

# EMN INFORM

## Admitting third-country nationals for business purposes

### 1. INTRODUCTION

This EMN Inform summarises the main findings of the EMN Study *Admitting third-country nationals for business purposes*, published in May 2015. The Study was based on contributions from EMN National Contact Points in 24 Member States<sup>1</sup>, collected via common specifications to ensure comparability. The key findings are set out below.

### 2. KEY POINTS TO NOTE

- ★ Designing and implementing policies/programmes and schemes to attract and facilitate the admission of third-country nationals for business purposes is a **growing phenomenon**. More than half of all EU Member States seek to **actively attract** investors and business owners, while supporting international mobility: they implement specific programmes by **providing incentives** and **easing restrictions** on entry and/or stay.
- ★ The admission of third-country national investors and business owners is not harmonised at EU level. Member States have designed and implemented **specific programmes** for these groups according to national priorities and needs and national legal frameworks show considerable variety with regard to the definitions and **categories** of third-country nationals admitted and the 'incentives' that are made available. In many cases, national approaches have been introduced **relatively recently**, and in response to the economic crisis, which accounts in part for the limited availability of supporting

statistics and evaluation information available to better understand the phenomenon.

- ★ Other categories of business persons include (but are not limited to) the six pre-defined categories of **"natural persons"** providing services, under the specific commitments of the General Agreement on Trade in Services (**GATS**) and **EU free-trade agreements**; however these categories are not recognised by all Member States and are not distinguished in practice by existing definitions in all Member States.
- ★ In terms of **migration policy design**, Member States strive to find the **right balance** between incentives and rights offered to third-country nationals on the one hand and admission criteria which guarantee effective controls and secure borders on the other. Member States exercise their competence to design policy to favour economic migration, by **picking and choosing measures and criteria** they deem will best meet their national needs whilst also meeting the requirements of and acting as incentives to business persons.
- ★ **Higher-rate immigration** Member States with tailored programmes for business persons have developed and / or adapted them with the aim to better meet the needs of their national markets and seek higher economic benefits. Detailed admission criteria are purposely designed to target specific groups of third-country nationals whose presence would constitute a certain added value to host country, a region or a specific economic sector.

<sup>1</sup> Austria, Belgium, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland,

Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom

- ★ In **lower-rate immigration** Member States, immigrant investors' programmes may have been more recently designed as economic recovery measures or, more ambitiously, to act as (regional) hubs for investments. In other Member States, however, immigration for business purposes does not seem to be a priority, or to be attributed any higher degree of attention.
- ★ Member States rely on their standard **measures to detect any misuse / abuse** of the business channel by migrants to the EU. Controls applied at admission stage are used by Member States to detect cases of *potential misuse / abuse*, and it is usually at the moment of the renewal of the residence permit or when specific inspections are carried out, for example, that *actual* misuse/abuse becomes manifest.
- ★ **Few specific instances of misuse/abuse of the investor route** by third country nationals has been reported. **For business categories, some incidences have been identified in specific sectors**, including construction, catering / restaurants, IT services, transport, accommodation, trading services, financial services, retail, agriculture and cleaning services.
- ★ Though **evaluations** undertaken to assess the contribution of such programmes to the national economy are limited, the study reveals that some Member States have **adapted their programmes over time** to refocus on specific priorities, whilst introducing procedural adjustments to improve effectiveness and address misuse and abuse.

#### WHAT DID THE EMN STUDY AIM TO DO?

The aim of the EMN Study was to provide an analysis and further understanding of the **policies and specific conditions** in place in EU Member States that regulate the admission for business purposes of:

- ★ **Non-EU investors** who are not yet present/resident in any Member State (admitted on a long-stay visa or residence permit for the purpose of making a (substantial) financial investment either in financial products or in a business but without involving in the day to day operations or in the management of business);
- ★ **Non-EU business owners** who are not yet present/resident in any Member State (admitted on long-stay visa or residence permit to the Member State to i) set up a business and be involved in its management; ii) take over the running of a business or businesses and be involved in its management; iii) or for self-employment;
- ★ Other third-country nationals who travel to the EU for business reasons ("**other business persons**"),

including (but are not limited to) the six pre-defined categories of "**natural persons**" providing services, under the specific commitments of the (**GATS**) and **EU free-trade agreements**.

The study also sought to compare the ways, and extent to which, EU Member States' existing **legal and policy measures are used to facilitate the admission and stay** of third-country nationals for business purposes whilst safeguarding against misuse.

The Study contributes to the **wider debate on increasing EU competitiveness**, attracting investors and business owners (entrepreneurs), while addressing the mobility of international workers.

#### WHAT IS THE SCALE OF THE PHENOMENON?

Statistics on **immigrant investors, immigrant business owners and other business persons** were provided by 21 Member States for the period 2009-2013. However, such statistics are **not collected systematically** for each of the categories within the scope of study as they are not recognised by many Member States' national systems or have been introduced too recently to provide comprehensive statistics. In addition, statistics based on the issuing of C-type visas<sup>2</sup> tend to cover wider groups of third-country nationals, making it difficult to identify with accuracy the categories analysed by this study.

