

# EMN INFORM

## Approaches and tools used by Member States to identify labour market needs

### 1. INTRODUCTION

This EMN Inform provides information on the regulatory frameworks used at the national level to manage the migration of third-country nationals to the EU. It is based on information collected<sup>1</sup> from 21<sup>2</sup>, Member States plus Norway and draws additionally on relevant reports and studies developed by the EMN.

The **Europe 2020 Strategy** paves the way for economic migration in sectors in which labour and skills shortages are emerging, as well as to attract highly skilled third-country nationals in the global competition for talent. The **EU migration Directives** respect the competences of Member States on employment, labour and social matters. Within their national regulatory frameworks to manage immigration, Member States therefore use a number of tools, both singularly or in combination, to ensure that the arrival of workers from third countries is demanded. The most frequently used are labour market tests, shortage lists and quotas, although other tools may also be deployed at national level for this purpose, responding to specific national considerations.

### 2. KEY POINTS TO NOTE

- ★ The **Labour Market Test (LMT)** is used extensively across the EU where the Union preference principle is widely applied.
- ★ As a tool to manage labour migration and to facilitate entry of certain categories of third-country

national workers, Member States apply various **exemptions** from the LMT for certain categories of worker, according to national labour market needs. These include: **highly qualified** workers or **top specialists, inter-corporate transferees (ICTs), posted workers**, persons holding **high ranking positions, sports professionals**, workers in the field of **research / science / art / culture**, categories exempted under **international agreements** in place with third-countries, **third-country nationals with national background / ancestry**, clerics and religious workers, and in some cases, **seasonal workers**.

- ★ In practice, Member States apply different methodologies in undertaking LMTs to ensure that no suitable national / EU candidates are available to take up a specific vacancy, within a specified time period. The **verification period varies widely** across Member States from ten days to three months.
- ★ The national LMT contributes to the implementation of the '**Union preference**' rule<sup>3</sup>; and almost all Member States included in the survey can reject applications from third country nationals for positions where suitably qualified EU nationals are available and willing to take up work. Member States use the EU job mobility portal **Eures** to share national job vacancies widely across the EU.
- ★ **Shortage lists** are a further tool used by Member States to determine demand for labour migration. These are monitored and adjusted to ensure they

<sup>1</sup> Ad-Hoc Query No 2013.507 plus additional contributions from Austria, Czech Republic and Hungary.

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

<sup>3</sup> [Council Resolution of 20 June 1994](#) on limitations on admission of third-country nationals to the territory of the Member States for employment.

remain relevant, although review periods vary across Member States.

- ★ Labour shortages are highly specific to (Member) States and reflect national priorities. The most frequently identified shortage categories reported included the **medical sector, accountants, IT analysts / experts, construction workers, engineers, natural scientists** and **chefs**.
- ★ Some Member States have introduced **facilitated processes** for entry and stay of migrant workers in occupations included in shortage lists.
- ★ Given the diversity in applications across Member States, there is potential **for learning and sharing** of information to ensure better implementation in the future.

### 3. HOW DO LABOUR MARKET TESTS WORK IN PRACTICE?

The legal basis for the limitation on admission of third-country nationals for the purpose of employment is set out in the Council Resolution C274/3 of 20<sup>th</sup> June 1994. **Labour Market Tests** are mechanisms that aim to ensure that migrant workers are only admitted after employers have seriously and unsuccessfully searched for local workers<sup>4</sup>.

#### 3.1 How are LMTs implemented?

The use of LMTs in EU Member States is widespread. In almost all of the Member States sampled, and Norway, the LMT is applied before a third-country national migrant can obtain a work permit and take up employment in a vacant position. However, considerable variation applies across Member States in the implementation of the LMT.

