooperation with national labour inspectorates** to support the enforcement of TCN employment rights.

The role of courts and of third parties are not mutually exclusive since unions and NGOs play a crucial role in supporting migrant workers in case of exploitation to file complaints and to obtain back pay.²⁹⁸

All these possible options for the EU to support the enforcement of TCN employment rights could be based on Article 79(2)(b) TFEU (definition of the rights of third-country nationals residing legally in a Member State) or on Article 153(1)(g), which gives the EU competence to adopt minimal requirement concerning 'conditions of employment for third-country nationals legally residing in Union territory'.

7.3.2. Assessment

This policy option would support existing labour market norms and labour standards that are currently not enforced, avoid exploitative situations and guarantee remedy for victims of exploitation. As described in Section 2.3.1, such situations include both very hard working conditions and low pay that can be below national or sectorial minimum wages, which indicate poor controls on employers. By potentially limiting such situations, the policy option would promote the **fundamental rights** of TCN workers by avoiding such situations. Specifically, judicial enforcement is required by the fundamental right to **effective judicial remedy**, protected by Article 47 of the CFR, and by Article 6 of the ECHR.

An expected impact is the reduction of the **wage gap** between migrants and EU nationals, especially in its 'unexplained' component, meaning the wage gap between two workers in the same sector and occupation and with similar characteristics (e.g. level of education), one EU citizen and one TCN, that, according to recent studies amount to 28 % (see Section 2.1.3). Studies at the Member State level find wage gaps between 20 % and 50 % upon arrival.²⁹⁹ This gap is expected to be reduced by better enforcement of workers' rights. This policy option, providing greater bargaining power to TCN workers, is expected to improve labour market outcomes, where TCN workers face a gap with respect to EU nationals (Section 2.3.1).

Enforcement of TCN worker's rights would also contribute to ensure fair competition among businesses, creating a **level playing field for EU enterprises**.

In the macroeconomic model, this policy option is assumed to reduce the migrant-natives wage gap. The preliminary results show that productivity, human capital and GDP increase. Wages for

²⁹⁷ [Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union](#). COM(2020) 682 final, 28 October 2020.

²⁹⁸ [Protecting migrants in an irregular situation from labour exploitation – Role of the Employers Sanctions Directive](#), Fundamental Rights Agency, 2021.

²⁹⁹ See Annex 1 – CEPS, Section 8.2.1.

both TCN and EU workers are expected to increase. The long-run aggregate impact on the GDP would be 0.14 % or €19.5 billion per year.³⁰⁰

Table 21: Assessment of EU-level policy option

	Assessment
Impacts	Improved enforcement of workers and anti-discrimination rights More effective controls against exploitative situations
Benefits	Enhanced protection of fundamental rights for TCNs (incl. effective judicial remedy (Article 47 of the CFR)) Improved working conditions and situations of exploitation reduced wage gap between TCNs and EU nationals Reduced discrimination has positive impacts on society: wage gains, better labour market outcomes Improved tax revenues because of reduced shadow economy and irregular employment, and because increased earnings Contributes to international action in favour of migrant workers (consistent with ILO law)
Costs	Expansion in tasks of the European Labour Authority (limited costs) Training of labour inspectorates and other actors supporting enforcement
Quantitative economic assessment	Expected reduction in wage gap and increased earnings for TCN workers Productivity, human capital and GDP increase (0.14 %) or €19.5 billion per year.
European added value	Greater coherence in EU anti-discrimination framework Economies of scale through enforcement and monitoring through a joint EU Agency Greater harmonization in the protection of workers (included posted workers) Greater coherence with international obligations on labour standards

Source: Compiled by the authors.

7.4. Policy option 4c: Reducing uncertainty with respect to obtaining long-term residence status

7.4.1. Possible EU action

At present, an important number of TCN workers, who have accumulated long periods of residence within the EU, face **obstacles to integration and social mobility** (see Section 2, Key Issue 2). This is the case for TCNs who have been granted temporary residence in Member States as seasonal workers or providers of cross-border services. There are also misalignments between EU and national law. For example, students are typically entitled to permanent residence after five years of residence in a Member State, but only 50 % of the time is counted for the EU long-term residence. Member States are allowed a substantial margin in the interpretation of the Long-Term Residents Directive provisions.³⁰¹ Moreover, TCN workers face the **risk of losing their work permits** in transitioning between employers and/or unemployment. This can have additional negative consequences for obtaining long-term residence due to the requirement of 'continuous residence'.

³⁰⁰ See EPRS and JRC's Annex 2 for more information.

³⁰¹ The discretion granted to Member States concerns the conditions required for becoming eligible for the long-term resident status, its withdrawal, and the conditions for intra-EU mobility.

Overall the access to long residence status has a number of barriers. This policy option would amend Article 3 and Article 4 of the Long-Term Residents Directive (2003/109/EC).³⁰² The amendments would **expand the personal scope** to allow new categories of TCN to be granted long-term residence status.³⁰³ The amendment would also **replace the condition of five years of 'continuous residence'** with a condition based on overall duration or a ratio of time in and outside the EU. The articulation with other directives may need to be modified to ensure coherence. The EU could also seek to **restrict the leeway that Member States use in interpreting the conditions for acquiring long-term resident status** as noted in Article 5 of the Directive.³⁰⁴ The notions of having 'stable' and 'regular resources', which are 'sufficient' to 'maintain' the TCN worker and his/her family members would be defined at EU level via a recommendation.