Available statistics suggest that these categories represent only very low shares of overall immigrant populations. In **2013**, the number of residence permits issued to immigrant investors ranged from **94** in **Latvia** to **753** in **Portugal**, while those granted to non-EU business owners ranged from **54** in **Estonia** to **4,179** in **Lithuania**. Member States with **high numbers of applications** (for both categories of immigrant investors and immigrant business owners) have reported the **lowest refusal rates**.

#### CAN A TYPOLOGY OF PROGRAMMES BE DERIVED FROM MEMBER STATES' PRACTICES?

National legal frameworks show considerable **variety** with regard to the definitions and categories of third-country nationals admitted for business purposes, and the facilitations that are made available. While the majority of Member States implementing policies to attract non-EU investors and business owners **translate them into specific measures and/or criteria** to provide incentives, an automatic correlation between the two cannot be derived.

A categorisation of existing programmes can be made on the basis of the following four elements:

- ★ **Incentives** i.e. policy measures tailored to attract immigrant investors such as marketing actions,

<sup>2</sup> The Short-stay visa (Type "C") is issued for one, two or several visits. Its period of validity varies and allows stays which do not exceed three months in any six-month period.

According the Regulation No 539/2001, nationals of certain third-countries are exempted from the requirement of being in possess of a visas when crossing the EU external borders.

dedicated information portals, favourable tax regimes,

- ★ **Procedural facilitation** i.e. measures to fast-track or ease restrictions to admission such as shorter examination procedures or exemptions from “integration contracts”,
- ★ **Qualifying criteria** i.e. entry requirements such as minimum size of investment, evidence of capital, impact on the national economy or evidence of certain entrepreneurial / language skills,
- ★ **Enhanced rights** i.e. accelerated family reunification, direct granting of long-term residence permits or accelerated access to citizenship.

The combination of those may provide an indication of the level of openness to the targeted categories of third country nationals as well as the breadth of target groups Member State wish to attract.

Figures 1 and 2 below provide a visual overview of which Member States have programmes that facilitate the admission of immigrant investors (Figure 1) and business owners (Figure 2). The reference to this information can be found in Sections 2.1 and 2.2.

Figure 1 Overview of Member States with programmes that facilitate the admission of immigrant investors

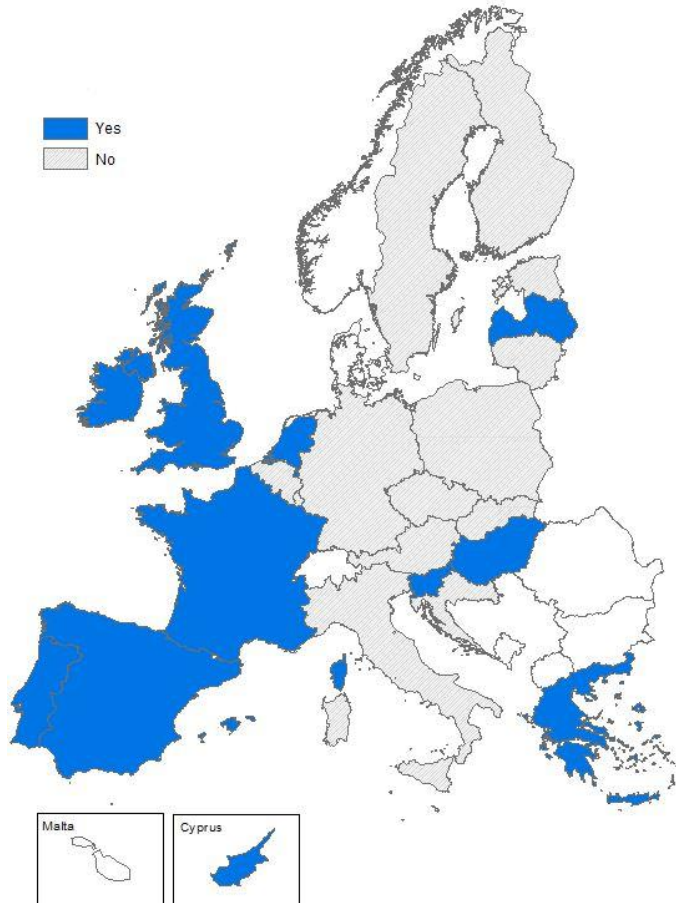


Figure 2 Overview of Member States with programmes that facilitate the admission of immigrant business owners



**WHAT MEASURES HAVE MEMBER STATES ADOPTED TO PREVENT THE MISUSE/ABUSE OF BUSINESS IMMIGRATION CHANNELS?**

While the terms **misuse** and **abuse** of immigration channels for business purposes are used indiscriminately, measures in place to **monitor, detect and prevent** misuse / abuse differ according to the responsible authorities, the scope of the investigation performed and the type and frequency of controls undertaken.