In **Belgium**, regional regulatory frameworks for the labour market exist rather than one national approach therefore the three different regions (Flanders, Walloon and Brussels Regions) operate their own LMT and shortage lists (see below). The LMT does exist officially but is applied only in very limited cases. In **Luxembourg**, the LMT applies, but to salaried workers only. **Germany** does not apply a Labour Market Test *per se*, but operates a **priority check** to determine shortages. In **Sweden**, the system is employer-led, for all qualification levels, and government interference is restricted, hence **Sweden** does not in general apply quotas, shortage lists etc.

#### 3.2 Major categories of TCNs exempted from a LMT

Where (Member) States do apply the LMT, a number of categories of workers can be exempted from the test. These categories are **not harmonised** and vary widely across Member States, reflecting their specific national

situations and labour market priorities. From the survey of Member States, exemptions primarily apply in the following categories of individuals in the respective (Member) States:

- ★ **Highly skilled workers or top specialists** (**Austria, Belgium, Estonia, Finland, France, Ireland, Italy, Latvia, Luxembourg, Malta, Netherlands, Spain**). In **United Kingdom**, exemptions apply to some categories of highly skilled migrants such as entrepreneurs and people with exceptional talent. In about half of the countries sampled, **highly qualified workers** are exempted from undergoing the LMT (**Austria, Belgium, Estonia, Finland, France, Ireland, Italy, Latvia, Luxembourg, Netherlands, Spain**).
- ★ In some Member States, the above approach has been used alongside other national policies with the **specific aim of attracting highly qualified and qualified third country national migrant workers**<sup>5</sup>. Such measures may include fast tracking of procedures; information campaigns; employer sponsorship; and reducing labour market restrictions.
- ★ Other Member States responding to the survey do apply the LMT to this category of worker (**Bulgaria, Cyprus, Malta, Poland, Lithuania, Slovak Republic, Sweden** and **United Kingdom**). In **Norway**, the LMT is applied for highly qualified workers only when the set quota for this group of workers is filled.
- ★ **Inter-corporate Transfers (ICTs)** (e.g. **Bulgaria, Cyprus, Finland, France, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovak Republic, Spain** and **United Kingdom**).
- ★ **Posted workers** (e.g. **Cyprus, Estonia, Finland, Italy, Latvia, Lithuania, Luxembourg, Poland, Slovak Republic** and **Spain**).
- ★ Persons holding **high ranking positions** (e.g. **Austria, Belgium, Bulgaria, Cyprus, Estonia, Finland, Italy, Lithuania, Malta, Spain** and **United Kingdom**).
- ★ Sports professionals (**Austria, Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Ireland, Italy, Latvia, Lithuania, Luxembourg, Spain** and **United Kingdom**)
- ★ Workers in the field of **research/science/art/culture**, sometimes with the condition that being 'highly talented' (**Austria, Bulgaria, Cyprus, Estonia, Finland, France,**

<sup>4</sup> The Migration Observatory, University of Oxford

<sup>5</sup> EMN Study: Attracting Highly Qualified and Qualified Third-Country Nationals to EU Member States.

**Italy, Latvia, Lithuania, Luxembourg, Netherlands, Slovak Republic, Sweden and United Kingdom).**

- ★ Categories exempted under **international agreements** with third-countries (**Bulgaria, Czech Republic, Estonia, France, Lithuania, Poland, Slovak Republic, Spain, Sweden, United Kingdom and Norway**).
- ★ Third-country nationals with national background / ancestry (**Bulgaria and United Kingdom**).
- ★ Clerics and religious workers (**Austria, Czech Republic, Estonia, Italy, Lithuania, Slovak Republic, Spain and United Kingdom**).

The above lists are not exhaustive. In over half of the countries surveyed, the LMT is applied also to **seasonal workers**.

### 3.3 How does the LMT apply in practice?

Member States apply **different methodologies** in undertaking LMTs. In most cases, the labour market is tested by ensuring that suitable national / EU candidates are not available to take up a specific vacancy, within a specified time period.

