



## **EMN FOCUSSED STUDY 2012**

### **Intra-EU mobility of third-country nationals**

### **HUNGARY**

*The European Migration Network (EMN) is co-ordinated by the European Commission with National Contact Points (EMN NCPs) established in each EU Member State plus Norway.*



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## Introduction

The so-called Free Movement Directive (Directive 2004/38/EC of the European Parliament and of the Council)<sup>1</sup> summarized and re-regulated earlier Union *acquis*), and integrated into a single Directive all prior legal instruments relative to the admission and residence of EU citizens staying in other Member States for whatever purpose, including the declaration of their right to, and the conditions of long-term residence. In contrast to this the regulation of the admission and residence conditions of third-country nationals is far from comprehensive.<sup>2</sup> Way back in 2001 the European Commission tried to regulate the entire range of economy-driven migration, with both the employees and the self-employed inclusive. Having learnt from the failure of this draft directive and relying on the results of the public consultation pioneered in this area in 2005, the next initiation of 2007 at the Union level was already based on a sectoral approach.<sup>3</sup>

The currently applicable union-level harmonized system, therefore, uses a set of regulations in the case of predefined categories and purposes – such as family reunification, pursuing studies, research, highly qualified employment – as well as in the case of long-term residents from third-countries. This system, however, applies different regulation, if any, when it comes to intra-EU mobility. Furthermore, taking into account the fact that at the Union level the regulatory instruments used for classifying stays exceeding three months are typically the system of directives, this practice offers a certain level of flexibility for the Member States when transposing the provisions of these directives into the legislation of the specific countries. Then again this approach may result in further deviation in the chances for mobility of third-country nationals.

The coming up Chapter 1 of this study offers a review of Hungarian regulations relative to visas and residence permits that aim to ensure the practical implementation of rules that have been harmonized at the Union level, and the specific unharmonized rules relative to the right

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<sup>1</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC; OJ L 158, 30.4.2004, pp. 77–123.

<sup>2</sup> It was stipulated as early as in the 1999 Tampere Programme that third-country nationals legally residing in a member state should be granted fair treatment, furthermore, a more intensive migration policy based on rights and responsibilities similar to those of EU citizens should be sought to be put into practice. Consequently, the legal status of third-country nationals need to be brought closer to the legal status of citizens of the Union, more specifically, those having spent a determined period of legitimate stay in a member country with a long-term residence permit should be offered a unified set of legal instruments at the union level that is as close to the one applied in the case of union citizens as it possible can. An integral part of this legal approach is offering a right to mobility within the European Union, a right that was granted in the initial treaties only for a limited personal category of potential employees.

<sup>3</sup> Source: Ágnes Tóttös: A harmadik országbeli állampolgárok legális migrációjának uniós szabályozása (The EU rules on the legal migration of third-country nationals), In: Interdiszciplináris Doktorandusz Konferencia 2012 Konferenciakötet, Pécsi Tudományegyetem Doktorandusz Önkormányzat, Pécs, 2012., pp. 11-16. [http://phdpecs.hu/static/idk\\_2012/idk\\_2012.html](http://phdpecs.hu/static/idk_2012/idk_2012.html) (accessed 4 December 2012)



to mobility. Further on in Chapter 2 we provide an analysis of what kind of statistical data are available to track down movements of foreign nationals across Hungary that may be indicative of the scale of their mobility within the European Union. Chapter 3 endeavours to make an inventory of the factors that hinder intra-EU mobility, highlighting those restrictions that result from the lack of a unified EU labour market. Finally, based on the regulations presented and the data provided this study makes an attempt to come to conclusions as regards the intra-EU mobility of third-country nationals.



## **Section 1: The National Legislative Framework: Visas and Residence Permits**

### **1.1 Mobility rights derived from European Union directives – selected groups of third-country nationals**

#### **1.1.1 Third-country nationals with long-term EU residence permits from another Member State**

Third-country nationals who were granted a long-term EU residence permit in line with the so-called Long-term Residence Directive (2003/109/EC Council Directive)<sup>4</sup> and who wish to exercise their mobility right in Hungary need to apply for an interim permanent residence permit. They may submit an application for an interim permanent residence permit on or before the last day of their lawful residence for a period not exceeding three months, or thirty days before the expiry of their right of residence for a period longer than three months.<sup>5</sup>

Third-country nationals submitting the application for an interim permanent residence permit have to meet the conditions set forth in Article 13 of Act II of 2007<sup>6</sup> (for the purposes of this study hereinafter referred to as Aliens Act) the general conditions for a stay exceeding three months, the special conditions defined in Article 33 of Aliens Act and the conditions outlined in Article 34 of the same Act expressly related to interim permanent residence permits. Against this background, therefore, it is apparent that if third-country nationals with long-term EU residence permits issued by other Member States wish to exercise their mobility right in Hungary on the basis of the Long-term Residence Directive, they have to prove compliance with the specified conditions – i.e. residence and permanent residence conditions – each and every time they expire.

At the same time, Hungarian regulation has a special property, in the sense that neither the EC residence permit issued in the capacity of a first Member State in line with the Long-term Residence Directive, nor the interim permanent residence permit issued as a second Member State specify integration conditions as such. This is partly explained by the fact that the Hungarian language is rather difficult to acquire and it is quite a challenge to become a fluent speaker even after several years, on the other hand Hungary receives a relatively small number of legal migrants, most of whom are predominantly ethnic Hungarians from across the borders – and in their case it would have been unjustified to define any specific integration conditions.

Work permit, as a requirement of sufficient resources – and a necessary precondition to ensure subsistence in the eyes of the immigration authorities – again enjoys special treatment

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<sup>4</sup> Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents; OJ L 16, 23.1.2004, pp. 44–53.

<sup>5</sup> Article 99 Section 1 of Government Decree 114/2007 (V. 24.) on the Implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals.

<sup>6</sup> Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals.



in the case of interim permanent residence permit holders, inasmuch as persons in this category are expressly exempt from the obligation of obtaining a work permit.<sup>7</sup>

Albeit those who were granted a long-term EU residence permit in another Member State regarding conditions of admission are at a disadvantage as opposed to EU citizens – who come to Hungary from the country of their own or from another Member State and possess a permanent residence permit gained either in their own or in another Member State and intend to exercise their mobility right in Hungary – considering that they, for instance, have to justify that they meet the requirements of adequate accommodation when applying for an interim permanent residence permit, furthermore subsistence is also a precondition to convincingly claim that they are able to sustain livelihood, having granted an interim permanent residence permit, with a view to their profession, they become exempt from work permit obligation, just like any EU citizen.

### **1.1.2 EU Blue Card holders**

The so-called EU Blue Card Directive (Directive 2009/50/EC of the Council)<sup>8</sup> – approved on the 25th of May in 2009 by the Council is aimed at the facilitation of entry and free movement of third-country nationals entering for the purposes of highly qualified employment in order to address the lack of labour in specific areas and to maintain the competitiveness and economic growth of the European Union. With this objective the EU Blue Card Directive contains detailed requirements as to mobility rights as well.

In Hungary Article 20/B of Aliens Act stipulates that a third-country national holding a residence permit issued by a Member State with the aim of highly qualified employment may be granted an EU Blue Card, provided he legally resided for eighteen months in the Member State issuing the EU Blue Card and is able to meet the requirements set out in Subsections a)-d) Section (1) of Article 20/A, i.e. when exercising the granted mobility right it is necessary to prove, repeatedly and periodically, that all the conditions of getting the EU Blue Card are met. Section 1 of Article 72/C of Government Decree 114/2007<sup>9</sup> (hereinafter referred to as Implementing Government Decree) sets out that the application for the card, with all the necessary documents verifying compliance with the specified conditions, can be submitted within thirty days after the entry into Hungary.

The EU Blue Card Directive ensures mobility within the Union also for the family members of EU Blue Card holders. National regulation in Hungary applies liberal approach in line with this: the family members of holders of any kind of residence permits, EU Blue Card inclusive,

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<sup>7</sup> In accordance with Section (2), Article 2 of Act IV of 1991 on job assistance and unemployment benefits stipulate that individuals with permanent residence status have the same rights and obligations as Hungarian citizens as specified in said Act and in the provisions of the decree on its implementation.

<sup>8</sup> Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment; OJ L 155. pp. 17-29.

<sup>9</sup> Government Decree 114/2007 (V. 24.) on the Implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals.



may submit an application for a residence permit on the grounds of family reunification as defined in Article 19 of Aliens Act.

### **1.1.3 Researchers**

The Implementing Government Decree contains two provisions that may specifically facilitate granting Hungarian residence permits to researchers staying in another Member State. On the one hand, Article 47 in its Subsection b) of Section (4) sets out that applications for a residence permit may be submitted in the territory of Hungary whenever the purpose of residence is research. On the other hand, if the purpose of entry is research, the competent regional directorate of the Office of Immigration and Nationality (hereinafter referred to as OIN) is compelled to adopt a decision concerning applications for residence permits within fifteen days, as opposed to the standard thirty-day deadline.<sup>10</sup>

The so-called Researcher Directive (Council Directive 2005/71/EC)<sup>11</sup> grants special mobility rights within the term of three months without the obligation of reaching an additional hosting agreement. In accordance with this, Government Decree No. 181/2007<sup>12</sup> does not necessitate an additional hosting agreement for a term under three months, and Section (2) of its Article 13 sets forth that if the researcher concerned is stationed in another Member State of the European Economic Area with a hosting agreement during the term of which he or she spends a period of time exceeding three months in Hungary, the provisions of the said Decree shall apply.

