

ATTRACTING HIGHLY QUALIFIED AND QUALIFIED THIRD-COUNTRY NATIONALS

SPAIN
2013



The European Migration Network (EMN) is an initiative of the European Commission. The EMN has been established via Council Decision 2008/381/EC and is financially supported by the European Union.

Its objective is to meet the information needs of EU institutions and of Member States' authorities and institutions by providing up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policymaking in the European Union in these areas. The EMN also serves to provide the general public with such information.

To that end, the EMN has a network of National Contact Points (NCPs).

The Spanish NCP is composed by experts from the Ministry of Employment and Social Security, Ministry of the Interior, Ministry of Foreign Affairs and Cooperation, and Ministry of Justice and the General Prosecutor's Office. It is coordinated by the Deputy General Directorate for Legal Affairs of the General Secretariat for Immigration and Emigration.

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Attracting Highly Qualified and Qualified Third-Country Nationals

**Spain
2013**

The objective of this study is to explore the strategies and practical measures used to attract highly qualified and qualified workers from third countries. The study aims to set in a context and enumerate the policies and national practices, analyse their efficacy, describe the Labour Migration Agreements, highlight best practices and identify the challenges at national level.

This Report has been developed by the Spanish National Contact Point of the European Migration Network.

September 2013

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**Top-line “Factsheet”
(National Contribution)
Executive Summary
(Synthesis Report)**

On 28 June 2013, the Council of Ministers approved the draft law on support for entrepreneurs and internationalisation (Ley de Apoyo al Emprendedor y su Internacionalización, “LAPI”), which includes a new regulation on international mobility and highly qualified migration.

Prior to this, the Government conducted an assessment of the existing mechanisms for attracting qualified migration.

The findings of the assessment were:

— The main weaknesses of the existing model are:

- The current system lacks the required flexibility and responsiveness in the current global economic climate.
- There are barriers to internal market unity because working and residence authorisations have geographical limits.
- It does not meet the internationalisation needs of business.
- Procedures are long and drawn out.
- It is not designed to attract qualified migration.

— Its main strengths are:

- A specialised Large Business and Strategic Groups Unit (Unidad de Grandes Empresas y Colectivos Estratégicos, “UGE”) that handles cases affected by matters of economic, social or labour interest.
- A specific procedure is in place for these cases.

Based on these findings, a new model has been designed with the intention of attracting third-country nationals who can make a special contribution to economic growth. A series of categories have been defined for this purpose. They are:

- Investors.
- Entrepreneurs.
- Highly qualified professionals.
- Researchers.
- Workers engaged in intra-corporate transfers (within the same company or corporate group).

A specific working and residence authorisations procedure has been designed for these categories through the Large Business and Strategic Groups Unit. This system offers quicker authorisation processing and is operated by specialised staff. Security assurance tools have also received a boost.

Migration policy has traditionally focused on unskilled labour migration and the management of labour flows based on national employment needs. This has given rise to a model that has generally failed to pay sufficient attention to the impact of mobility on international trade and the internationalisation of business.

Over the years, a number of measures have been introduced in the Spanish legal system, designed to attract skilled migration, and a series of bilateral agreements have been signed (with Canada and New Zealand) to promote mobility among skilled youths. However, there is no global and specific policy for attracting qualified and highly qualified professionals, as evidenced by the handful of authorisations granted to this group. By way of illustration, just 1.95% of the total number of authorisations issued for economic activities in 2011 were granted to highly qualified third-country nationals.

The main elements for attracting talent currently in place are:

- Authorisations specifically targeted at qualified migration resulting from the transposition of Directives in this area.
 - Residence and work authorisations for highly qualified workers in possession of an EU Blue Card, defined as third-country nationals who can demonstrate higher education qualifications or, exceptionally, have a minimum of 5 years' comparable experience and, as a rule, an annual gross salary 1.5 times the average gross annual salary. They are subject to the National Employment Situation test unless processed through the UGE.
 - Residence and work authorisations for researchers.
- A specialised procedure that operates through the Large Business and Strategic Groups Unit, processing the authorisations of third-country nationals whose professional activity is affected by matters of economic, social or labour interest. The staff of this Unit are trained in qualified migration.
- Certain measures to promote flexible hiring, such as non-application of the requirement of the National Employment Situation for positions of trust or company directors, and certain exceptions to the requirement to apply for a work authorisation.