Article 79 TFEU provides a proper legal basis for EU action in this domain.³⁰⁵

7.4.2. Assessment

Considering the broad scope of the principle of equality, enshrined in Article 11 of the Directive, extending the beneficiaries of the Long-term resident status can be deemed a main contribution to the EU action in favour of **equality** between natives and migrants. By the same token, increasing the beneficiaries of the LTR status, and securing this access, will participate in the EU action for **migrants' integration**. This is fully in line with the EU action in favour of inclusion, as defined in the Action Plan on Integration and Inclusion 2021-2027.³⁰⁶

Increasing integration and equality for migrants is very likely to **increase the EU capacity to attract 'talents'**. Policy areas related to integration (e.g. employment, income, citizenship) range indeed among the OECD Indicators of Talent Attractiveness³⁰⁷: 'these considerations underscore the importance of aligning migration and integration policies with talent attraction aspirations and strategies, so that they do not run in opposite directions' (ICMPD, 2021). The external EU migration policy has taken a restrictive turn, which emphasizes externalization of migration controls and migration-control conditionality.³⁰⁸

There is evidence that securing a residence status improves labour market outcomes of migrant workers, especially the **probability of being employed**. This in turn is expected to improve overall economic performance.

³⁰² Article 3(2) would have to be deleted and Article 4(2) would be amended.

³⁰³ A recent study suggested that the Long-Term Resident status could serve as a 'template' for a general status of TCNs residing in the EU : Bast J., F. von Harbou & J. Weesees (2020), Human Rights Challenges to European Migration Policy (REMAP), Glesse, REMAP Project p. 120.

³⁰⁴ Article 5 Conditions for acquiring long-term resident status: '1. Member States shall require third-country nationals to provide evidence that they have, for themselves and for dependent family members: (a) stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum wages and pensions prior to the application for long-term resident status; (b) sickness insurance in respect of all risks normally covered for his/her own nationals in the Member State concerned.

2. Member States may require third-country nationals to comply with integration conditions, in accordance with national law.

³⁰⁵ Article 79 corresponds to former Article 63, points 3 and 4, TEC which has been the Long-Term Residents Directive's legal basis.

³⁰⁶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Action plan on Integration and Inclusion 2021-2027 COM(2020) 758 final.

³⁰⁷ [How do OECD countries compare in their attractiveness for talented migrants?](#) OECD, 2019.

³⁰⁸ Migration Control Conditionality: a flawed model. ECRE, 2020.

Moreover, allowing more TCNs to access this status would partly solve problems resulting from the fact that often migrants are 'stuck in a legal regime' with little possibility to see their legal status evolve. This situation is often the result of the formulation of EU law and the fragmentation of the legal acquis.

Table 22 – Assessment of EU-level policy option

	Assessment
Impacts	Greater potential for inclusion and non-discrimination of TCNs Facilitate access to secure residence status Efficiencies in the assessment of long-term resident status
Benefits	Greater potential for integration Greater protection of fundamental rights The EU a more attractive destination for TCN workers Improved employment rate of TCNs and consequent improved overall economic performance Lower risk of exploitation Reduce risk of TCNs being 'stuck in a legal regime' Promote circular migration Promote access to social security
Costs	No major costs identified
Quantitative economic impact	Being long-term residents increases the probability of being employed of 5 percentage points for men TCNs and 7 percentage points for women TCNs – difficult to assess which share could be ascribed to this PO alone
European added value	Greater efficiency in the labour market Greater coherence with the EU anti-discrimination legislative framework Improve the EU's reputation in international arena

Source: Compiled by the authors.

8. Resume

The assessment defined **four broad policy options** with several sub-options within each (see Table 23).

Table 23 – Overview of policy options

Policy option	Sub-options
1. Promote the recognition of professional qualifications	
2. Facilitate access to regular work for TCNs already present in the EU	2a: Students
	2b. Family members
	2c. Asylum seekers
3. New legal channels for migrants to enter the EU	3a. Mobility schemes for entrepreneurs
	3b. Skilled refugees' mobility scheme
	3c. Support Skill Mobility Partnerships
	3d. Promote Youth Mobility Schemes Complementary instrument: EU Talent Pool
4. Improve worker rights and work conditions for TCNs	4a. Alignment of rights of TCNs compared with EU nationals
	4b. Strengthen enforcement of TCN workers' rights
	4c. Reduce uncertainty with respect to obtaining long-term residence status

Source: Compiled by the authors.

The analysis conducted to date suggests that the policy options could generate **significant benefits**, in particular:

- greater protection of the rights of TCN workers who are already in the EU leading to lower discrimination, lower risk of exploitation, higher productivity and GDP gains;
- better allocation and utilisation of human capital already present in the EU leading to higher productivity and GDP;
- better attraction of workers with relevant skills to the EU, including by supporting human capital formation and ensuring effective protection of their rights;
- less irregular migration;
- improved relations with third countries;
- greater fundamental rights protection, coherence with EU goals and with international commitments.

A summary table of the potential impact of policy options in addressing the issues highlighted in Section 3, their economic impacts and their consequences in terms of internal and external coherence of EU policies is presented in Table 24 below.