### **1.1.4 Students**

When transposing the so-called Students Directive (Council Directive 2004/114/EC)<sup>13</sup> into national law the scope of residence permits for purposes of studies was perceived in a wider sense than it would follow from the provisions of the Directive.

In accordance with Section (1) of Article 21 of Implementing Government Decree a residence permit may be issued on grounds of pursuit of studies to a third-country national who is accepted by an establishment of secondary or higher education accredited in Hungary and who is admitted to the territory of Hungary to pursue as his/her main activity a full-time course of study, or to attend a course in an establishment of higher education, which may cover a preparatory course prior to such education, provided he/she is able to verify the linguistic knowledge required for the pursuit of studies.

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<sup>10</sup> Section 3 of Article 49 of Implementing Government Decree.

<sup>11</sup> Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research; OJ L 289, 3.11.2005, pp. 15–22.

<sup>12</sup> Government Decree 181/2007 (VII. 6.) on the accreditation of research institutions employing third-country nationals and on hosting agreements.

<sup>13</sup> Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service; OJ L 375, 23.12.2004, pp. 12–18.





As opposed to the main principle set out in Section (1), Article 47 of Aliens Act, which defines the permanent or usual place of residence of the applicant, and/or the country of his/her nationality, as the place to submit the application for a residence permit, Section (2), Article 47 of Aliens Act states that applications for residence permits may be submitted at the consulate officers of Hungary, or any other agency authorized to accept such applications also in countries other than the ones referred to in Subsection (1), in which the applicant is lawfully residing, provided that the entry and stay of the applicant is desired on the grounds of substantial national interest of Hungary in the field of economics, culture, science or sports.

Similarly to the regulation on residence permits for purposes of research, the competent regional directorate of OIN has to adopt a decision concerning applications for residence permits for a third-country national in a shorter period of time, i.e. within fifteen days, as opposed to the standard thirty-day deadline, provided the purpose of entry is the pursuit of studies.<sup>14</sup>

### **1.1.5 Posted workers**

Third-country nationals posted in Hungary for a period exceeding three months need to submit an application for a residence permit issued for the purpose of gainful employment.<sup>15</sup> Relevant immigration regulation does not contain special rules as to granting residence permits or as to the conditions of admission.

At the same posted employees enjoy a special position when it comes to substantiating the condition of sufficient resources, inasmuch as they do not need to attach a work permit to be granted a residence permit.

A posted status entails a special approach in the employment authorization procedure, insofar as according to Section (1) Subsection 7 of Article 2 of Government Decree 355/2009 (XII. 30.)<sup>16</sup> the employment of a third-country national is not conditional on a permission in case he/she is posted or assigned to an employer in Hungary under a private contract as part of the cross-border services offered by an employer residing in a state party to the EEA Treaty.<sup>17</sup>

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<sup>14</sup> Subsection a) of Section (3) of Government Decree

<sup>15</sup> Section (2), Subsection i) of Article 20/A of Aliens Act merely sets out that third-country nationals covered by Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services shall not be granted an EU Blue Card.

<sup>16</sup> Government Decree 355/2009 (XII.30.) on the rules of employment of third-country nationals necessitating no permission in the territory of the Republic of Hungary.

<sup>17</sup> What it implies is that in case the third-country employee is posted to work in Hungary by an employer stationed in an EEA country, his/her employment requires no permission, irrespective of his/her place of abode. On the other hand, if said third-country national is employed by a firm registered in Hungary and in this capacity he/she is posted to work in another Member State his/her employment is conditional on a permission, in line with Section (1) of Article 1 of Decree 16/2010. (V. 13.) of the Ministry of Social Affairs and Employment. This regulation fundamentally differs from the rules applied for EU citizens as their employment requires no permissions. As to the rules regulating work abroad, as described further on, EU citizens and third-country nationals are treated alike.



Aliens Act in its Section (3) of Article 35 provides for granting a national permanent residence permit for a third-country national by the immigration authorities even if his/her residence in Hungary was discontinued for a period longer than specified in Section (2)<sup>18</sup>, if this happened due to justifiable reasons, such as medical treatment or foreign assignment of the third-country national in connection with his/her gainful employment. As a result, the national permanent residence permit drawn up in line with Hungarian regulation, when determining a three-year long continuous stay, specifically defines it as a justifiable reason if the applicant left the territory of Hungary due to posting for a period exceeding four consecutive months or two hundred and seventy days during the preceding three years.

## **1.2 Rules promoting mobility of categories of third-country nationals not covered by Union *acquis***

### **1.2.1 Cross-border workers**

Currently there are no rules specifically regulating cross-border commuting workers neither for migration nor for employment purposes. Albeit on 26 March 1997 the Governments of the Republic of Hungary and the Republic of Austria signed an Agreement on mutual employment in the regions neighbouring the common border<sup>19</sup> (hereinafter referred to as Agreement),<sup>20</sup> it treated as cross-border commuters only those who were citizens any of the two countries and their permanent or usual place of residence for at least one year had been in the border districts where they would be returning to on a daily basis and, with the exception of employment at variable sites, they would be employed on a site across the border. This Agreement, therefore, concerned only cross-border commuting of EU citizens, furthermore, the work permits<sup>21</sup> issued under the Agreement became void of function in 2011 following a seven-year transitional period after Hungary's accession to the EU on 1 May 2004.

### **1.2.2 Seasonal workers**

Of the three long-term visa categories (visa authorizing to receive a residence permit, seasonal employment visa, national visa) that may be issued in Hungary the seasonal employment visa

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<sup>18</sup> Absence from the territory of Hungary of less than four consecutive months shall not be deemed as discontinuity of residence, if the combined duration of absence does not exceed two hundred and seventy days during the preceding three years before the application was submitted.

<sup>19</sup> The Agreement defines as border region the following districts in Austria: Bruck an der Leitha, Neusiedl am See, Eisenstadt (including the two towns with district status: Eisenstadt and Rust), Mattersburg, Güssing, Oberpullendorf, Oberwart and Jennersdorf. In Hungary the counties of Győr-Moson-Sopron, Vas and Zala constitute the border region covered.

<sup>20</sup> The Agreement was promulgated in Hungary in Government Decree 38/1998. (III. 1.), Magyar Közlöny (Hungarian Journal), 1998/14.

<sup>21</sup> The maximum term of a commuting work permit is 6 months. An extension may be applied for at the competent Austrian labour office provided the current employer or another employer, meeting the conditions of the Agreement, intends to continue employment. The permit may be extended in one instance for maximum six more months. After one year of continuous employment the employee may apply for a permission-free status (Freizügigkeitsbestätigung) at the Austrian Labour Service (AMS) which entitles the applicant to work in Austria without any special permit until the end of the transitional period of Hungary's EU accession in 2011.



is valid for single or multiple entry and entitles its holder to take up seasonal employment for a period longer than three months but not exceeding six months<sup>22</sup> and the validity term of which is one year at the most.<sup>23</sup>

A seasonal employment visa or a national visa may be granted to a third-country national who meets the conditions set out in Subsections a) and c)–i) of Section (1), Article 13<sup>24</sup> of Aliens Act.<sup>25</sup> A seasonal employment visa may be applied for after having acquired an agricultural seasonal work permit, and seasonal employment cannot exceed 180 days within a calendar year with an option breaking it up into several periods. Permits for agricultural seasonal work are issued in compliance with the rules of individual employment but a fast-track procedure is applied. Such permits are issued based on labour market tests, except in cases when the term of seasonal employment does not exceed 60 days in a calendar year.

Applications for visas for a validity period of longer than three months are adjudged by the competent consulate officer in case of seasonal employment visas.<sup>26</sup> As a main principle, applications for seasonal employment visas may be submitted to a consulate officer of Hungary, or at any other place authorized to accept such applications in the country where the applicant's permanent or usual residence is located, or in the applicant's country of citizenship.<sup>27</sup> Seasonal employment visas, in addition to the main principle, may be also be applied for at the consulate officers of Hungary, or any other agency authorized to accept such applications in a country where the applicant is lawfully residing, provided that the entry and stay of the applicant is desired on the grounds of substantial national interest of Hungary in the field of economics, culture, science or sports.<sup>28</sup>

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<sup>22</sup> Subsection a) of Section (1) Article 14 of Aliens Act

<sup>23</sup> Subsection a) of Section (2) Article 14 of Aliens Act.