While some Member States report that thorough controls / verifications are ensured by the competent authorities responsible for the admission of third-country nationals (**BE, EL, ES, FR, IE, IT, LT, LU, LV, NL, PL, PT, SE, SK, UK**), including missions abroad (**CZ, FR, IT, LT, PL, SE, SK**), in other cases, specific bodies are mandated to fulfil this duty.

The Study has reported few specific instances of misuse/abuse of the investor route by third country nationals (real estate in **Latvia**). For the other categories, the main **sectors** where misuse/abuse has been reported include the following categories of business: construction (**AT, BE, DE, FR, PL**), catering/restaurants (**BE, FR, PL, UK**), IT services (**AT, UK**), transport (**AT, PL**), accommodation (**FR, PL**), trading services (**FR, LT**), financial services (**HU, LV**),

retail (**PL, UK**), agriculture (**BE, PL**) and cleaning services (**AT**). Independent Professionals (IPs) were at times found to undertake **bogus self-employment** activities.

#### HOW HAVE MEMBER STATES EVALUATED THE IMPACTS AND EFFECTIVENESS OF THEIR PROGRAMMES?

Examples of impacts in terms of volume of **investments expected or generated** are demonstrated for four countries (**ES, HU, LV, UK**), while the pool of Member States demonstrating impacts is larger in the case of business owners (**AT, FR, ES, NL, PL, SK**). Investments generated by non-EU business owners in Member States where data was available amounted to nearly **EUR 8 billion** and is supporting the creation of nearly **53,000 jobs**.

Evaluation studies have served the purpose to support the (plan for) **changing existing national approaches**: for example admission criteria have been adapted (normally increasing the investment threshold) to better manage the flow of third-country nationals (**HU, LV, NL, UK**).

#### WHAT ARE THE MAIN CHALLENGES FACING MEMBER STATES AND THIRD-COUNTRY APPLICANTS?

**Challenges** were reported by most Member States (**AT, BE, DE, ES, FR, HU, IE, LT, LU, LV, NL, PL, SE, SK, UK**) in the design and implementation of policies to attract and admit third-country nationals for business purposes. Some Member States raised concerns about the difficulty to **counteract the establishment of bogus economic activities** set-up by third-country nationals whose main aim is to simply enter and stay in the Member State (**AT, CZ, HU, LT, PL**) or engage in illicit activities (**SE**), thus misusing the schemes in place.

One of the main challenges is to ensure a **balance** between selective admission criteria able to prevent and reduce abuses and yet provide for favourable channels for genuine third-country investors and business owners (**AT, CZ, LT, LV**). Furthermore, **the complexity of administrative procedures** and ensuring coordination among competent authorities in charge of the implementation of policies is an obstacle to attract immigrant investors and immigrant business owners (**BE, FI, FR, LT, LU, PL**).

With regard to the **stages of admission and stay**, the complexity of application procedures is in some cases reported by Member States as a point of criticism from migrant applicants. Not entirely related to the nature of specific admission programmes, such criticisms are often levelled more generally as remarks in relation to the standard procedures regulating immigration to the EU. In some cases, these procedures are considered rigid, slow and requiring much supporting documentation (**DE, FI, FR, HU, LT, PL, SE**); the different permits and visas are likely to confuse the applicant (**FI, FR, LU, PL, SE**) or are perceived as lacking clarity (**AT, BE, LT**).

Challenges in procedures in relation to **residency requirements** are mostly likely to discourage applicant **immigrant investors (EE, NL, SK, UK)**. The limited **capacity to attract investments** (i.e. hedge funds) **may be also caused by insufficient** popular acceptance of foreign direct investments (**DE**). Finally, difficulties to apply for a residence permits for family members (**LU**) and the limited choices in the form of investment to be made (**UK**) are perceived as barriers. **Immigrant business owners** are reported to face challenges mostly at start-up phase: although being willing to set up business, they encounter obstacles such as limited country-knowledge (**DE, FI, IE, PL**); language barriers (**BE, DE, FI, PL, SK**) and high levels of bureaucracy (**BE, FR, LT, LU, PL, SK**) among others. Few challenges were reported specifically with regard to **other business persons**, some of which common to different categories and a few Member States.

#### DO MEMBER STATES IDENTIFY GOOD PRACTICES OR LEARN FROM THEIR NATIONAL APPROACHES?

A number of good practices and lessons learnt in attracting and admitting third-country nationals for the purpose of business have been proposed by Member States. These reflect the need for Member States to find **ways to balance flexibility with certainty** and match the demands of investors and business owners for longer visas and permits. They are grouped around a number of themes as follows:

- ★ **Promotion of programmes** (including targeted and well-structured information) for migrant investors and business owners (**BE, DE, EE, ES, HU, IE, LU, NL, PL, SE**);
- ★ **Facilitation of admission procedures** for migrant investors and business owners (**CZ, EE, ES, FR, IE, LT, LV**);
- ★ **Prevention of misuse/abuse** (**EE, LT, NL**).

### 3. FURTHER INFORMATION

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

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