Table 24 – Overview of the impacts of the policy options outlined in this study

Policy option	Sub-options	Effectiveness					Economic impact			Coherence	
		Lack of legal pathways	Barriers to equal treatment and poor workers' rights protection	Lack of pathways for integration and social mobility	Fragmented framework	Lack of a holistic approach	Labour market	Economy	Attractiveness	Internal, incl. fundamental rights	External
1. Promote the recognition of professional qualifications			✓	✓	✓		Reduced overqualification, improved labour market outcomes	Productivity, human capital, GDP gains (0.11 %) or €15.3 billion per year)	EU more attractive for medium and high skilled TCN	Equality and non-discrimination, Art. 15, 16, 20, 21 CFR	Coherent with COE and ILO
2. Facilitate access to regular work for TCNs already present in the EU	2a: Students		✓	✓		✓	Greater labour market integration Lower over-qualification of young TCNs, higher wages	Greater efficiency of labour market and allocation of skills, greater productivity More investment in country-specific skills	Greater attraction of high-potential students	Greater fundamental rights protection (Articles 5, 15 and 31 CFR), Harmonization Single Market	UN Global Compact, international labour standards
	2b: Family members		✓	✓		✓	Higher employment rate	Increase tax revenues	Possibility for family members crucial for	Work-life balance, non-discrimination	UN Convention on the

Policy option	Sub-options	Effectiveness					Economic impact			Coherence	
							Lower irregular employment Greater integration	Better use of skills in the economy More human K investment. Increase in wages, productivity and GDP increase of 15.3 billion/year (together with PO2c)	attracting high skilled workers	on the basis of gender	Elimination of All Forms of Discrimination against Women
	2c. Asylum seekers		✓	✓		✓	Lower uncertainty Lower irregular employment and improved working conditions improved employment rate and wages	Increased tax revenues Better use of skills in the economy Greater incentives to human capital formation/accumulation GDP gains in removing bans. Increase in wages, productivity and GDP increase of 15.3 billion/year (together with PO2b)		Protection of fundamental rights of TCNs (Art. 1 and 18 CFR) Greater efficiency in the labour market and reduction of secondary movements	Coherent with UNHCR (access to employment for asylum seekers)
3. Introduce new legal channels for migrants to enter the EU	3a. Mobility schemes for entrepreneurship	✓				✓	Lower barriers to TCN to start a business	Greater innovation and productivity Greater competitiveness of EU economy. Increase in wages and productivity and GDP gain of 12.52 billion per year	Attraction of entrepreneurs – focus not on capital, but on entrepreneurship	Coherent with Digital Decade strategy economies of scale of Single Market for businesses	Coherent with UN-Global Compact on open safe and legal migration channels

Policy option	Sub-options	Effectiveness					Economic impact			Coherence	
	3b. Skilled refugees' mobility scheme	✓	✓			✓	Greater integration of refugees in the labour market	Greater human capital and needed skills in the EU economy		protection of fundamental rights (Article 15 and 18 CFR) Greater monitoring	coherent with the EU strategy on the resettlement
	3c. Supporting Skill Mobility Partnerships	✓	✓			✓	Address skill shortages in origin and destination countries Improve working conditions	Address skill shortages. Increase in wages and GDP gain of 2.78 billion per year.	Legal pathways for low and medium skilled TCN workers	Economies of scale, commitment to education goals	Coherent with UN-Global Compact on open safe and legal migration channels Improved external relations SDG 4 Education
	3d. Promote Youth Mobility Schemes	✓	✓			✓	Improved employment outcomes for young TCN Greater human capital accumulation	Reduce skill shortages in destination and origin countries	Greater attractiveness for future skilled workers	commitment to education goals and, EU Youth Strategy protection of fundamental rights (Articles 14 and 15 CFR)	Coherent with UN-Global Compact on open safe and legal migration channels
	Talent Pool	Complementary option									

Policy option	Sub-options	Effectiveness					Economic impact			Coherence	
4. Improve worker rights and work conditions for TCNs	4a. Alignment of rights of TCNs to those of EU nationals		✓	✓	✓		Reduced discrimination in hiring process and working conditions Reduce over-qualification and wage gap	Increase in productivity and GDP (0.07 %) or €9.8 billion per year.	EU more fair and attractive destination	coherence in EU anti-discrimination framework, fundamental rights, esp. social (art. 15, 20 and 21, 27 to 34 CFR)	international labour standards (ILO), UN Global Compact
	4b. Strengthen enforcement of TCN workers' rights		✓	✓			Improved working conditions and f exploitation reduced Reduced wage gap	Productivity, human capital and GDP increase (0.14 %) or €19.5 billion per year. Increased tax revenues	EU more fair and attractive destination	protection of fund rights (incl effective judicial remedy (Article 47 CFR))	international labour standards (ILO), UN Global Compact
	4c. Reduce uncertainty with respect to obtaining long-term residence status			✓	✓		Improved employment, integration and lower discrimination on labour market	GDP gains from increased employment	EU more fair and attractive destination	Contributes to EU action on equality and non-discrimination fundamental rights, esp. social	UN Global Compact

The preliminary results of the macro-economic assessment indicate that there could be substantial **gains in human capital, productivity and GDP** as a result of declining occupational barriers and discrimination on the labour market facing migrant workers. All assessed policy options lead to positive economic outcomes both for migrant workers and for the overall EU economy.³⁰⁹

Promoting the recognition of professional qualifications could lead to 0.11 % increase of GDP in the long run, or €15.3 billion per year. Better alignment of rights of TCNs compared with EU nationals could lead to 0.07 % increase in GDP (or €9.8 billion per year). Strengthening the enforcement of TCN workers' rights could lead to 0.14 % increase in GDP, or €19.5 billion per year. Greater benefits are expected in case of a **combination³¹⁰ of the three options, in which case GDP gains can get up to 0.53 %, or €74.0 billion per year**. There are important economic gains at the macroeconomic level also by facilitating access for start-up migrant entrepreneurs, for facilitating the hiring of family migrants and asylum seekers and refugees, and by implementing Global Skill Partnerships (including a training component), i.e. policy options 2b and 2c, 3a, 3c). A scenario **combining these four options** could lead to **long-run GDP gains of €37.55 billion per year**.