Given the lack of compatibility between Spain's model of migration and the new context, a diagnosis of the situation was conducted in 2012. The main findings from an internal perspective are listed below.

Its **main weaknesses** are:

- The current system lacks the flexibility required by the current global economic climate:
 - The general system for determining whether a position can be filled by a non-resident third-country national in Spain (National Employment Situation and Shortage Occupation Lists) is designed to manage bulk labour migration.
 - There is no more favourable national system for highly qualified workers or researchers than the one set out in the "Blue Card" Directive.
 - The requirement of a salary 1.5 times the average salary of the profession makes it difficult to recruit highly qualified workers.
 - There is no specific legal treatment for the "skilled worker" figure.

- It does not meet the internationalisation needs of business.
 - The system lacks a clear orientation towards the promotion of business operations.
- Authorisation processing times are too long.
- The geographical limitation to the validity of work and residence authorisations is a barrier to market unity.

The **biggest strong point** is the UGE, the unit that specialises in processing authorisations affected by matters of economic, social or labour interest, for which a specific procedure is followed.

In the light of these findings, on 28 June, the Government approved the draft law on support for entrepreneurs and internationalisation, which includes a section on international mobility. This draft law adopts a multidisciplinary approach and introduces the perspective of foreign trade promotion.

The draft law regulates cases affected by matters of economic interest, facilitating and streamlining the processing of work and residence authorisations – valid across national territory – in order to attract investment and talent to Spain. A series of categories have been defined for this purpose:

- Investors
- Entrepreneurs
- Highly qualified professionals
- Researchers
- Workers engaged in intra-corporate transfers

Authorisations will be processed very quickly by the UGE, thereby creating a model of selective migration linked to business operations. A system based on business demand rather than points was chosen so that the companies themselves could seek out the highly qualified professionals. These authorisations are not subject to the requirement of the National Employment Situation because they are considered to contribute to economic growth.

Given that this study was carried out during the passage through parliament of the draft law on support for entrepreneurs and internationalisation, reference is made both to current legislation (the Aliens Act, Organic Law 4/2000, "LOEX") and the draft law ("LAPI").

Section 1 National Policies and Measures

This section reviews the *national policies and measures* that Member States employ in order to attract highly qualified and qualified third-country nationals. Reference is made to the International Standard Qualifications as regards education (ISCED) and occupation (ISCO-08) and/or the respective salary threshold when outlining the target group of these policies and measures (see examples above).

1.1. Policies

Q 1. Are there national policies in place for the attraction of highly qualified and qualified third-country nationals?

Yes, although they are currently under review.

Q 1.a. If Yes, please indicate the following:

- **National definition of highly qualified third-country nationals, including references to relevant international standards such as ISCED/ISCO and/or salary thresholds;**
- **National definition of qualified third-country nationals, including references to relevant international standards such as ISCED/ISCO and/or salary thresholds.**

There are three basic elements to the concept of highly qualified professional under the current system (LOEX, Organic Law 4/2000):

— Educational level:

A higher education qualification is required:

Those awarded by a higher education course lasting at least three years that provides the level of qualification needed to join an advanced research programme or to practise a profession requiring a high level of training.

— Salary:

Gross annual salary of at least 1.5 times the average gross annual salary. The salary threshold may be 1.2 times the average gross annual salary set for occupations in which there is a particular need for workers from third countries and who fall under Groups 1 and 2 of the International Standard Classification of Occupations, ISCO.

— Experience:

Exceptionally, if the applicant does not hold a higher education qualification, professional experience of at least five years comparable to the higher education qualification and related to the activity for which the authorisation is issued.

— Other

There is no definition for “highly qualified professional” in the draft law on support for entrepreneurs and internationalisation. Residence authorisations for highly qualified professionals may be requested by companies that need to recruit non-EU professionals in Spain when certain criteria are met (large business, strategic industries, business projects of general interest, etc.).