<sup>24</sup> Section (1) of Article 13 of Aliens Act: For entry into the territory of Hungary and for stays in the territory of Hungary for a period of longer than three months the entry conditions for third-country nationals shall be the following:

- a) they are in possession of a valid travel document;
- c) they are in possession of the necessary permits for return or continued travel;
- d) they justify the purpose of entry and stay;
- e) they have accommodations or a place of residence in Hungary;
- f) they have sufficient means of subsistence and financial resources to cover their accommodation costs for the duration of the intended stay and for the return to their country of origin or transit to a third country;
- g) they have full healthcare insurance or sufficient financial resources for healthcare services;
- h) they are not subject to expulsion or exclusion, they are not considered to be a threat to public policy, public security or public health, or to the national security of Hungary;
- i) they are not persons for whom an alert has been issued in the SIS for the purposes of refusing entry or stay.

<sup>25</sup> Section (3) of Article 14 of Aliens Act

<sup>26</sup> Subsection c) of Article 32 of Government Decree

<sup>27</sup> Section (1) of Article 34 of Government Decree

<sup>28</sup> Subsections b)–c) of Section (2) of Article 34 of Government Decree



### 1.2.3 Regulated professions

There is no special regulation, neither from considerations of migration nor of employment, relative to third-country nationals who reside in another Member State and are employed in regulated professions.

### 1.2.4 Mobility rules concerning any other migrant employee category

As a main principle, the employment of third-country nationals requires a permit. The permission procedure is based on and connected to the work and not the place of residence of the employee. Consequently, the fact that the employee resides in another Member State is not an impediment to his/her being granted a work permit.<sup>29</sup>

## 1.3 Common regulation and procedures for all mobile third-country nationals

As the first set of provisions in Hungarian regulation that aims at promoting mobility it is ‘the designation of the places where applications may be submitted’ that needs to be highlighted.<sup>30</sup> All the more so as Implementing Government Decree in its Section (1), Article 47<sup>31</sup> asserts as a main principle that applications for residence permits may be submitted not only in the country of the applicant’s nationality but also at any consulate officer of Hungary, or any other agency authorized to accept such applications in the country where the permanent or usual residence of the applicant is located.

Consequently, a third-country national with an entitlement to permanent or usual residence within the European Union does not need to leave the area of EU and return to his/her country of nationality just to be able to hand in an application for a residence permit in Hungary. Moreover, Implementing Government Decree, in its Section (4) of Article 47 sets out a more favourable provision inasmuch as it allows third-country nationals already staying in Hungary to submit their applications, in specified cases, at the regional directorate of the OIN competent at their place of abode within the country.<sup>32</sup>

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<sup>29</sup> Work permits for third-country nationals are regulated by Decree 16/2010. (V. 13.) of the Ministry of Social Affairs and Employment on the granting of permission for employment of third-country nationals in Hungary. The rules of employment of third-country nationals necessitating no permission in the territory of the Republic of Hungary are contained in Government Decree 355/2009 (XII.30.).

<sup>30</sup> Hungarian migration regulation assumes that the applicant for any type of residence entitlement is the third-country national concerned.

<sup>31</sup> Section (1) of Article 47 specifies that – with the exception set out in Sections (2) and (4) – applications for residence permits may be submitted at any consulate officer of Hungary, or any other agency authorized to accept such applications for residence permit in the country where the permanent or usual residence of the applicant is located or in the country of the applicant’s nationality.

<sup>32</sup> Provided :

- a) there are special circumstances to justify submission of the application in Hungary, such as on the grounds of family reunification or medical treatment;
- b) the purpose of residence for a period of longer than three months is research;
- c) lawfully residing in Hungary as nationals of the states listed in Annex II of Council Regulation 539/2001/EC, or together with such third-country national in the capacity of a family member.



Among the conditions of granting or extending a residence permit, the migration regulation contains a number of more flexible provisions that third-country nationals might find to be of assistance when entering Hungary from a Member State or when they intend to continue to move on to another Member State.

To begin with, the conditions of residence do not compel the given third-country national to leave the territory of the EU upon expiration of entitlement. Subsection c) in Section (1) of Article 13 of Aliens Act mentions only one condition, namely: the applicant must possess the necessary permits for return or continued travel. Section (1), Article 29 of Implementing Government Decree specifies that this provision is to be considered to be complied with if the third-country national is in possession of the necessary permissions, a valid travel ticket or sufficient financial means to purchase one, or a means of transport that is in his/her legitimate use, even after the expiration of his visa or residence permit for a term longer than three months. In this manner Hungarian legislation enables the person in question to travel further to another Member State.

Aliens Act in its Subsection f) of Section (1) of Article 13 specifies that the applicant shall have sufficient means of subsistence and financial resources to cover their accommodation costs for the entire duration of the intended stay and for the travel cost on leaving the country. In this connection Article 29 of Implementing Government Decree, in Subsection h) of Section (6), allows that the requirement of subsistence in the case of third-country nationals may also be verified by a certificate in proof of regular income received from abroad. Moreover, Subsection g) of Section (1) of Article 13 of Aliens Act facilitates entitlement for a stay longer than three months the entry conditions not only for those who have full-coverage healthcare insurance but also for those who have sufficient financial resources to cover the expenses of healthcare services.

In view of the fact that in order to facilitate intra-EU it is expedient to make it as easy as possible to grant so-called entry visas that are meant to be used exclusively to enter the country with the aim of collecting documents, Hungarian regulation applies most favourable procedural rules in this respect. Implementing Government Decree in Section (1) of Article 33 rules that third-country nationals may apply for an entry visa for entitlement to collect the residence permit before admission to the country in the application for residence permit, without having to lodge a separate application – the application for a visa is treated the same way as the application for residence permit.<sup>33</sup> It follows that there is no need for an additional visa procedure, the application for a residence permit automatically entails it. Neither is the tariff separated for the two procedures: the fee for the visa issued to collect the residence

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<sup>33</sup> Sections (2) and (3) of Article 33 of Aliens Act specify that a visa application for collecting a residence permit is decided upon by the competent regional directorate. If the decision of the regional directorate is in favour of the application for residence permit, it also constitutes approval for the issue of a visa for entitlement to collect the residence permit, of which the competent consulate officer shall be notified.





permit includes the fee for the procedure of the first residence permit, and their joint fee is 60 EUR.<sup>34</sup>

In the Hungarian body of law we may find rules that promote intra-EU mobility not only in the regulation of defined-term residence permits but also in the realm of long-term residence. The precondition of acquiring a (non-EU based) national permanent residence permit, as defined in the main principle of related domestic law, is a proof of three years of lawful and continuous stay in Hungary,<sup>35</sup> in which case temporary absences from the territory of Hungary of less than four months shall not be deemed as discontinuity of residence, if the combined duration of such absences does not exceed two hundred and seventy days during the preceding three years before the application was submitted.<sup>36</sup>

Even so, the immigration authority may approve of granting a national permanent residence permit also in cases when residence in Hungary was discontinued for a period longer than so specified, if this happened due to justifiable reasons, such as medical treatment or employment-related foreign assignments of the third-country national. As a result, applicants for a national permanent residence permit will not be at a disadvantage just because, due to professional posting, they spend more time in other Member States than is specified in the main principle.

There are further rules ensuring flexibility even after having granted national permanent residence status. In line with Subsection c) of Section (1) in Article 37 of Aliens Act this status may be withdrawn in case the third-country national left Hungary for more than six months, however, Section (4) of Article 105 of Implementing Government Decree reaffirms that if the third-country national leaves the territory of Hungary for a period not exceeding two years for reasons other than resettlement, and notifies the competent regional directorate of this in writing then he may not be deprived of his residence status, provided the third-country national in question resided in Hungary for at least one hundred and eighty days within a period of one year prior to the notice.

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<sup>34</sup> Subsection II/1 of Annex 2 to Decree 28/2007. (V. 31.) of the Ministry of Justice and Law Enforcement regulating the fees of procedures related to persons with the right of free movement and stay, and the entry and stay of third-country nationals.

<sup>35</sup> Subsection a) of Section (1), Article 35 of Aliens Act

<sup>36</sup> Section (2), Article 35 of Aliens Act



## Section 2: Scale and scope of the phenomenon of mobility

### 2.1 Statistics on intra-EU (work-related) mobility of third-country nationals available in Hungary<sup>37</sup>

#### 2.1.1 Categories regulated by EU law

##### 2.1.1.1 Long-term residence permit holders

In the period from 2008 to 2011 the number of applications for EC permanent residence permits shows a steady decrease in Hungary (in 2008: 128 applicants, in 2009: 123, in 2010: 99, in 2011: 91), in the first ten months of 2012, however, the number of submitted applications exceeds that of every earlier year: there were 176 applicants. The biggest segment of applicants is represented by the Chinese every year (see Appendix III/a).

Hungary, alongside with the EC permanent residence permit and the mobility right granted by the Long-term Residence Directive, issues a national permanent residence permit based on domestic regulation which offers more favourable conditions.<sup>38</sup> As a result, this form of national permanent residence permit is far more ‘popular’ among those seeking long-term residence, i.e. permanent residence status.<sup>39</sup> This also implies that the priority given to national permanent residence permits generates a bigger number of residents with long-term residence status without intra-EU mobility right.<sup>40</sup>

Those, who have acquired a long-term residence permit in compliance with the Long-term Residence Directive in another Member State and exercising their mobility right intend to obtain their second long-term residence permit in Hungary, need to apply for an interim permanent residence permit. This kind of secondary migration is extremely uncommon in Hungary: the number of applicants for a temporary permanent residence permit was 2 in 2008, 3 in 2009, 3 in 2010, 6 in 2011, 3 in 2012 until 31 October. As to the citizenship of the applicants (see Appendix III/a) it appears that Serbia was represented each year. Furthermore, it is apparent that in the time span of 2010–2012 Serbian citizens (3 of them each year), with no exception, obtained their first long-term residence permit, in line with the Directive, in

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<sup>37</sup> There are no comprehensive statistics available as to the movement of third-country nationals within the Union with Hungarian connection.