These results suggest a large untapped growth potential for the EU from affirmative action policies in the area of legal migration. Promoting **intra-EU mobility** and **recognition of professional qualifications** are central to the generation of these benefits.

In the building of a 'holistic approach', as frequently called for by the Parliament³¹¹, a central element is the awareness that **the existence and development of legal pathways is the first step for a regulated and responsible approach to migration**. This has the potential to address structural needs of the EU economy and reduce irregular arrivals. Relatedly, **access to regular employment and improved working conditions for TCN already in the EU** is needed to tap the potential of the human capital of TCNs that are already in the EU but who are currently lacking workers' rights. Better protection of fundamental rights is first of all a goal in itself, and has also substantial positive economic outcomes.

The policy options offer high **European added value, which** stems from potential **efficiency gains** due to greater harmonisation in labour market policy across Member States and **greater coherence** with the EU's anti-discrimination legislative framework, social policy and international commitments.

The discussed policy options have a great degree of complementarity and would produce a substantially increased added value if implemented jointly. In some cases, a policy option could address and mitigate the limitations of other policy options.

Examples of such complementarities are the following.

Favouring intra-EU mobility: this is a core domain of EU action and could become a central pillar of EU migration policy, with both positive outcomes in terms of integration and social mobility of TCN and of economic growth for the EU. EU action could combine

- recognition of qualifications (PO 1);

³⁰⁹ The outcomes are long-run aggregate estimates. Please see Annex 2 for details. Further policy options will be assessed in the final version of the study.

³¹⁰ This effect is not simply the addition of the impacts of the three policy options, but is the outcome of the interaction of the three potential changes in the EU economy, including their potential interactions and feedback loops.

³¹¹ European Parliament, Resolution of 12 April 2016 on the [situation in the Mediterranean and the need for a holistic EU approach to migration](#), 2015/2095(INI); European Parliament, Resolution of 5 July 2016 [on refugees: social inclusion and integration into the labour market](#), 2015/2321(INI); European Parliament, Report on [new avenues for legal labour migration](#) (2020/2010(INI)), 2021.

- facilitating access to the EU labour market for students, asylum seekers, family members (PO 2);
- ensuring respects of migrants' rights, and combatting exploitation of migrants moving within the EU in the framework of posting workers (policy options 4A and 4B).

Enhancing rights of TCNs and their enforcement: protecting the rights of TCNs is required by the EU Charter of Fundamental Rights, and has moreover beneficial effect for both TCN and national workers. Discrimination has moreover both social and economic costs for society as it leads to poorer allocation of human capital and lower productivity. These rights would be better enforced through a mix of policies, including:

- prohibition of discrimination on the grounds of nationality (see PO 4A) and prohibition of intersectional discrimination;
- build on its acquis on enforcement of rights to ensure that migrants' rights are properly enforced (policy option 4B), including enhancing the role of the European Labour Authority and national equality bodies, and on national trade unions, and collective bargaining;
- development of legal pathways to the EU (see PO 3), in order to allow safe and non-exploitative migration channels and at the same time avoid that mobility schemes, aimed at filling EU labour market shortages, neglect the rights and interest of TCNs;³¹²
- avoiding creating situations in which migrants are 'stuck' with one employer, which opens the door to possible exploitation (see policy options PO 3 and 4C).

Reduce fragmentation of the EU legal migration framework: a major critique to EU labour migration policy is its fragmentation, which leaves largely unaddressed the situation of a number of TCN workers in the EU and create a number of different provisions that limit the enforcement of equal treatment. This is why several scholarly publications, including the report on The Cost of non-Europe prepared in 2019 by the EPRS call for transversal tools to guarantee the same rights to all migrant workers in the EU, e.g. a binding migration code.³¹³ Some policy options, especially if combined together, aim to go in this direction:

- develop legal pathways for medium- and low-skilled workers (PO 3C) and limit others to high-skilled ones (PO 3A, 3B, 3D);
- the proposed actions on recognition of previous skills and qualifications do not only apply to highly qualified workers and not only to qualifications obtained in the EU (PO1);
- bridges between the conditions applicable to asylum seekers and to labour migrants could be enhanced, as in PO 2C and 3A;
- providing the same rights and rules to all TCNs across and beyond the directives (PO1, PO 4A and 4B);
- allowing more TCNs to apply for long-term resident status (policy option 4C).