Q 1.b. If Yes, do the policies distinguish between highly qualified and qualified third-country nationals?

Q 1.c. If Yes, please indicate the rationale for their distinction

Article 38b of the LOEX refers specifically to highly qualified professionals and sets out a specific system for these workers in relation to temporary residence and work, which is developed by Chapter V of Title IV of the implementing regulations of the RLOEX (the Aliens Act implementing Regulation).

It does not, however, establish a specific system for qualified staff although, in the context of work and residence authorisations, Article 36.3 LOEX states that “when a third-country national proposes to work whether in a self-employed or employed capacity, exercising a profession for which a special qualification is required, issuance of the authorisation shall be conditional upon the possession and, where appropriate, official approval of the relevant qualification and, if so required by law, membership of the relevant official professional college”.

Q 1.d. If Yes, what is the main rationale for these policies? What is the objective? Please consider whether this rationale is linked to circular, temporary or permanent migration

To date, Spanish migration policy has focused on managing labour flows based on the needs of the National Employment Situation (Art. 2a, 2b) LOEX). This model was designed to manage the labour migration of the past fifteen years, in which the Spanish economy required large numbers of foreign workers.

Now, however, the internationalisation of business dictates the need for a faster, more flexible system specifically designed to attract talent that can contribute to growth and economic progress. The approach is selective as opposed to quantitative (as is the case of general labour migration). It was therefore decided to adopt a new model (LAPI), solely for qualified migration.

This new model is aimed primarily at temporary migration, which is the more common mode of migration in the context of international labour mobility, although it does not preclude the possibility of third-country nationals acquiring long-term residency if the requirements are met.

Q 1.e. If Yes, briefly outline the main features of the policies. Please consider whether the following exists:

- **Points-based system (i.e. a system that admits third-country nationals who have a sufficient number of qualifications and experiences from a list that typically includes language skills, work experience, education and age¹);**

No.

- **Employer-led system (i.e. a system that allows employers to select the workers they need, subject to, government regulations²);**

Yes.

Both in the existing system and in the new draft law, the procedure is designed in such a way that it is the employer who selects the worker and subsequently requests the residence authorisation for highly qualified professionals for the worker in question. The authorisation is granted if the legal requirements are met.

- **Hybrid system (i.e. combination of points-based and employer-driven model ³);**

No.

Q 2. Are other groups of third-country nationals included in the national policies on attracting (highly) qualified third-country nationals?

Yes.

¹ Definition from: <http://www.migrationpolicy.org/pubs/rethinkingpointssystem.pdf>

² Ibid

³ Ibid

Q 2.a. If Yes, please indicate what other groups are included (i.e. investors, entrepreneurs, international graduates, transferred workers etc.)?

The LOEX, in addition to the specific system for the temporary residence and work of highly qualified professionals holding an EU Blue Card, sets out other systems for attracting certain groups of highly qualified third-country nationals:

- Temporary residence and work authorisation for research (transposes the content of Council Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research).
- Temporary residence and work authorisation in the context of the provision of transnational services: foreign workers who travel to places of work in Spain and who depend by means of an explicit employment relationship on a company established in a country outside the European Union or the European Economic Area.
- Temporary residence authorisation with the exception of work authorisations. These groups include:
 - Foreign technicians and scientists, invited or employed by the State, Autonomous Communities or local authorities or agencies for the purpose of conducting and developing research mainly with the backing or participation of the above.
 - Foreign teachers invited or hired by a Spanish university.
 - Foreign management staff and teachers of cultural and educational institutions, whether private or dependent on other states, of renowned prestige and officially recognised by Spain, that carry out cultural and educational programmes from their respective countries in Spain and whose activity is limited to the development of such programmes.
- Temporary residence and work authorisation for salaried employment of a fixed duration that applies, among other cases, to:
 - Contract work for specific project activities relating to the assembly of industrial or power plants, construction of infrastructure, buildings and power grids, telephone networks, gas systems and railways, and the assembly and maintenance of production equipment and its commissioning and repair.
 - Temporary activities carried out by senior management staff.
- Temporary residence and work authorisation for self-employed workers.