<sup>38</sup> As is the case in a number of other Member States, it is also noticeable in Hungary that national regulation offers more favourable conditions (3 years of continuous lawful stay in the country as opposed to 5 years), moreover, national laws provide further concessions to various migrant categories (ethnic Hungarians, family reunion, or pursuant to an amendment of law approved by Parliament on 11 December 2012: third-country nationals bringing in substantial investment), especially as regards the length of stay that needs to be verified when handing in an application for a national permanent residence permit.

<sup>39</sup> Whereas the annual number of applications for national permanent residence permits amounts to some 2000, the number of applicants for EU residence permit was a meagre 99 in 2010 and 91 in 2011.

<sup>40</sup> At the same time migration related Hungarian law allows applications for EU residence permits to be submitted for those in possession of a permanent resident or immigrant status, obtained prior to the entry into force of Aliens Act. Thus the EU residence permit takes the top ranking at the legal hierarchy applied for long-term residents, thereby facilitating to complement the already acquired long-term resident status by intra-EU mobility right.



Austria. This indicates that in certain cases Hungary was targeted by those exercising their mobility right in line with the Long-term Residence Directive because, geographically, it is situated between the applicants' country of origin and the country that first granted them long-term residence permit.

#### **2.1.1.2 EU Blue Card holders**

EU Blue Cards, which also grant mobility right within the territory of the EU, can be applied for in Hungary from 1 August 2011 by third-country nationals. Since then, up to 31 October 2012 there were only 5 EU Blue Card applications (see Appendix VII) submitted and merely 2 of these procedures ended with granting the Blue Card.

It is apparent that only a very limited number of highly qualified third-country nationals apply for an EU Blue Card in Hungary. The reason for this is partly that the transposition of the EU Blue Card Directive into national law entailed a combined application procedure which is yet quite unfamiliar for the employers, furthermore, the salary threshold defined in the Directive is a condition difficult to meet, given the Hungarian labour environment. Consequently, highly qualified third-country nationals still tend to prefer to apply for a residence permit issued for the purpose of gainful employment, then having been obtained this residence permit and after having spent three years in Hungary they can apply for a national permanent residence permit, which grants them, in many respect, equal treatment with Hungarian citizens.

#### **2.1.1.3 Researchers**

Very few third-country national researchers come to Hungary: the number of applications for residence permits issued for the purpose of research amounted to only 33 in 2008, 52 in 2009, 63 in 2010, 79 in 2011 and 5 in 2012 up to the 31st of October. Moreover, from among this small number of researchers merely a tiny portion – 1 to 4 annually – indicated another EU Member State as their previous place of residence. Among the Member States indicated in the past 5 years are Britain, Germany, the Czech Republic, Spain, Italy, Finland and France (see Appendix V/a).

#### **2.1.1.4 Students**

The numbers of applications for residence permit issued for the purpose of study in Hungary were as follows: 8,687 in 2008, 9,814 in 2009, 11,179 in 2010, 10,236 in 2011 and 8,927 in 2012 up to October 31. The majority of applicants were Iranian and Turkish citizens, Serbian citizens are also highly represented in the period 2008–2011 (see Appendix VI/a).

Only a marginal portion of applicants, some 0.6–1.4 percent, indicated another Member State to be their previous residence. Up to 31 October 2012, of the 95 third-country nationals coming to Hungary from other EU Member States 11 indicated Germany, 9 Austria and 6 France. Germany and France is steadily represented in earlier years as well. As to Britain: in contrast to 2008 when 41 applicants asked for a residence permit for studies after a stay in the UK, their number shrank to be hardly of note by 2011–2012.





### 2.1.1.5. Posted workers

The provisions of EU agreements specify that the Member States must ensure the freedom of services in the territory of EU, and this fundamental freedom shall include the right of service providers to send employees on a temporary basis to another Member State to carry out or supervise services. The fundamental framework of work in posting is defined in the so-called Posted Workers' Directive (96/71/EC).<sup>41</sup> The major attribute of posting is that the employee is required by the employer, out of economic considerations, to work temporarily at a worksite that is different than his usual one. In accordance with the regulation elaborated in Chapter 1, the employment of posted workers requires no permission; furthermore, in order to eliminate all possible obstacles in the way of the provision of services employment in a posted capacity does not necessitate even notification.<sup>42</sup>

Although third-country nationals posted in Hungary for a period exceeding three months still need to submit an application for a residence permit issued for the purpose of gainful employment, the registration of permissions thus issued, however, will not indicate that the permit is related to such employment, consequently, migration statistics will not contain details about posted workers.

Determining the number of employees posted in other Member States poses a challenge not only in Hungary,<sup>43</sup> it can be estimated that at the EU level about one million employees are posted annually to another Member State.<sup>44</sup> EU level estimations reveal that due to lack of labour-specific registration approximations can only be based on social security forms. Currently, a portable A1 form may be applied for that entitles the employee and his/her dependent family members to remain covered by the social security system of the sender State for the duration of the posting, for maximum two years. This makes it impossible to measure the number of postings that entail no local social security coverage as the A1 form keeps the

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<sup>41</sup> Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services; OJ L 18, 21.1.1997, pp. 1–6.

<sup>42</sup> Subsection a) Section (1) Article 3 of Government Decree 355/2009 (XII.30.) on the rules of employment of third-country nationals necessitating no permission in the territory of the Republic of Hungary.

<sup>43</sup> Questionnaire by Ágnes Hárs and László Neumann, Eurofound, 8 October 2010.  
<http://www.eurofound.europa.eu/eiro/studies/tn0908038s/hu0908039q.htm> (accessed 4 December 2012).

<sup>44</sup> “The only available data source at EU-level is based on the systematic data collection of E101 certificates (2005-2009) in the field of social security, carried out by the Commission in cooperation with national authorities . . . Furthermore, the E101 social security form is not issued to all posted workers, either because it is not required (postings of over 12 months are not considered for social security purposes) or because some companies do not apply for E101 forms when workers are posted, especially in the cases of very short-term postings. With these caveats, it can be estimated that around one million workers are posted each year by their employers from one Member State to another.” Commission Staff Working Document, Executive Summary of the Impact Assessment accompanying the document Proposal for a Directive of the European Parliament and of the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provisions of services (Text with EEA relevance) and Proposal for a Council Regulation on the exercise of the right to take collective action within the context of freedom to provide services (Text with EEA relevance), 21.3.2012, SWD(2012) 64 final, pp. 3–4.



posted worker covered by the social insurance of the sender State, although the work is being done in the State of posting.

## **2.1.2 Categories not regulated by EU law**

### **2.1.2.1 Cross-border workers**

Data are not readily available on intra-EU mobility of third-country nationals as it is not yet regulated by Union *acquis*. Cross-border workers are surveyed only on an occasional basis, thus only a rough-and-ready estimate of commuting workers can be given, and primarily of EU citizens, in the vicinity of the border area.<sup>45</sup>

### **2.1.2.2 Seasonal workers**

Seasonal agricultural work permits numbered 696 in 2008, this number shrank to 368 in 2009, as a result of the fact that employment of Romanian citizens no longer necessitated a permit. An increase to 470 followed in 2010 due to more seasonal workers from Ukraine (who accounted for 460 of the 470). In 2011 only Ukrainian citizens (380 of them) were granted seasonal work permits. By 2012 the number of such permits decreased to a mere 168. Seasonal workers coming to Hungary typically belonged to the 35–44 year-old age group, with the 25–34 and 45–54 year-olds also significantly represented (see Appendix I).

Whereas in 2008 we had basically nationals from Romania, Serbia and Ukraine who made up the bulk of holders of seasonal work permits. From 2009 the Romanian citizens do not need a work permit and from 2010 the Serbian citizens are exempted from visa obligation, consequently, seasonal work permits are now granted solely to Ukrainian nationals. As Ukraine is basically not a country whose citizens handed in applications in big numbers for Hungarian visas in other EU Member States, we can assume that the seasonal workers come straightaway from the bordering areas in Ukraine.

## **2.1.3 Other data indicating intra-EU mobility<sup>46</sup>**

From among the data having relevance to intra-EU mobility patterns and trends<sup>47</sup> the most noteworthy are the statistics relative to applications for a visa authorizing a stay exceeding 90

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<sup>45</sup> The EURES-T Pannonia project concludes that “the number of commuters from their home in Hungary to their workplace in Austria cannot be reliably determined statistically. The number of ‘not self-employed’ Hungarian workers is registered on a monthly basis in Austria by Social Security Services (Sozialversicherungsträger). ...In 2009 some 80% (ca. 18,500) of the Hungarians employed in Austria (ca. 24,000) worked in four provinces (Bundesländer): Burgenland (7,600), Wien (4,000), Niederösterreich (4,000) and Steiermark (2,800).” EURES-T Pannonia website <http://www.eures-pannonia.hu/index.php?lang=hu&site=82> accessed 15 December 2012.