Relatedly, new policies on legal migration in the EU would benefit from starting from the need to **change the narrative on migration**. From a security and deterrence perspective, where migrants are narrowly viewed as a cost (when not a threat), the EU and its Member States could move to an approach where migration can be viewed in a holistic manner in which there is potential positively

³¹² As highlighted in cases of employers' sponsored programs developed in the past, rules are needed on proper enforcement of labour standards is needed to limit the risk that firms' market power that can be detrimental to workers' rights, See Norlander, P. [Do guest worker programs give firms too much power?](#), IZA World of Labor, 2021

³¹³ W. van Ballegooij and E. Thirion, op. cit., 2019.

impact the EU economy while also being aligned and supportive of the EU's broader policy objectives such as the Digital Decade Strategy, the Green Deal and the European Pillar of Social Rights.

9. References

European Parliament

Report on [new avenues for legal labour migration](#) (2020/2010(INI)), European Parliament, 2021.

Resolution of 12 April 2016 on the [situation in the Mediterranean and the need for a holistic EU approach to migration](#), 2015/2095(INI), European Parliament.

Resolution of 5 July 2016 [on refugees: social inclusion and integration into the labour market](#), 2015/2321(INI), European Parliament.

[Resolution of 19 January 2017 on a European Pillar of Social Rights](#) (2016/2095(INI)), European Parliament.

[Resolution of 11 December 2018 with recommendations to the Commission on Humanitarian Visas](#), 2018/2271(INL)), European Parliament.

Resolution of 19 June 2020 on [European protection of cross-border and seasonal workers in the context of the COVID-19 crisis](#), 2020/2664(INI), European Parliament.

Navarra C and van Ballegooij W, [The Cost of non-Europe in Asylum Policy](#), EPRS, European Parliament, 2018.

[Precarious work from a gender and intersectionality perspective, and ways to combat it](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2020.

[The external dimension of the new pact on migration and asylum A focus on prevention and readmission](#), EPRS, 2021.

[Towards a more resilient Europe post-coronavirus: Capabilities and gaps in the EU's capacity to address structural risks](#), European Parliament Research Service, 2020.

Van Ballegooij W and Navarra C., [Humanitarian Visas. European Added Value Assessment](#), EPRS, 2018.

van Ballegooij W. and Thirion E., [The Cost of non-Europe in the Area of Legal Migration](#), EPRS, European Parliament, 2019.

Other European institutions

Commission Staff Working Document. Executive Summary of the Fitness Check on EU Legislation on Legal Migration. SWD (2019) 1055 final.

[Commission work programme 2021](#), European Commission.

Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, [The European Green Deal](#), COM/2019/640 final, p. 21.

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions, on a New Pact on Migration and Asylum, COM/2020/609 final

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Action plan on Integration and Inclusion 2021-2027 COM(2020) 758 final, p. 11

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. European Skills Agenda for sustainable competitiveness, social fairness and resilience. COM(2020)274.

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, [Action plan on integration and inclusion 2021-2027](#). SWD(2020) 290 final.

Directive 2000/43 (EC) implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (2000) OJ L 180/22.

Directive 2000/78 establishing a general framework for equal treatment in employment and occupation (2000) OJ L 303/16.

[Directive 2005/36](#) of 7 September 2005 on the recognition of professional qualifications.

[Directive 2009/50](#) of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment.

[Directive 2013/33](#) of 26 June 2013 laying down standards for the reception of applicants for international protection (recast).

[Directive 2016/801](#) of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing.

[Directive 2019/1158](#) of 20 June 2019 on work-life balance for parents and carers.

[Inception Impact Assessment – Single permit for third-country nationals to reside and work in the EU](#), European Commission, 2021.

[Integration of immigrants in the European Union](#), Special Eurobarometer 469 Report, 2018.

Case C-179/90 *Merci Convenzionali Porto di Genova* (1991) EU:C:1991:464

ECJ, 26 February 1991, Antonissen, C-292/89.

CJEU, C-302/19, *Istituto Nazionale della Previdenza Sociale* (2020).

[Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union](#). COM(2020) 682 final, 28 October 2020.

[Regulation No 1612/68](#) of the Council of 15 October 1968 on freedom of movement for workers within the Community.

[Migratory Pathways for Start-Ups and Innovative Entrepreneurs in the European Union](#), European Migration Network Synthesis Report for the EMN Study 2019, December 2019.

[Report on the consultation on the future of EU legal migration](#), European Commission, 2021.

[The European Pillar of Social Rights Action Plan](#), European Commission, 2017.

[Treaty on the Functioning of the European Union](#).

Other

Altai Consulting for the European Commission, [Learning Lessons from the EUTF – Phase 2 – Paving the way for future programming on migration, mobility and forced displacement](#), February 2021.

Aksoy, C. G., & Poutvaara, P., 'Refugees' and irregular migrants' self-selection into Europe: Who migrates where?', *Journal of Development Economics*, 2021.

Andersson R., ['Europe's failed 'fight' against irregular migration: ethnographic notes on a counterproductive industry'](#), *Journal of Ethnic and Migration Studies*, 42:7, 2016, pp.1055-1075.

Andersson, R., *Illegality, Inc.: Clandestine migration and the business of bordering Europe*. University of California Press, 2014.

Bast J., von Harbou F. & Weesees J., *Human Rights Challenges to European Migration Policy (REMAP)*, Glesse, REMAP Project p. 120, 2020.