In most of the (Member) States the employer sets out the required characteristics and qualifications for the job, and communicates these to the relevant authorities (e.g. public employment service (PES); national / local employment centres etc.). In some (Member States), the remuneration for the job must also be stated (**Bulgaria, Cyprus, Hungary, Italy, Latvia, Luxembourg, Netherlands, Poland, Slovak Republic, United Kingdom and Norway**); in **Norway**, the salary must be specified for the whole work period.

The most common means of advertisement is via the national, regional or local employment services. In more than half of the Member States surveyed, such vacancies are also notified using newspapers, specialist publications or other public channels (**Bulgaria, Cyprus, Finland, Ireland, Italy, Lithuania, Malta, Netherlands, Slovak Republic, Sweden and United Kingdom**). In **Bulgaria, Cyprus, Estonia, Finland, France, Ireland, Hungary, Luxembourg, Netherlands, Poland and Slovak Republic** searches are also undertaken in the database of jobseekers and unemployed people to identify suitable candidates for the advertised vacancies. In **Slovak Republic**, the process also includes assessing whether a national candidate could be suitable following further training.

Advertising via EURES (the EU job mobility portal) is a common practice also for many Member States (e.g. **Bulgaria, Cyprus, Finland, Ireland, Lithuania, Malta, Netherlands, Slovak Republic, Sweden, United Kingdom**).

The processes that apply vary in their application, most notably in the duration of the verification process, via external advertisement or via comparison with internal databases, from ten days (**Sweden**) to three months (**Netherlands**). In some Member States, the test has to be performed directly by the employer (**Bulgaria, Ireland, Latvia, Malta, Netherlands, Sweden and United Kingdom**); in others by the local or national authority/office (**Cyprus, Estonia, Finland, France, Hungary, Italy, Lithuania, Luxembourg, Poland, Slovak Republic and Norway**).

The results of the LMT help to determine whether or not an application for a work permit can be granted to a third-country national. In the majority of Member States, a suitably qualified employee from within the national / EU labour market may not be rejected by an employer in favour of similarly qualified third-country national, unless a justification can be made. In **Latvia** and **Sweden** this is not the case; in **Latvia** there is no explicit prohibition on a third-country national where a suitably qualified candidate is available. In some Member States, e.g. **Finland**, the third-country national candidate rejected in favour of a national or EU citizen may appeal against the decision not to issue a work permit. Through this process, the LMT contributes to the implementation of the 'Union preference' rule.

## 4. USE OF SHORTAGE LISTS

Member States use shortage lists to determine labour market needs in specific sectors. Of those Member States surveyed, nine reported compiling shortage lists (**Austria, Finland, France, Germany, Ireland, Lithuania, Malta, Poland, Spain and United Kingdom**). In **Sweden**, shortage lists are compiled, but only for the purpose of evaluation and forecasting rather than to determine whether and employer may recruit a third-country national to a particular vacancy.

Where countries operate shortage lists in some Member States, e.g. **Finland and Lithuania**, the LMT may still be applied. Other Member States provide exemptions (e.g. **France, Malta and Poland**).

Shortage lists are compiled on the basis of information collected by relevant national and regional authorities (**Finland, France, Germany and Lithuania**) specific policy boards (**Ireland**), or via discussions with employers in specific sectors (**Malta**). In the **United Kingdom**, an independent Migration Advisory Committee (MAC) makes recommendations to the Government.

The criteria that apply vary across Member States; these include: high numbers of jobs offered in a particular (sometimes niche) sector with shortage of demand (e.g. **Ireland**); jobs offered are significantly higher than the qualified national job seekers available (e.g. **Finland, Lithuania and Malta**); reported

difficulties in filling vacancies and where a job has been vacant for more than three months (e.g. **Lithuania**).