<sup>46</sup> As to those employed in regulated professions and other employees there are no sufficient data available to facilitate conclusions with regard to intra-EU mobility.

<sup>47</sup> The sources of data specified in the study with certain insight important for mobility – recognition of diplomas, social security registration, reasons for applications for citizenship, general census – are either unavailable or do not allow for no appropriate breakdown that would be necessary to come to conclusions as to intra-EU mobility trends or magnitude.



days, insofar as such visas are typically applied for as a visa authorizing to receive a residence permit, and are normally handed in together with the application for the residence permit (see Appendix II). The annual breakdown reveals 227 long-term visa applications in 2008, 185 in 2009, 153 in 2010, 184 in 2011 and 156 in 2012 (up to 31 October) filed at the competent Hungarian agencies in the Member States. The biggest numbers of applicants were of Chinese and Indian nationality. Those indicating studies as their purpose of stay, normally handed in their applications in one of the Member States, some of those meaning to come for gainful employment also chose one of the Member States. A decreasing number of applications is filed in the Member States with the purpose of family reunification.

## **2.2 Statistics relative to the migration of EU citizens**

EU citizens living in Hungary are in possession of a registration certificate or a permanent residence card. Prior to 1 July 2007 they were granted an EEA residence permit with a maximum validity term of five years. In compliance with the right of free movement and residence EU citizens need no work permits but they have an obligation to notify the competent authorities.

The number of EU citizens keeps shrinking: in 2008 – 26,711, in 2009 – 20,794, in 2010 – 18,552, in 2011 – 18,308, in 2012 (up to 30 October) – 13,602 of them (mostly Romanian, German and Slovakian citizens) had their stay exceeding three months registered. For their breakdown by sex and age see Appendix VIII.

Those EU citizens who have been staying in Hungary for more than five years, or have acquired this status through family reunification stay in our country as permanent resident card holders. Among them citizens of Romania, Germany and Slovakia take the biggest shares (see Appendix IX).

According to registration statistics from among EU Member States citizens of Romania and Slovakia are employed in the greatest numbers in our country, however, the number of registered EU employees shows a steady decrease over the years. Romanian registrations were as follows: 12,725 in 2009, 6,983 in 2010, 6,368 in 2011 and 4,315 in 2012 (up to 15 November). Registered employment of Slovakian citizens shows a similar, mostly declining pattern: 4,883 in 2008, 2,586 in 2009, 3,368 in 2010, 1,615 in 2011 and 725 in 2012 (up to 15 November).<sup>48</sup>

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<sup>48</sup> Statistics relative to profession, age and education are available, a breakdown cross-referenced with citizenship, however, would require quite some capacity.



### Section 3: Restrictions to the intra-EU mobility of third-country nationals

#### 3.1. Labour market constraints of the employment of third-country nationals

In line with Section (1) Article 7 of Act IV of 1991 (hereinafter referred to as Employment Act)<sup>49</sup> a third-country national, as defined in Aliens Act, with the exceptions set out in Section (2) Article 2 of Employment Act<sup>50</sup> and the relevant Government Decree, may enter into employment in possession of a work permit or an EU Blue card. Work permits for third-country nationals are regulated by Decree 16/2010. (V. 13.) of the Ministry of Social Affairs and Employment. The rules of employment of third-country nationals necessitating no permission in the territory of the Republic of Hungary are contained in Government Decree 355/2009 (XII.30).

As a main principle, the employment of third-country nationals requires a permit. The permission procedure is based on and connected to the work and not the place of residence of the employee. Consequently, the fact that the employee resides in another Member State is not an impediment to his/her being granted a work permit.

Data on work permits and the number of registered workers are stored in nationwide database that are processed quarterly by the Nemzeti Munkaügyi Hivatal (National Labour Office, NLO) and resultant statistics<sup>51</sup> are published on the NMH website.<sup>52</sup>

The data published reveal that the number of individual and seasonal work permits combined shows a continuous decrease, with the exception of 2006, in the period between 2004 and 2009. This is followed by a slight increase in 2010 but the number goes down again in 2011 (see Appendix I).<sup>53</sup> The report of NLO for the first half of 2012 concludes that the number of work permits issued in the period was 5,690, of which 5,528 were individual permits and 162 were agricultural seasonal permits. Compared to the first half of 2011 the increase is 2.1%, with a 6.4% growth in individual work permit and a 50% drop in agricultural seasonal permits.

Apart from the exceptions specified in relevant law a third-country national can take up employment in possession of a permit issued by the Nemzeti Foglalkoztatási Szolgálat (Public Employment Service). As set out in Section (1) Article 4 of Decree 16/2010 (V. 13.) of the Ministry of Social Affairs and Employment an individual permit is to be issued provided: the

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<sup>49</sup> Act IV of 1991 on Job Assistance and Unemployment Benefits.

<sup>50</sup> Section (2) Article 2 of the above Act defines identical rights and obligations for Hungarian nationals and for persons with refugee status, beneficiaries of subsidiary protection and persons enjoying temporary protection, persons who have been granted immigrant or permanent resident status, and for persons with the right of free movement and residence. The related Government Decree, in its Section (1) Article 2 specifies further cases when the employment of a third-country national necessitates no work permit. The employer has the obligation to notify the regionally competent labour centre of the fact.

<sup>51</sup> Source: [www.munka.hu](http://www.munka.hu); accessed: 12 December 2012.

<sup>52</sup> Major characteristics of the employment of foreign nationals in Hungary in H1 2012 [in Hungarian], Research and Analysis Department, NLO.

<sup>53</sup> Major characteristics of the employment of foreign nationals in Hungary in 2011 [in Hungarian], NLO, p. 6.



employer had possessed a valid workforce request for the job to be done prior to filing the application for the employment of the third-country national, no job-seekers were found to meet the conditions set out in the Employment Act and its implementing decrees and defined by the employer's request, moreover, the third-country national meets the conditions set out in applicable law and defined by the employer's request. A workforce request shall be considered to be valid if the employer submitted it together with the application, or maximum 60 days prior to the application, or – if submitted earlier – it had been extended maximum 60 days prior to the application.<sup>54</sup> The employer has an obligation to forward the workforce request<sup>55</sup> to the labour office prior to, or simultaneously with the application for employment, supplemented with a description and conditions relative to the vacancy.<sup>56</sup> Based on this information the competent labour authorities shall first try to find appropriate matches among the Hungarian and other EU citizens seeking employment.

As set out in Article 3 of Decree 16/2010 (V. 13.) of the Ministry of Social Affairs and Employment the sum total of third-country nationals employed with work permit or EU Blue Card (simultaneously employed third-country nationals) cannot exceed the monthly average of number of workforce requests filed in the year prior to the referenced year.<sup>57</sup> This maximum figure is to be issued by the Minister of Economy in Magyar Közlöny (Hungarian Journal) until 1 February of the referenced year at the latest.

According to the communique of the Ministry of National Economic Affairs (Nemzetgazdasági Minisztérium, NGM) in 2012 the maximum number of third-country nationals that may take up employment simultaneously with work permit or EU Blue Card is 85,000. In 2011 the total number of issued – individual and seasonal agricultural – work permits was 10,556.<sup>58</sup> This clearly indicates that the number of work permits that may have been issued in line with the above described formula is a multiple figure of actually issued ones. Consequently, the ceiling figures thus set impose no impediment whatsoever in the way of the employment of third-country nationals.

### **3.2. Minimum wages as factors influencing the mobility of third-country nationals**

Government Decree 298/2011 (XII. 22.) marked out the minimum wages for 2012 as detailed below. Starting 1 January 2012, the smallest compulsory basic salary (minimum salary) for a full-time worker, supposing all working hours have been completed, should be HUF 93,000 in

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<sup>54</sup> Decree 16/2010 (V. 13.) of the Ministry of Social Affairs and Employment, Section (2) Article 4.

<sup>55</sup> However, no workforce request or labour market test is required in the cases specified in Section (1) Article 10 of Decree 16/2010 (V. 13.) of the Ministry of Social Affairs and Employment.

<sup>56</sup> It is to be indicated on the form for workforce request if an application for the employment of a foreign national is expected to follow.

<sup>57</sup> This should read as the number of workforce requests unfulfilled at the beginning of the month plus number of workforce requests filed during the course the same month, rounded to nearest thousand. The number of simultaneously employed third-country nationals should include the number of third-country nationals that may be employed with permits granted pursuant to international agreements on work exchange.

<sup>58</sup> Major characteristics of the employment of foreign nationals in Hungary in 2011 [in Hungarian], NLO, p. 5.





the case of a monthly (gross) salary, HUF 21,400 in the case of weekly wages, HUF 4,280 as a daily wage, and HUF 535 if hourly wages apply. In the case of employment that requires at least medium-level education, medium-level vocational schooling the guaranteed minimum wages should read: HUF 108,000/month, HUF 24,850/week, HUF 4,970/day and HUF 621/hour.