Baker, S. R. (2015). Effects of immigrant legalization on crime. *American Economic Review*, 105(5), 210-13

Bellini, E., Ottaviano, G. I. P., Pinelli, D., & Prarolo, G., 'Cultural Diversity and Economic Performance: Evidence from European Regions'. In Crescenzi, R. and Percoco, M. (eds.), *Geography, Institutions and Regional Economic Performance*, 2013, pp.121-141, Berlin: Springer-

Bisong, A., *Migration Partnership Framework and the Externalization of European Union's (EU) Migration Policy in West Africa: The Case of Mali and Niger*. In *Regional Integration and Migration Governance in the Global South*, 2020, pp. 217-237, Springer, Cham.

Bjarnesen, J., *Shifting the narrative on African migration: the numbers, the root causes, the alternatives—get them right!*. Nordiska Afrikainstitutet, 2020.

- Brekke J.P., Borchman G., Stuck in Transit Secondary Migration of Asylum Seekers in Europe, National Differences, and the Dublin Regulation, *Journal of Refugee Studies*, Vol. 28(2), 2015, pp.145-163.
- Bribosia E., Rorive I. & Hilaire J., 'Article 21. Non-discrimination', in Fabrice Picod and alii, *Charte des droits fondamentaux de l'Union européenne*, Commentaire Article par Article (2nd ed., Bruylant, 2020) para 10, 581, 2020.
- Brozca S., Paulhart K., EU mobility partnerships: a smart instrument for the externalisation of migration control, *European Journal of Futures Research*, volume 3, N°15, 2015.
- Brücker, H., Glitz, A., Lerche, A. and Romiti, A., Occupational recognition and immigrant labor market outcomes. *Journal of Labor Economics*, 39(2), 2021, pp.497-525.
- Buckingham S. and alii, [Precarious work from a gender and intersectionality perspective, and ways to combat it](#), November 2020, Study commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the FEMM Committee.
- Carrera, S., & Hernández i Sagrera, R. (2011). Mobility partnerships. 'Insecurity partnerships' for policy coherence and migrant workers' human rights in the U. In R. Kunz, S. Lavenex, & M. Panizzon (Eds.), *Multilayered migration governance. The promise of partnership* (pp. 97-115). London: Routledge.
- Cassarino J-P., [The New Pact on Migration and Asylum: Turning European Union Territory into a non-Territory](#), EU Law Analysis, November 2020
- Cholewinski R. Eu Legal Migration Policies Since Tampere, And Their Relationship With International Standards And The Un Global Compact For Migration in Carrera S. Curtin D, Geddes A, 20 Year Anniversary Of The Tampere Programme: Europeanisation Dynamics of the EU Area of Freedom, Security and Justice, EUI, 2020.
- Clemens M., [Skill Flow: A Fundamental Reconsideration of Skilled-Worker Mobility and Development](#). CGD Working Paper 180, Center for Global Development. Washington, DC, 2009.
- Clemens M. Dempster H., Gough K, Maximizing the Shared Benefits of Legal Migration Pathways: Lessons from Germany's Skills Partnerships, Centre for Global Development, 2019.
- Clemens M. The Fiscal Effect of Immigration: Reducing Bias in Accounting Estimates, forthcoming 2021
- Colombelli A., D'Ambrosio A., Meliciani V. & Quatraro F., Newborn Firms and Regional Diversification Patterns: The Role of Cultural Diversity, *Economic Geography*, 96:4, 2020.
- Cosgrave et al., Europe's refugees and migrants: Hidden flows, tightened borders and spiralling costs, ODI Report, 2016
- Christl, M., Bélanger, A., Conte, A., Mazza, J., & Narazani, E. (2021). The fiscal impact of immigration in the EU (No. 814). GLO Discussion Paper.
- Cupák A., & Kancs P. C. D. A., [Comparing the immigrant-native pay gap: A novel evidence from home and host countries](#), LIS Working Papers, 2021.
- Czaika, M., & de Haas, H., [The effect of visa policies on international migration dynamics.](#), IMI Working Papers, Oxford, 2014.
- D'Ambrosio, Anna and Leombruni, Roberto and Razzolini, Tiziano, 'Fear is the Path to the Dark Side'. Electoral Results and the Workplace Safety of Immigrants. IZA Discussion Paper No. 14322, 2021.
- de Haas, H., Vezzoli, S., & Villares-Varela, M., Opening the floodgates?: European migration under restrictive and liberal border regimes 1950-2010., Working Papers, International Migration Institute, 2019.
- de Haas, H. (2020). Paradoxes of migration and development. In *Routledge Handbook of Migration and Development* (pp. 17-31). Routledge.
- De Lange T., A new narrative for European migration policy: Sustainability and the Blue Card recast, *European Law Journal*, April 2021.
- De Wispelaere, F., & Pacolet, J., Posting of workers: Report on A1 Portable Documents issued in 2016. Tratto da <http://ec.europa.eu/social/BlobServlet?docId=19040&langId=en>
- Desiderio M. V., On interrupted trajectories and difficulties transferring human capital, 2016.

['Detained and Dehumanised, Report On Human Rights Abuses Against Migrants In Libya'](#), United Nations Support Mission in Libya, Office of the United Nations High Commissioner for Human Rights, December 2016.

Devillanova, C., Fasani, F. and Frattini, T., Employment of undocumented immigrants and the prospect of legal status: evidence from an amnesty program. *ILR Review*, 71(4), 2018, pp.853-881.

Docquier, F., & Rapoport, H. (2004). Skilled migration: the perspective of developing countries. The World Bank.