Together with the residence authorisation for highly qualified professionals, the draft Law on Support for Entrepreneurs and Internationalisation provides for:

- Visa and residence authorisations for investors.
- Residence authorisations for business activities, for foreigners seeking to engage in a business activity as entrepreneurs.
- Residence authorisations for training or research.
- Residence authorisations for intra-corporate transfer.
- Possibility of exception from the application of the requirement of the National Employment Situation for strategic sectors.

Q 3. Do the policies in your Member State focus on specific areas of occupations?

Yes.

If Yes, please briefly indicate the specific areas of occupations and their link with the policies

The LOEX and its implementing Regulation provide for specific treatment for certain occupations (researchers, scientists, artists, athletes, university teachers, etc.) and sectors considered strategic, such as information and communications technology, renewable energy, environment, water, health sciences, biopharmaceuticals and biotechnology, aeronautics and aerospace.

The draft Law on Support for Entrepreneurs and Internationalisation has opted to set flexible thresholds for residence authorisation applications for highly qualified professionals. It does not include a set list of occupations so as to adapt to the changing needs of international business operations.

Q 4. Has the transposition of EU Directives⁴ led to more favourable legislation/ measures/conditions for specific groups of (highly) qualified third-country nationals?

Not yet, although it is included in the draft Law on Support for Entrepreneurs and Internationalisation.

⁴ E.g. EU Blue Card Directive and Researchers Directive

Q 4.a. If Yes, please indicate the relevant Directives and the more favourable legislation/measures/conditions which were created for these specific groups (i.e. EU Blue Card Directive and Researchers Directive)

The draft Law on Support for Entrepreneurs and Internationalisation provides for parallel models with regard to the Blue Card Directive and for researchers.

Q 5. Are the national policies addressing the aspect of brain drain in the countries of origin?

Article 38 c) 3 of the LOEX states that the issuance of authorisations for highly qualified professionals “may take into account the need to ensure sufficient human resources in the country of origin of the third-country national”.

Q 7. Have your national policies been the subject of public debate?

Yes.

Q 7.a. If Yes, please briefly indicate the main features of the policies which were debated as well as the reasons for such debate and the level at which these occurred (e.g. Parliament, society, media). Please support your answer with reference to research or any other sources of information

The new model is being regulated through the processing of the new law (LAPI). The draft law was the subject of a report by the Economic and Social Council (a body on which social agents are represented). As the bill passes through Parliament, it is being discussed by political groups both in Congress and the Senate.

Q 7.b. If Yes, please briefly indicate possible impacts of the debate on the national policies

The point generating the most debate is the creation of a specific model for highly qualified migration. Back in 2007, the creation of the Large Business and Strategic Groups Unit was challenged by the social partners. The Supreme Court judgement endorsed the creation of the UGE and considered the design of the immigration policy to be a competitive element.

Q 8. Does your Member State employ concrete measures in order to satisfy the policy goals?

Yes.

Q 8.a. If Yes, please indicate the measures that contribute to the implementation of the national policies and indicate their specific goals

In the implementing regulations of the LOEX, the main measure to facilitate the entry of highly qualified third-country nationals is the Large Business and Strategic Groups Unit (UGE). In procedures managed by the UGE, the National Employment Situation is not applied and processing times are much faster. A quality system and service charter have also been developed.

This system has been refined and improved in the draft Law on Support for Entrepreneurs and Internationalisation. Once it is approved, the National Employment Situation will not apply for this type of authorisation, the role of the employer in the migration process will be reinforced, processing times will be reduced and there will be an increase in the use of electronic means.

Q 8.b. If Yes, are there any measures aimed at facilitating the integration of (highly) qualified third-country nationals?

There are no measures specifically aimed at the integration of highly qualified professionals.

Q 9. Do public policies exist in your Member State that specifically aim at positively influencing the immigration decision of (highly) qualified third-country nationals?

Yes.