The quoted decree does not define guaranteed minimum wages for employees in posts requiring higher than medium-level qualification. The salary threshold for those with diplomas quoted in recent years were basically minimum wages suggested by trade unions. Civil servants, however, are subject to special rule: in their case “the diploma minimum wage” was introduced into the salary scale in 2002 under the so-called category F that guaranteed HUF 100,000 for them.<sup>59</sup>

To conclude, Hungary does determine a minimum wage threshold but it is extremely low by European standards<sup>60</sup> in compliance with the relatively low average income in Hungary. This happens to be one of the reasons for the low number of foreign workers coming to our country.

Aliens Act in Section (5) Article 72/A sets out that in a procedure to issue or extend an EU Blue Card the condition of subsistence is to be taken satisfied if the salary of the third-country national equals or exceeds the gross monthly salary of specified in the appropriate regulation.

Section (1) Article 3 of Decree 44/2011 (XII. 16.) of the Ministry of National Economic Affairs on third-country nationals employed with an EU Blue Card and on modification of certain labour-specific ministerial decrees stipulates that in Hungary the mandatory salary paid for a third-country national with an EU Blue Card, with the exception set out in Section (2), shall not be any lower than one and a half times the average gross monthly salary in the second year prior to the referenced year, as calculated by the Hungarian Central Statistical Office. As set out in Section (4) Article 3, the minister responsible for employment policy shall announce the value of the lowest salary defined in Section (1) on or before 31 October of the year prior to the referenced year in the official journal of his ministry. In line with this the lowest salary for an EU Blue Card holder was HUF 299,700 in 2011 and HUF 303,900 in 2012.<sup>61</sup>

In line with the provisions of Article 3 of NGM Decree 44/2011 (XII. 16.) Hungary applied the 1.2 multiplier approved of by the Blue Card Directive, in compliance with which in

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<sup>59</sup> Source: <http://minimalber.com/minimalber-2012/diplomas-minimalber-2012-garantalt-diplomas-berminimum-2012.html> accessed 13 December 2012.

<sup>60</sup> Source: EUROSTAT, [http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php?title=File:MW\\_map\\_EUR\\_July\\_2012.png&fileti\\_mestamp=20120802093553](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:MW_map_EUR_July_2012.png&fileti_mestamp=20120802093553) accessed 13 December 2012.

<sup>61</sup> Section (2) Article 4 of MNEA Decree 44/2011 (XII. 16.).



healthcare positions<sup>62</sup> set out in Annex 1 to said Decree, the salary threshold may not be lower than 1.2 times the national average gross monthly salary registered by the Central Statistical Office in the second year prior to the referenced year, specifically HUF 239,760 in 2011 and HUF 243,120 in 2012.

In Hungary one of the reasons for the low number of work permit applications is the salary threshold defined in the Blue Card Directive. In healthcare, albeit Hungary applied the salary threshold, due to the prevailing low wages, even this threshold appears to be high enough for workers in the sector to submit applications for EU Blue Cards in big numbers.

### **3.3. Obstacles in the recognition of diplomas and qualifications**

Recognition is a procedure in the course of which the competent authority declares a foreign certificate to be legally identical with a certificate that is or was obtainable in Hungary. The rules of recognition are defined in chapter IV of Act C of 2001 (Recognition Act).

Section (2) Article 28 of said Recognition Act sets out that the same rules as in the case of EU citizens apply for a) a family member with free movement and residence right of a Member State, and of Hungary, b) a third-country national with residence permit issued for the purpose of research, c) a person with immigrant or permanent residence status, or d) or third-country national with high-qualified employment and residence permit (EU Blue Card).

Section (3) Article 6 of Recognition Act stipulates that a person who is not a citizen of another Member State, and has no Hungarian citizenship, is entitled to the recognition or naturalization of his/her diploma or certificate – cases of further study not inclusive – if he/she is in possession of a residence permit, in addition to the provisions of Section (2), issued for the purpose of gainful employment or family reunification.

The fees to be paid are made up of the cost of the procedure and the collateral expenses that may be generated. As set out in Recognition Act the applicant shall pay sum as defined in effective law – in 2013 it is set out in Government Decree 390/2012 (XII. 20.) – adjusted to the mandatory lowest salary (minimum salary).

### **3.4 Other circumstances influencing mobility**

In the field of social security there are several bilateral and international agreements helping third-country nationals using related services.<sup>63</sup> In general, there are no legal provisions in Hungary necessitating to produce justified financial means for self-employment.

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<sup>62</sup> General or specialist medical practitioners, pharmacists, specialized pharmacists, optometrists, dietitians nutrition advisors, physiotherapists, visitor and hospital nurses (with diploma), paramedics, midwives, (with diploma).

<sup>63</sup> Lecture delivered by Dr Éva Lukács Gellérné PhD, EMN National Contact Point meeting, 16 October 2012, [http://www.emnhungary.hu/sites/default/files/eva\\_gellerne\\_lukacs\\_-\\_social\\_security\\_as\\_an\\_enhancing\\_factor\\_of\\_migration.pdf](http://www.emnhungary.hu/sites/default/files/eva_gellerne_lukacs_-_social_security_as_an_enhancing_factor_of_migration.pdf) accessed 4 December 2012.



#### **Section 4: Conclusions**

This study endeavoured to explore the extent of intra-EU mobility of third-country nationals specifically concerning Hungary through an analysis of a number of areas with an implied objective to identify the regulations, both at EU level and at the national level together with their practical implication, which may have an impact on the decision of third-country nationals.

Whereas in the field of regulation the task has been somewhat easier, the availability of related statistics is far more problematic. The reasons beyond this challenge are rather complex. In some cases the competent bodies are in possession of plentiful of data but a lack of capacity prevents a breakdown revealing intra-EU mobility to be made. In other cases data with reliable reference to mobility are not available. Also, there are certain cases, when it happens to be the efforts to remove administrative impediments in the way of the free movement of services and labour that abolished channels facilitating reliable data collection.

However, we can conclude that EU law brings about harmonization only with regard to specified migrant groups, furthermore, not all of the Directives that concern certain categories of third-country nationals set out provisions relative to intra-EU mobility. From among the categories where harmonized mobility rules apply at the EU level, those with long-term EU residence permit are especially worthy of note, as they have special arrangements that facilitate intra-EU mobility. Some of the provisions of the EU Blue Card Directive have similar objectives; it remains to be seen how successfully. As to researchers and students current provisions can alleviate their difficulties, at most. As a result, national law continues to have a significant role to play both in their mobility, and that of legal migrants from third countries.

In addition to compliance with EU Directives our country introduced regulatory instruments that attempt to minimise such obstacles. They range from the procedures of submitting applications to acquiring long-term residence permits, all aimed at paving the way for third-country nationals from other Member States to Hungary.

Despite all these efforts, in Hungary the situation is characterized not only by a low number of legal migrants within the general population in comparison with most Member States, but it is also apparent that not a great number of third-country nationals with residence rights in other Member States choose Hungary as a second Member State either. The primary reasons, therefore, must lie not so much in regulatory barriers but rather in other areas, such as the economic and labour market conditions of Hungary. Our country simply cannot be competitive in salaries with the countries of Western Europe and, to protect her labour force, is still compelled to issue work permits based on labour market tests.

Just like across the European Union, it is also a frequent question in Hungary to ask: Which migrant groups would we be most willing to welcome, which are the ones that could contribute most effectively to the economic development and the competitiveness of both the Union and the individual Member States? In the ongoing course of drawing up the Hungarian





migration strategy<sup>64</sup> it is necessary, therefore, to be mindful that we should more effectively try to attract certain employment categories of third-country migrants, that is knowledge-based migration both from outside the Union and by promoting intra-EU mobility.

The efforts to define this demand accurately may generate more detailed information in several areas, with a more reliable mapping of current trends, all which unavoidably may necessitate corrections and adjustments in the procedures and practice of data collection and analysis. However, implementing this task it is inevitable to rely on both the EU principles and the domestic regulation on data protection.

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<sup>64</sup> Subsection 5) of Government Resolution 1657/2012. (XII. 20.) on the tasks related to the review of strategic documents.