Dustmann, C., Fasani, F., & Speciale, B. (2017). Illegal migration and consumption behavior of immigrant households. *Journal of the European Economic Association*, 15(3), 654-691

ECDPM, [The EU's migration agenda – what about legal migration pathways?](#), 2018

Eisele K., *The External Dimension of the EU's Migration Policy Different Legal Positions of Third-Country Nationals in the EU: A Comparative Perspective*, Brill 2014.

Eisele, K.. The EUs readmission policy: of agreements and arrangements. In *Constitutionalising the External Dimensions of EU Migration Policies in Times of Crisis*. Edward Elgar Publishing, 2019

Euronews (2020), [Invisible workers: Underpaid, exploited and put at risk on Europe's farms.](#)

Fasani F., & Mazza J., *Being on the Frontline? Immigrant Workers in Europe and the COVID-19 Pandemic*, 2020.

Fasani F., & Mazza J., [Immigrant Key Workers: Their Contribution to Europe's COVID-19 Response](#), 2020.

Fasani, F., Frattini, T., & Minale, L., *Lift the Ban? Initial Employment Restrictions and Refugee Labour Market Outcomes*, 2020.

Fernandes M., Lomba N., Navarra C. with Garcia Munoz M., [Gender-based violence as a new area of crime listed in Article 83\(1\) TFEU](#), European Added Value Assessment, EPRS, 2021.

Frelick B., I. M. Kysel, & J. Podkul, The impact of externalization of migration controls on the rights of asylum seekers and other migrants. *Journal on Migration and Human Security*, 4(4), 2016,190–220.

Fondation Robert Schuman, [European Union/African Cooperation: the externalisation of Europe's migration policies](#), 2018

Fondazione CRC, [Lavoro migrante in agricoltura settembre 2020 i distretti della frutta e del vino nel cuneese](#), Settembre 2020

Garcia Andrade P., *EU cooperation on migration with partner countries within the New Pact: new instruments for a new paradigm?*, 2020.

Geddes, A, et al. *Migration and Mobility in the European Union*, Macmillan Education UK, 2020.

Giesing, Y., & Laurentsyeve, N., *Firms Left Behind: Emigration and Firm Productivity*. CESifo Working Paper No. 6815, 2017.

Giesing Y and Hofbauer M., [How does Covid-19 Affect Migration and Integration?](#) IFO Institut, 2020.

Gomez, R., M. Gunderson, X. Huang, & T. Zhang. Do immigrants gain or lose by occupational licensing? *Canadian*, 2016, Public Policy 41:S80–S97.

Groenendijk, K. (2012). Are third-country nationals protected by the Union law prohibition of discrimination on grounds of nationality? (pp. 131-142). Nomos Verlagsgesellschaft mbH & Co. KG.

Hagen-Zanker, Mallett R., [Journeys to Europe: the role of policy in migrant decision-making](#), ODI Insights, 2016.

Hainmueller, J., Hangartner, D. and Lawrence, D., When lives are put on hold: Lengthy asylum processes decrease employment among refugees. *Science advances*, 2(8), p.e1600432, 2016.

Hooper K., [Exploring New Legal Migration Pathways: Lessons from Pilot Projects](#), MPI Paper, 2019.

[How do OECD countries compare in their attractiveness for talented migrants?](#) OECD, 2019.

Howard Davies. *EUA Special Update on EU trade agreements and on the Recognition of professional qualifications*, 2016.

[Indicators of Immigrant Integration 2015: Settling in](#). Organisation for Economic Cooperation and Development, 2015.

OECD, International Migrations Outlook, 2020.

Kancs, D. A., & Lecca, P.. Long-term social, economic and fiscal effects of immigration into the EU: The role of the integration policy. *The World Economy*, 41(10), 2018, 2599-2630.

Kato, T. and Sparber, C., Quotas and quality: The effect of H-1B visa restrictions on the pool of prospective undergraduate students from abroad. *Review of Economics and Statistics*, 95(1), 2013, pp.109-126.

Kraft and Quendrae study.

[Lavoro Migrante in Agricoltura, I Distretti Della Frutta e Del Vino nel Cuneese](#), Fondazione CRC, September 2020.

Lebano, A., Hamed, S., Bradby, H., Gil-Salmerón, A., Durá-Ferrandis, E., Garcés-Ferrer, J., Azzedine, F., Riza, E., Karnaki, P., Zota, D. and Linos, A., 2020. Migrants' and refugees' health status and healthcare in Europe: a scoping literature review. *BMC Public Health*, 20(1), pp.1-22.

Lens, D., Mussche, N., & Marx, I. Europe's ever expanding mobility patterns – posting, third-country nationals and the single European labour market. CBS Working Paper No. 19.08, 2019.

Levitt, P., & Lamba-Nieves, D. (2011). Social remittances revisited. *Journal of Ethnic and Migration Studies*, 37(1), 1-22.

Mastrobuoni, G., & Pinotti, P. (2015). Legal status and the criminal activity of immigrants. *American Economic Journal: Applied Economics*, 7(2), 175-206.

McCormack-George, D. (2019). Equal Treatment of Third-Country Nationals in the European Union: Why Not?. *European Journal of Migration and Law*, 21(1), 53-82.

[Making Integration Work: Assessment and Recognition of Foreign Qualifications](#), OECD, 2017.

[Managing international migration under Covid-19](#), OECD brief, 2020.