The numbers of job categories included in the shortage lists varies by Member State. In 2013, from the information provided, the numbers ranged from 5 in **Lithuania** to 76 in **Ireland**. Whilst limited information was provided to compare the situation in 2013 with that in 2008, in **France**<sup>6</sup> the number of professions remained unchanged during this period whilst in **Lithuania** the numbers decreased, from 60 to just 5. In the **United Kingdom**, the numbers increased from 27 to 32, although the number of jobs represented decreased from 700 000 to 180 000 during the period.

The employment sectors identified on Member States' shortages lists as expected, show considerable variation to address national differences. However, some 'clusters' emerge in the types of professions that dominate shortage lists. Where stated by Member States, these included:

- ★ the medical sector (e.g. **Finland, Germany, Ireland, Malta** and **United Kingdom**);
- ★ nurses (e.g. **Austria, Finland, Germany** and **Malta**);
- ★ accountants (e.g. **Finland, France** and **Ireland**);
- ★ IT analysts / experts (e.g. **France, Germany, Ireland** and **Malta**);
- ★ construction workers (**Austria, France, Lithuania** and **Malta**);
- ★ engineers (**Austria, France, Germany** and **Ireland**);
- ★ natural scientists (**Germany** and **Ireland**) and;
- ★ chefs (**Lithuania** and **United Kingdom**).

Other shortage sectors identified included: supervisors, workers in social services and sales representatives / telephone salespersons (**Finland**), special education and kindergarten teachers (**Finland**); teachers in shortage subjects e.g. maths, physics and chemistry (**United Kingdom**); technical project managers (**France**); mathematicians (**Germany**), long haul freight drivers (**Lithuania**); the gaming industry / managers and high ranking positions in its shortage list (**Malta**); and professionals related with the merchant marine, coaches and professional athletes (**Spain**). **Ireland** has identified shortages in niche skills within particular sectors.

<sup>6</sup> The decree of 11 August 2011 established a list of 14 occupations open to all third-country nationals but was annulled by a decision of the Council of State on 26<sup>th</sup> December 2012. Therefore, the preceding Decree of 18 January 2008, which established regional lists of occupational shortages applicable to third-country nationals (30 professions including six on a national level) came back into force.

Such lists tend to be regularly monitored and updated according to market needs, at intervals ranging from six months (e.g. **Ireland, Lithuania**) to three years (**Finland**).

Conditions of entry and stay are **not in the main facilitated for third-country national workers** applying to work in shortage occupations. Of the Member States surveyed, this was the case only in **Ireland** (since July 2013) and the **United Kingdom**. In **Ireland**, "Highly Skilled Job Interview Authorisations" are provided, on a pilot basis which grants third-country national workers selected for interview for a position on the highly-skilled occupations list, permission to enter on a temporary basis (up to 90 days from the date of arrival). During this time, successful interviewees may apply for an employment permit and await the outcome of the application. In the **United Kingdom**, migrant workers in shortage occupations are given first priority when allocating places in the annual limit.

Applying to work in a shortage occupation may however result in exemptions from the Labour Market Test in some Member States (e.g. **Austria, France, Ireland** (for some occupations), **Malta, Poland, Spain** and **United Kingdom**). In the **Netherlands**, regulations relating to highly skilled migrants exempt employers who hire a highly skilled third-country national from having to obtain a work permit (although a residence permit is still required). As well as facilitated entry, in some Member States, stay may also be facilitated: in **Lithuania**, for example, a work permit can be renewed while residing in-country and the maximum period of residence is also extended.

In conjunction with the above tools, Member States may apply **quotas** to manage and regulate labour migration from third countries (please see EMN Inform 2013 "The Application of Quotas in EU Member States").

## 5. SUMMARY AND CONCLUSIONS

The way that Member States apply tools such as labour market tests, shortage lists and quotas is highly specific to their Member State and reflects national priorities and practices. The extent to which these are effective in meeting labour market demand through migration, and the lessons to be learned and shared, would contribute to better understanding of the potential of such tools across a wide range of occupational sectors.

## 6. 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)

*Produced December 2013*