Q 9.a. If Yes, please also indicate such incentives

The measures favouring the immigration of highly qualified professionals both in the current system and in the LAPI include:

- Specialised, centralised and faster processing through the UGE.
- Facilities for family reunification.
- Non-discrimination and equal treatment. Article 3 of the LOEX establishes as a general interpretative criterion that foreigners shall be understood to exercise their rights under

law on equal terms as Spanish citizens. And the article 14.2 of the LOEX also recognises the principle of equal treatment among legally resident third-country nationals with respect to access to social services and benefits, whether basic and general or specific. Lastly, Chapter IV of Title I in the LOEX refers to anti-discrimination measures.

1.2. Relations with third countries and labour migration agreements

Q 10. Do the policies in your Member State focus on specific third countries?

Yes.

Q 10.a. If Yes, please list these third countries, providing a brief indication of the reasons for focusing on specific third countries?

Not with regard to highly qualified workers, except for the comments in answer Q 11.

Q 11. Has your Member State entered into labour migration agreements relating to attracting qualified and/or highly qualified third-country nationals to the national territory?

Yes.

Q 11.a. If Yes, what role does these labour migration agreements play in executing your Member State's policies?

Spain has signed international agreements to promote mobility among qualified young people.

These are intended to give young people the opportunity of an international professional or personal experience that can improve their training, skills acquisition and future access to the labour market.

Q 11.b. If Yes, please fill out the following:

— Agreement No.1

Third country: Canada.

Date of agreement: 10 March 2009 (in force since 1 February 2010).

Purpose of agreement: to expedite the administrative procedures applicable to the entry and stay of young people wishing to gain work experience in their field,

complement their post-secondary education or further their knowledge of the language, society and culture of the destination country.

Number of third-country nationals who have benefited from this measure:

There is an annual quota of 1,000 places.

Was the agreement adopted in the framework of Mobility Partnerships?

— Agreement No.2:

Third country: New Zealand.

Date of agreement: 23 June 2009 (in force since 21 April 2010).

Purpose of agreement: to encourage mobility among young people visiting the other country who could carry out occasional work in the destination country.

Number of third-country nationals who have benefited from this measure:

Under this Agreement, the Kingdom of Spain will issue up to 200 visas each year to citizens of New Zealand.

Was the agreement adopted in the framework of Mobility Partnerships? No.

Q 12. Has your Member State adopted legislations facilitating labour migration from specific third countries ('country-specific legislation')?

Q 12.a. If yes, please elaborate concisely

Not specifically for highly qualified workers.

Q 13. Has your Member State entered into other more favourable arrangements with non-EU/EEA countries and/or regions relating to attracting qualified and/or highly qualified third-country nationals to the national territory?

The aforementioned agreements with Canada and New Zealand (see Q.11).

Q 13.a. If yes, please elaborate concisely

Section 2. Evaluation and Effectiveness of Measures

This section reflects on the effectiveness of national measures as described in Section 1 and the methods used for evaluation. This analysis shall help to identify good practices and lessons learnt in Section 4.

2.1 . Evidence of effectiveness based on statistics

A template table for statistics will be provided.

Please provide statistics that reflect the scale and scope of highly qualified and qualified labour immigration of third-country nationals using statistics provided by Eurostat and other relevant national statistics that are available⁵. Please present the following:

- The number of third-country nationals employed and self-employed in the respective Member State in the relevant ISCO groups (i.e. those related to qualified and highly qualified employment according to national definitions) over the last 5 years aggregated by sex and age group.

Table 2.1.1: Employment of Third-Country Nationals in high-skilled occupations (1 000)

Occupation according to ISCO categorisation	2008	2009	2010	2011	2012
OC1 Legislators, senior officials and managers	63.1	61.3	54.5	25.3	23.1
OC 2 Professionals	45.7	49.7	66.8	71.2	51.9
OC 3 Technicians and associate professionals	50.2	48.2	52.9	51.2	41.3
Total	159.0	159.2	174.2	147.7	116.3

Source: Eurostat

Table 2.1.2: Employment of Third-Country Nationals in high-skilled occupations and sex (1 000)

Sex breakdown	2008	2009	2010	2011	2012
Male	92.3	96.3	101.0	84.2	71.1
Female	66.7	62.9	73.2	63.6	45.1
Total	159.0	159.2	174.2	147.7	116.3

Source: Eurostat

⁵ Please take into account the comments made under section V. Available Statistics.