Melin P., The External Dimension of EU Social Security Coordination: Towards a Common EU Approach, *Studies in EU External Relations*, Volume: 15, Brill, 2019

[Migration and the European Green Deal](#), International Organization for Migration.

Migration Control Conditionality: a flawed model. ECRE, 2020.

Ministero del Lavoro, Piano triennale di contrasto allo sfruttamento lavorativo in agricoltura e al caporalato (2020-2022), 2019, Rome, Italy.

Monras, Joan and Vázquez-Grenno, Javier and Elias Moreno, Ferran, Understanding the Effects of Legalizing Undocumented Immigrants (February 13, 2018). Upjohn Institute Working Paper No. 18-283

Moving beyond crisis, Germany new approach to integrating refugees to the labour market. Migration Policy Institute, 2016.

Norlander, P. Do guest worker programs give firms too much power?. IZA World of Labor 2021.

Ottaviano, G. I., & Peri, G., The economic value of cultural diversity: evidence from US cities. *Journal of Economic geography*, 6(1), 2006, 9-44.

Palumbo L., Corrado A., [Are agri-food workers only exploited in southern Europe? case studies on migrant labour in Germany, the Netherlands, and Sweden](#), Open Society and European Policy Institute Policy Brief 2020

Pastore F. (ed), Beyond the Migration and Asylum Crisis, Options and Lessons for Europe, Aspen Institute Italia, 2017.

Pastore, F., & Roman, E., Migration policies and threat-based extraversion. Analysing the impact of European externalisation policies on African polities. *Revue europeenne des migrations internationales*, 36(1), 2020, 133-152.

Patuzzi, L., Start-up visas: A passport for innovation and growth, Migration Policy Institute, 2019.

Peri, G., 'The Effect Of Immigration On Productivity: Evidence From U.S. States'. *Review of Economics and Statistics*, 94(1), 2010, 348-358.

- PICUM, Regularising undocumented people in response to the COVID-19 Pandemic, 1 July 2020,
- Pinotti, P. (2017). Clicking on heaven's door: The effect of immigrant legalization on crime. *American Economic Review*, 107(1), 138-68.
- Pijnenburg, A., Gammeltoft-Hansen, T., & Rijken, C. (2018). Controlling migration through international cooperation. *European Journal of Migration and Law*, 20(4), 365-371
- [Protecting migrants in an irregular situation from labour exploitation – Role of the Employers Sanctions Directive](#), Fundamental Rights Agency, 2021
- [Protecting migrant workers from exploitation in the EU: workers' perspectives](#), Fundamental Rights Agency, 2019.
- [Quarto Rapporto Agromafie E Caporalato](#) – Osservatorio Placido Rizzotto, FLAI-CGIL, 2018.
- Rapoport, H. (2016). Migration and globalization: what's in it for developing countries?. *International Journal of Manpower*.
- Reslow, N. (2015). EU 'Mobility' Partnerships: An Initial Assessment of Implementation Dynamics. *Politics and Governance*, 3(2), 117-128.
- [Retaining third-country national students in the European Union : EMN Inform](#). European Migration Network, 2017.
- Ruhs, M., & Vargas-Silva, C., The labour market effects of immigration. The Migration Observatory, 2015.
- Ruhs M., [Expanding Legal Labour Migration Pathways to the EU: Will This Time Be Different?](#), Istituto Affari Internazionali, 2020
- [Scaling Fences: Voices of Irregular African Migrant to Europe](#), UNDP, 2019.
- [Skilled Mobility Partnerships \(SMPs\). Towards a Global Approach to Skills](#), IOM, 2020.
- Tani M., [Occupational Licensing and the Skills Mismatch of Highly Educated Migrants](#). *British Journal of Industrial Relations*, 2021.
- [Together in the EU: Promoting the participation of migrants and their descendants](#)', Fundamental Rights Agency, 2017.
- UNHCR Annotated Comment to the Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast).
- [UNHCR's Response](#) to the European Commission's Green Paper on the Future Common European Asylum System, September 2007.
- Wahba, J. Who benefits from return migration to developing countries?. IZA World of Labor 2015
- Wollenschläger F., A.P. van der Mei, S. Robin-Olivier, H. Verschueren, [Analytical report on the legal situation of third-country workers in the EU as compared to EU mobile workers](#), 2018.
- Zardo F., The EU Trust Fund for Africa: Geopolitical Space Making through Migration Policy Instruments, *Geopolitics*, 2020.
- Zschirnt, E. and Ruedin, D., Ethnic discrimination in hiring decisions: a meta-analysis of correspondence tests 1990–2015. *Journal of Ethnic and Migration Studies*, 42(7), 2016, pp.1115-1134.

This European added value assessment (EAVA) has been written with the aim of providing support to the ongoing work on a European Parliament legislative-initiative report on legal migration policy and law (2020/2255(INI)). The assessment reviews the key issues concerning legal migration in the status quo (with a focus on labour migration) and discusses the reasons why the EU should take action. It then explores a selection of possible EU actions, that include recognising migrants' qualifications, facilitating access to employment of migrants already in the EU, developing new avenues for legal migration to the EU, tackling discrimination and promoting migrants' rights. The assessment finds that all policy options could generate substantial benefits for workers and spillover benefits for the EU economy. Moreover, as these policy options are complementary, they could be implemented together in order to enhance the added value of EU action.

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