## Appendix I

### I/a Number of individual and seasonal work permits in agriculture (2003-2011)

2003	2004	2005	2006	2007	2008	2009	2010	2011
57,383	64,695	53,324	54,721	38,493	29,349	9,730	11,337	10,556

### I/b Number of seasonal work permits in agriculture (by nationality)

Citizenship	2008	2009	2010	2011	2012 (up to 15 Nov)
Yugoslav	1				
Moldovan	20	13	1		2
Russian	1				
Armenian		1	1		
Romanian	295				
Serbian	22	76	8		
Ukrainian	357	278	460	380	166
Total	696	368	470	380	168

### I/c Number of seasonal work permits in agriculture (by age groups)

Age group	2008	2009	2010	2011	2012 (up to 15 Nov)
19 and under	40	13	9	11	
20–24 yrs	103	34	52	38	12
25–34 yrs	191	80	93	91	37
35–44 yrs	165	101	154	102	64
45–54 yrs	136	92	112	95	32
55 and over	61	48	50	43	23
Unknown					
Total	696	368	470	380	168



## Appendix II

### Applications for visas for residence exceeding 90 days submitted at competent offices of Hungary in the territory of the European Union

Applications for D visas in 2008		Applications for D visas in 2009		Applications for D visas in 2010		Applications for D visas in 2011		Applications for D visas in 2012 (up to 31 Oct)	
Indian	28	Chinese	46	Chinese	29	Chinese	52	Chinese	28
Chinese	21	Indian	19	Indian	20	Indian	25	Indian	14
Russian	14	Turkish	11	Taiwanese	7	Pakistani	9	Vietnamese	13
Nigerian	12	Russian	9	Nigerian	1	Kosovar	7	Nigerian	12
Turkish	10	American	8	Nepal	5	Vietnamese	7	American	8
Other	142	Other	92	Other	91	Other	84	Other	81
Total	227	Total	185	Total	153	Total	184	Total	156

D visa applications in 2008 by purpose of stay		D visa applications in 2009 by purpose of stay		D visa applications in 2010 by purpose of stay		D visa applications in 2011 by purpose of stay		D visa applications in 2012 (to 31 Oct) by purpose of stay	
Study	79	Study	61	Study	57	Study	73	Study	59
Gainful employment	44	Gainful employment	52	Gainful employment	35	Gainful employment	69	Gainful employment	43
Family reunification	25	Family reunification	14	Family reunification	15	Family reunification	9	Family reunification	4
Official	19	Other	14	Official	12	Official	7	Other	5
Other	8	Official	12	Other	5	Other	3	Official	9
Other	52	Other	32	Other	29	Other	23	Other	36
Total	227	Total	185	Total	153	Total	184	Total	156



### Appendix III

#### III/a EC permanent residence permit and temporary permanent residence permit applications

EC permanent residence permit applications in 2008		EC permanent residence permit applications in 2009		EC permanent residence permit applications in 2010		EC permanent residence permit applications in 2011		EC permanent residence permit applications in 2012 (to 31 Oct)	
Chinese	55	Chinese	52	Chinese	49	Chinese	33	Chinese	83
Mongolian	29	Russian	12	Serbian	5	S-Korean	13	Ukrainian	14
Turkish	10	Mongolian	10	Russian	3	Russian	6	Mongolian	13
Russian	10	Serbian	7	Mongolian	3	Vietnamese	6	S-Korean	8
Vietnamese	6	American	6	American	1	Ukrainian	4	Thai	6
Other	18	Other	36	Other	38	Other	29	Other	52
Total	128	Total	123	Total	99	Total	91	Total	176

Temporary permanent residence permit applications in 2008		Temporary permanent residence permit applications in 2009		Temporary permanent residence permit applications in 2010		Temporary permanent residence permit applications in 2011		Temporary permanent residence permit applications in 2012 (to 31 Oct)	
Serbian	1	Cameroon	1	Serbian	3	Serbian	3	Serbian	3
Croatian	1	Serbian	2			Egyptian	2		
						Albanian	1		
Total	2	Total	3	Total	3	Total	6	Total	3



**III/b EC permanent residence permit and temporary permanent residence permit applications, where another EU/EEA Member State is indicated as previous place of residence**

EC perm. and temp. perm. residence permit applications in 2008 [with another EU/EEA Member State indicated as previous residence]			EC perm. and temp. perm. residence permit applications in 2009 [with another EU/EEA Member State indicated as previous residence]			EC perm. and temp. perm. residence permit applications in 2010 [with another EU/EEA Member State indicated as previous residence]			EC perm. and temp. perm. residence permit applications in 2011 [with another EU/EEA Member State indicated as previous residence]			EC perm. and temp. perm. residence permit applications in 2012 (up to 31 Oct) [another EU/EEA State indicated as prev. res.]		
EU/EEA	Nationality		EU/EEA	Nationality		EU/EEA	Nationality		EU/EEA	Nationality		EU/EEA	Nationality	
Britain	Serbian	1	France	Cameroon				0			0			0
			Switz.	Israeli										
			Poland	American										

Temp. perm. residence permit applications in 2008 [by the Member State of first entitlement]			Temp. perm. residence permit applications in 2009 [by the Member State of first entitlement]			Temp. perm. residence permit applications in 2010 [by the Member State of first entitlement]			Temp. perm. residence permit applications in 2011 [by the Member State of first entitlement]			Temp. perm. res. permit applications in 2012 (up to 30 Oct) [by the Member State of first entitlement]		
EU/EEA	Nationality		EU/EEA	Nationality		EU/EEA	Nationality		EU/EEA	Nationality		EU/EEA	Nationality	
Germany	Serbian	1	France	Cameroon	2	Austria	Serbian	3	Poland	Egyptian	2	Austria	Serbian	3
Austria	Croatian	1		Serbian	1				Austria	Serbian	3			
										Albanian	1			



III/c

EC permanent residence permits (by main nationalities)						
Nationality	2010	Total number of applications in percentage	2011	Total number of applications in percentage	Change	Change in percentage
Chinese	49	49.49%	33	36.26%	-16	-32.65%
Ukrainian	10	10.10%	4	4.40%	-6	-60.00%
South-Korean	4	4.04%	13	14.29%	9	225.00%
Russian	3	3.03%	6	6.59%	3	100.00%
Vietnamese	2	2.02%	6	6.59%	4	200.00%
Other	31	31.31%	29	31.87%	-2	-6.45%
<b>Total</b>	<b>99</b>	<b>100.00%</b>	<b>91</b>	<b>100.00%</b>	<b>-8</b>	<b>-8.08%</b>

Appendix IV

National permanent residence permits (by main nationalities)						
Nationality	2010	Total number of applications in percentage	2011	Total number of applications in percentage	Change	Change in percentage
Ukrainian	601	30.79%	559	29.59%	-42	-6.99%
Chinese	454	23.26%	497	26.31%	43	9.47%
Serbian	399	20.44%	259	13.71%	-140	-35.09%
Vietnamese	73	3.74%	128	6.78%	55	75.34%
Russian	96	4.92%	81	4.29%	-15	-15.63%
Other	329	16.85%	365	19.32%	36	10.94%
<b>Total</b>	<b>1 952</b>	<b>100.00%</b>	<b>1 889</b>	<b>100.00%</b>	<b>-63</b>	<b>-3.23%</b>



## Appendix V

### V/a The number of residence applications for purpose of research

Residence permit applications for purpose of research in 2008		Residence permit applications for purpose of research in 2009		Residence permit applications for purpose of research in 2010		Residence permit applications for purpose of research in 2011		Residence permit applications for research in 2012 (up to 31 Oct)	
Indian	5	Indian	16	Indian	9	Indian	10	Chinese	11
American	4	Egyptian	6	Iranian	7	Indian	7	Indian	6
Egyptian	4	Russian	6	Serbian	5	Ukrainian	6	Iranian	4
Serbian	3	Mexican	3	Ukrainian	5	Chinese	6	S-Korean	3
Ukrainian	3	Iranian	3	Chinese	5	Russian	4	Croatian	3
Other	14	Other	18	Other	32	Other	46	Other	30
Total	33	Total	52	Total	63	Total	79	Total	57

### V/b Residence applications for purpose of research with another EU Member State indicated as previous place of residence

Residence applications for purpose of research with a Member State as previous place of residence in 2008			Residence applications for purpose of research with a EU Member State as previous place of residence in 2009			Residence applications for purpose of research with a Member State as prev. place of res. in 2010			Residence applications for purpose of research with a Member State as previous place of residence in 2011			Res. app. for purpose of research with a Member State as previous place of residence in 2012 (up to 31 Oct)		
EU State	Nationality		EU State	Nationality		EU State	Nationality		EU State	Nationality		EU State	Nationality	
Czech R	Ukrainian	1	Czech R	India	1	Britain		1	Germany	Indian	1	Britain	Mexican	2
France	Chilean	1								Pakistani	1	Italy	Indian	1
Germany	India	1							Spain	Indian	1	Spain	Japanese	1
									Finland	Russian	1			
Total		4	Total		1	Total		1	Total		4	Total		4



## Appendix VI

### VI/a

Residence permits issued for the purpose of pursuing studies (by main nationalities)						
Pursuing studies	2010	Total number of applications in percentage	2011	Total number of applications in percentage	Change	Change in percentage
Iranian	1459	13.05%	1445	14.12%	-14	-0.96%
Serbian	1295	11.58%	950	9.28%	-345	-26.64%
Turkish	1066	9.54%	1164	11.37%	98	9.19%
Ukrainian	1007	9.01%	902	8.81%	-105	-10.43%
Nigerian	674	6.03%	755	7.38%	81	12.02%
Other	5 678	50.79%	5 020	49.04%	-658	-11.59%
<b>Total</b>	<b>11 179</b>	<b>100.00%</b>	<b>10 236</b>	<b>100.00%</b>	<b>-943</b>	<b>-8.44%</b>