Table 2.1.3: Employment of Third-Country Nationals in high-skilled occupations and age (1 000)

Age breakdown	2008	2009	2010	2011	2012
25-34	69.8	57.6	69.1	57	46.6
35-44	52.9	59.5	62.6	56	47
45-54	24.8	33.7	32.5	24.8	15.6
55-64	11.4	8.4	9.9	10	7.1 (u)
Total	159	159.2	174.2	147.7	116.3

Source: Eurostat

Sources: "Employment by sex, age, professional status and occupation (1 000)" in
http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=lfsa_egais&lang=en

- The number of third-country nationals employed and self-employed in the respective Member State over the last 5 years aggregated by relevant ISCED level of education (i.e. those associated with qualified and highly qualified employment according to national definitions), sex and age group.

Table 2.1.4: Employment of highly educated Third-Country Nationals (1 000)

Level of education according to ISCED categorisation	2008	2009	2010	2011	2012
First stage of tertiary education (ISCED level 5)	314.5	296.8	319.5	316.0	274.1
Second stage of tertiary education (ISCED level 6)	6.6 (u)	5.5 (u)	5.9 (u)	4.3 (u)	3 (u)
Total	321.1	302.3	325.4	320.3	277.1

Source: Eurostat

Table 2.1.5: Employment of highly educated Third-Country Nationals by sex (1 000)

Sex breakdown	2008	2009	2010	2011	2012
Male	161.5	139.8	138.8	146.8	131.4
Female	159.6	162.5	186.6	173.5	145.7
Total	321.1	302.3	325.4	320.3	277.1

Source: Eurostat

Table 2.1.6: Employment of highly educated Third-Country Nationals by age

Age breakdown	2008	2009	2010	2011	2012
25-34	142.8	118.6	133.7	122.9	100.5
35-44	113.1	113.2	125.8	122.9	111.8
45-54	53.7	54.6	50,2	58.7	50.3
55-64	11.5	15.9	15.7	15.8	14.4
Total	321.1	302.3	325.4	320.3	277.1

Source: Eurostat

Sources: "Employment by sex, age and highest level of education attained (1 000)" in http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=lfsa_egaed&lang=en

- The number of first residence authorisations issued for relevant reasons (e.g. highly skilled workers, EU Blue Card) over the past 5 years aggregated by sex and age group.

Table 2.1.7: Overall trend of first permits issued to third-country nationals for remunerated activities

	2008	2009	2010	2011	2012
Total number of first permits issued for remunerated activities	96,319	102,736	85,154	90,095	:

Source: Eurostat

Table 2.1.8: First permits issued to third-country nationals for remunerated activities by reason

	2008	2009	2010	2011	2012
Remunerated activity reasons: Highly skilled workers	2,884	2,071	1,244	1,650	:
Remunerated activity reasons: EU Blue Card	:	:	0	107	:

Source: Eurostat

Table 2.1.9: First permits issued to third-country nationals for remunerated activities by reason

Age breakdown	2008			2009			2010			2011			2012		
	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total
25-29	:	:	:	:	:	:	10,255	10,385	20,640	11,252	11,188	22,440	:	:	:
30-34	:	:	:	:	:	:	9,568	9,686	19,254	10,967	10,413	21,381	:	:	:
35-39	:	:	:	:	:	:	6,098	7,327	13,426	6,647	7,337	13,988	:	:	:
40-44	:	:	:	:	:	:	3,623	5,191	8,814	4,022	5,238	9,267	:	:	:
45-49	:	:	:	:	:	:	1,993	3,185	5,180	2,183	3,288	5,473	:	:	:
50-54	:	:	:	:	:	:	1,038	1,767	2,808	1,090	2,023	3,114	:	:	:
55-59	:	:	:	:	:	:	449	942	1,392	450	1,023	1,475	:	:	:
60-64	:	:	:	:	:	:	177	383	561	167	396	565	:	:	:

Source: Eurostat

Sources: First permits issued for remunerated activities by reason, length of validity and citizenship - annual data in http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_resocc&lang=en

Q 14. Is there any evidence (quantitative and/or qualitative) of a link existing between the measures outlined in Section 1 and the immigration of highly qualified and qualified third-country nationals?