Residence permits issued for the purpose of pursuing studies (by main nationalities)						
Pursuing studies	2009	Total number of applications in percentage	2010	Total number of applications in percentage	Change	Change in percentage
Iranian	1 346	13.72%	1459	13.05%	113	8.40%
Serbian	1 226	12.49%	1295	11.58%	69	5.63%
Turkish	891	9.08%	1066	9.54%	175	19.64%
Ukrainian	851	8.67%	1007	9.01%	156	18.33%
American	754	7.68%	704	6.30%	-50	-6.63%
Other	4 746	48.36%	5 648	50.52%	902	19.01%
<b>Total:</b>	<b>9 814</b>	<b>100.00%</b>	<b>11 179</b>	<b>100.00%</b>	<b>1 365</b>	<b>13.91%</b>





### VI/b Number of residence applications for purpose of studies

Residence permit applications for purpose of studies in 2008		Residence permit applications for purpose of studies in 2009		Residence permit applications for purpose of studies in 2010		Residence permit applications for purpose of studies in 2011		Residence permit applications for studies in 2012 (up to 31 Oct)	
Serbian	1,414	Iranian	1,346	Iranian	1,459	Iranian	1,445	Turkish	1,197
Iranian	1,258	Serbian	1,226	Serbian	1,295	Turkish	1,164	Iranian	1,143
Ukrainian	1,031	Turkish	891	Turkish	1,066	Serbian	950	American	578
Chinese	914	Ukrainian	851	Ukrainian	1,007	Ukrainian	902	Ukrainian	467
American	612	American	754	American	704	Nigerian	755	Serbian	316
Other	3,458	Other	4,746	Other	5,648	Other	5,020	Other	5,226
Total	8,687	Total	9,814	Total	11,179	Total	10,236	Total	8,927

### VI/c Residence applications for purpose of studies with another EU Member State indicated as previous place of residence

Residence applications for purpose of studies with a Member State as previous place of residence in 2008			Residence applications for purpose of studies with a EU Member State as previous place of residence in 2009			Residence applications for purpose of studies with a Member State as prev. place of res. in 2010			Residence applications for purpose of studies with a Member State as previous place of residence in 2011			Res. app. for purpose of studies with a Member State as previous place of residence in 2012 (up to 31 Oct)		
EU State	Nationality		EU State	Nationality		EU State	Nationality		EU State	Nationality		EU State	Nationality	
Germany	Russian	3	France	Taiwanese	5	Britain	Iranian	3	Germany	Chinese	3	Germany	Russian	2
	Pakistani	2		American	1		Taiwanese	2		Russian	3		American	1
	Turkish	4		Israeli	1		American	1		Indian	2		Bangladeshi	1
	Total	14		Total	13		Total	13		Total	24		Total	11
Austria	Saudi	5	Spain	Colombian	4	France	Taiwanese	3	Spain	Nigerian	1	Austria	Saudi	2
	Australian	1		Cuban	1		Chinese	2		Ethiopian	1		Japanese	1
	Total	6		Mexican	1		American	1		Indian	1		Nigerian	1
Britain	Nigerian	6		Total	7		Total	9		Total	13		Total	9
	Chinese	5	Britain	Chinese	2	Germany	Serbian	1	Norway	Serbian	1	France	American	1
	Total	41		Russian	3		Peruvian	1		Syrian	1		Israeli	1
				Nigerian	1			1		Ugandan	1		Iranian	1
				Total	15		Total	6		Total	3		Total	6
Grand Total		126	Grand Total		62	Grand Total		95	Grand Total		100	Grand Total		95



## Appendix VII

### The number of EU Blue Card applications

EU Blue Card applications in 2011		EU Blue Card applications in 2012 (up to 31 Oct)	
Russian	2	Chinese	2
Iranian	1		



## Appendix VIII

### Applications for Registration Certificate, broken down by purpose of stay

Registration certificate applications in 2008					
Citizenship	All applications	Gainful employment	Studies	Family reunification	Other
<b>Total</b>	<b>26,711</b>	<b>13,631</b>	<b>2,750</b>	<b>3,981</b>	<b>6,349</b>
Romanian	16,507	10,942	739	2,489	2,337
German	3,917	532	605	415	2,362
Slovakian	10,633	548	425	240	420
Austrian	806	194	19	106	487
British	534	232	33	156	113

Registration certificate applications in 2009					
Citizenship	All applications	Gainful employment	Studies	Family reunification	Other
<b>Total</b>	<b>20,794</b>	<b>9,210</b>	<b>3,198</b>	<b>3,419</b>	<b>4,967</b>
Romanian	9,000	5,902	352	1,434	1,312
German	3,249	519	346	433	1,951
Slovakian	1,478	534	314	253	377
Austrian	837	193	28	110	103
British	490	220	31	132	103

Registration certificate applications in 2010					
Citizenship	All applications	Gainful employment	Studies	Family reunification	Other
<b>Total</b>	<b>18,552</b>	<b>8,005</b>	<b>2,209</b>	<b>3,094</b>	<b>5,244</b>
Romanian	8,495	5,421	412	1,427	1,235
German	3,524	538	595	506	1,885
Slovakian	1,659	654	278	275	452
Austrian	950	144	25	117	664
British	526	204	49	143	130

Registration certificate applications in 2011					
Citizenship	All applications	Gainful employment	Studies	Family reunification	Other
<b>Total</b>	<b>18,308</b>	<b>8,099</b>	<b>2,291</b>	<b>3,062</b>	<b>4,856</b>
Romanian	8,339	5,354	389	1,444	1,152
German	3,480	646	572	592	1,670
Slovakian	1,617	613	331	263	410
Austrian	890	145	19	109	617
British	559	240	75	116	617

Registration certificate applications in 2012 (up to 31 Oct)					
Citizenship	All applications	Gainful employment	Studies	Family reunification	Other
<b>Total</b>	<b>13,602</b>	<b>6,421</b>	<b>1,627</b>	<b>2,144</b>	<b>3,410</b>
Romanian	6,597	4,499	200	1,104	794
German	2,259	415	457	276	1,111
Slovakian	1,178	426	267	180	305
Austrian	561	81	15	49	416
Italian	382	183	72	49	78



## Appendix IX

### IX/a Number of applications for permanent residence card (by main nationalities) 2010 - 2011

Nationality	2010	Total number of applications in percentage	2011	Total number of applications in percentage	Change	Change in percentage
<b>Romanian</b>	2 668	46.47%	1 961	43.78%	-707	-26.50%
<b>German</b>	926	16.13%	682	15.23%	-244	-26.35%
<b>Ukrainian</b>	375	6.53%	342	7.64%	-33	-8.80%
<b>Slovakian</b>	355	6.18%	167	3.73%	-188	-52.96%
<b>Russian</b>	131	2.28%	130	2.90%	-1	-0.76%
<b>Other</b>	1 286	22.40%	1 197	26.72%	-89	-6.92%
<b>Total</b>	<b>5 741</b>	<b>100.00%</b>	<b>4 479</b>	<b>100.00%</b>	<b>-1 262</b>	<b>-21.98%</b>

### IX/b Number of applications for permanent residence card (by main nationalities) 2009 - 2010

Nationality	2009	Total number of applications in percentage	2010	Total number of applications in percentage	Change	Change in percentage
<b>Romanian</b>	2 505	53.80%	2 668	46.47%	163	6.51%
<b>German</b>	396	8.51%	926	16.13%	530	133.84%
<b>Ukrainian</b>	390	8.38%	375	6.53%	-15	-3.85%
<b>Slovakian</b>	183	3.93%	355	6.18%	172	93.99%
<b>Russian</b>	111	2.38%	131	2.28%	20	18.02%
<b>Other</b>	1 071	23.00%	1 286	22.40%	215	20.07%
<b>Total</b>	<b>4 656</b>	<b>100.00%</b>	<b>5 741</b>	<b>100.00%</b>	<b>1 085</b>	<b>23.30%</b>



## Appendix X

**The number of EEA citizens employed as reported by their employers, data broken down by citizenship (1 January 2008 – 15 November 2012)**

Citizenship	2008	2009	2010	2011	2012*
Belgian	58	52	29	22	31
Bulgarian	65	90	66	67	56
British	185	314	496	1,230	233
British (BIOT**)	1				
Cyprus	3	3	6		4
Czech	83	139	75	108	64
Danish	31	19	15	14	14
Estonian	4	6	5	8	4
Finnish	23	40	19	16	6
French	270	307	210	280	112
Greek	22	16	15	17	37
Dutch	66	99	90	84	82
Irish	9	18	47	83	34
Polish	671	589	298	221	227
Latvian	5	5	2	2	11
Lithuanian	5	4	4	13	61
Liechtenstein					1
Luxemburg	1		2	1	
Maltese		1			2
German	456	722	391	360	277
Norwegian	7	14	3	13	3
Italian	157	135	233	196	138
Austrian	283	429	131	100	72
Portuguese	33	27	21	45	20
Romanian	4,412	12,725	6,983	6,368	4,315
Spanish	48	72	58	113	87
Swiss	15	29	12	8	14
Swedish	32	39	39	36	42
Slovakian	4,883	2,586	3,368	1,615	725
Slovenian	15	35	22	18	19

\* Data collected up to 15 November, consequently, not compatible with full-year data

\*\* British Indian Ocean Territory (Diego Garcia)



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