Yes.

Q 14.a. If yes, please elaborate concisely

Considering the last year for which data are available (2011), Table 2.1.7 shows that the total number of residence and work authorisations issued for remunerated activities was 90,095, of which, as disaggregated in Table 2.1.8, 1,650 authorisations were granted to highly skilled workers and 107 to Blue Card holders. In other words, of the total number of authorisations granted, just 1.95% were issued to highly qualified workers.

This means that the current system of residence and work authorisations for this group of third-country nationals (described in Section 1 of this study) has not allowed to meet the aim of attracting highly qualified workers to Spain.

Q 15. Is there a quota for highly qualified and qualified third-country nationals?

No.

Q 15.a. If Yes, is the quota exhausted?

Q 16. Is there any evidence (quantitative and/or qualitative) of a link existing between the labour migration agreements (also in the framework of Mobility Partnerships) outlined in Section 1 and the immigration of highly qualified and qualified third-country nationals?

No.

Q 16.a. If yes, please elaborate concisely

If (statistical) evidence as requested above regarding concrete measures and labour migration agreements is not available, please outline and analyse any other statistics which may provide indications of the effectiveness of the national policies and measures

2.2. National methods of evaluation

Q 17. Does primary research (using any methods) exist in your Member State evaluating the national policies, related practical measures and labour migration agreements (also in the framework of Mobility Partnerships) implemented to attract highly qualified and qualified third-country nationals?

Yes.

Q 17.a. If Yes, which methods have been used?

Spain uses the number of residence and work authorisations issued to third-country nationals as an indicator for the analysis and evaluation of its migration policy. By studying all of the residence and work authorisations issued and their distribution by groups, as in this study on highly qualified workers, it is possible to assess the national migration policy aimed at attracting qualified and highly qualified foreign workers.

Q 17.b. If Yes, what is the outcome regarding the effectiveness of these measures and labour migration agreements?

Comparisons using this indicator (number of issued residence and work authorisations) show that the measures implemented by Spain to date are insufficient.

Pinpointing this situation has been a key element to the regulatory reform currently being

developed to transform Spain's migratory policy into a competitive element that can attract the talent and knowledge of third-country nationals, thereby driving the internationalisation of our economy.

2.3. Policy makers' or other stakeholders' (i.e. academics, non-governmental or private sector representatives) experience

Q 18. If evidence (see 2.1 and 2.2) is not available, what is then the national policies makers' or other stakeholders' experience and assessment regarding the (perceived) effectiveness of measures (see also questions under 2.2)?

The information received through the potential recipients of these policies (export companies, companies involved in strategic sector business, etc.) and from foreign consulates and trade offices abroad has been especially useful in evaluating the policies. The economic agents believe that there are loopholes in the current regulations and that they do not meet the growing needs of the Spanish economy. Companies also consider the UGE to have established itself as a good practice by facilitating the processing of authorisations for skilled foreign workers.

Section 3. Challenges and Barriers

This section reflects on possible challenges and barriers that may affect the attractiveness of a Member State for highly qualified and qualified third-country nationals' immigration.

3.1. Possible challenges and barriers

Q 19. Have challenges and barriers in your country been identified based on previous research which affect the attractiveness of your Member State for (highly) qualified third-country nationals?

Yes.

Q 19.a. If Yes, please indicate these factors

1. Regulatory framework: the current legislation (LOEX and its implementing regulations) is a barrier to the internationalisation of Spanish companies. This situation has led to the approval of the draft law on support for entrepreneurs and internationalisation, which introduces a system whereby the perspective of foreign trade is integrated into immigration policy.

The **main weaknesses** of the LOEX regulatory framework are:

- The current system lacks the flexibility and responsiveness required by the current global economic climate.
 - The general system for determining whether a position can be filled by a non-resident third-country national in Spain (National Employment Situation and Shortage Occupation Lists) is designed to manage bulk labour migration.
 - There is no more favourable national system for highly qualified workers than the one set out in the "Blue Card" Directive.
 - The requirement of a salary 1.5 times the average salary of the profession makes it difficult to recruit highly qualified workers.
 - There is no specific legal treatment for the "qualified worker" figure.

- It does not meet the internationalisation needs of business.
 - The system lacks a clear orientation towards the promotion of business operations.
- Authorisation processing times are too long.
- The geographical limitation to the validity of work and residence authorisations is a barrier to market unity.

The **biggest strong point** is the UGE, the unit that specialises in processing residence and work authorisations affected by matters of economic, social or labour interest, for which a specific procedure is followed.

2. An economic climate that could adversely affect the country's ability to attract qualified and highly qualified workers.

By contrast, it is thought that the Spanish language, living conditions and business sector in Spain are key strong points for attracting qualified professionals.

Q 20. If such evidence is not available, what is then the national policies makers' or other stakeholders' experience and assessment regarding the challenges and barriers which affect the attractiveness of your Member State for (highly) qualified third-country nationals?

The response has been the adoption of the draft law on support for entrepreneurs and internationalisation.

Section 4. Conclusions

The *Synthesis Report* will outline the main findings of the Study and present conclusions relevant for policymakers at national and EU level.

Q 21. What conclusions would you draw from your findings that are relevant to the aims of this Focussed Study? Can you identify good practices and lessons learnt with regard to attracting highly qualified and qualified third-country nationals? What is the relevance of your findings to (national and/or EU level) policymakers?

Based on the description of the Spanish legal framework on the immigration of qualified and highly qualified professionals (Section 1), the numbers of residence and work authorisations issued to this group (Section 2) and the diagnosis of the strengths, weaknesses, threats and opportunities affecting Spain's ability to attract highly qualified and qualified third-country nationals (Section 3), the first conclusion is that the qualified migration policy currently in force in Spain is insufficient and has not served as an effective tool for attracting leading professionals to the country, as evidenced by the small numbers of residence and work authorisations issued for highly qualified workers in 2011: 1.95% of the total.

One possible cause of the failure of Spain's current migration model to attract qualified workers is that it has traditionally focused on unskilled migration. Now though, the new international and domestic contexts require a change of orientation in the model that gives specific treatment to qualified and highly qualified migration with its own regulations and a faster, more specialised system.

In the current climate of economic crisis, the internationalisation of Spanish companies has increased exponentially and they now carry out more of their business abroad. This increased internationalisation has led to the need for a faster and more flexible framework focusing on international trade needs that will help attract qualified and highly qualified workers for high value-added work.

The current draft law on support for entrepreneurs and internationalisation, which contains a section on international mobility, is a key factor in this context. It regulates certain cases affected by matters of economic interest, facilitating and streamlining residence authorisation processing – valid across national territory – in order to attract investment

and talent to Spain. The measures are aimed at investors, entrepreneurs, workers on intra-corporate transfers, highly qualified professionals and researchers.

Nonetheless, the diagnosis made in 2012 also highlighted some of the more positive aspects of the model. The second conclusion is that the UGE has established itself in recent years as a best practice for facilitating residence and work authorisation processing for this group, giving a speedy response to the needs of companies seeking to bring highly qualified professionals to Spain. Precisely because it is considered a best practice, the aforementioned draft law on support for entrepreneurs and internationalisation provides for the processing of residence and work authorisations through the UGE with very short resolution times, which will lead to the creation of a model of selective migration linked to business operations. Hence, new thresholds have been drawn up for the processing of cases by the UGE, thereby increasing the system's flexibility. A system based on business demand rather than points was chosen so that the companies themselves could seek out the highly qualified professionals. These authorisations are not subject to the national employment situation because they are considered to contribute to economic growth.

