

**Directorate-General Internal Policies**

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**Citizens Rights and Constitutional Affairs**

**LEGAL MIGRATION LAW AND POLICY TRENDS  
IN A SELECTION OF EU MEMBER STATES**

**BRIEFING PAPER**

This briefing paper offers an overview of the current trends in 'legal migration' law and policy in a selection of EU member states. The main tendencies are ascertained through a comparative analysis of their strategies and priorities in the specific areas of labour migration, family reunification and immigration for the purpose of studies. In particular, this paper looks at the legal and political experiences of and responses pursued by Austria, Belgium, France, Germany, Poland, Spain and The Netherlands. The following issues will be addressed: what are the latest developments in the legal and policy framework covering the admission of third country nationals for the purposes of employment, family reunification and studies? What is the underlying approach taken by EU countries? What are the conditions being applied in each of the cases? Are there any migration policy and legal trends that are common to all the member states of the EU?

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# LEGAL MIGRATION LAW AND POLICY TRENDS IN A SELECTION OF EU MEMBER STATES

Sergio Carrera<sup>1</sup>

## INTRODUCTION

This briefing paper offers an overview of the current trends in ‘legal migration’ law and policy in a selection of EU member states. The main tendencies are ascertained through a comparative analysis of their strategies and priorities in the specific areas of labour migration, family reunification and immigration for the purpose of studies. In particular, this paper looks at the legal and political experiences of and responses pursued by Austria, Belgium, France, Germany, Poland, Spain and The Netherlands. The following issues will be addressed: what are the latest developments in the legal and policy framework covering the admission of third country nationals for the purposes of employment, family reunification and studies? What is the underlying approach taken by EU countries? What are the conditions being applied in each of the cases? Are there any migration policy and legal trends that are common to all the member states of the EU?

## 1. THE NATIONAL LEGAL IMMIGRATION EXPERIENCES AND REGIMES

The experiences of and responses pursued by EU states are very diverse due to their respective regulatory and institutional settings covering the area of ‘legal immigration’.<sup>2</sup> The priorities, challenges and policy responses differ greatly from one state to another according to their divergent national histories of settlement and colonialism, perceived societal problems and labour market needs, as well as the economic and political situation in a given time period. But, are there any common trends in the national arena in the field of legal migration?

While the national level continues to retain the main sovereign powers over policies on legal migration, the influence of the EU is progressively growing. The set of rules in this area is growing rapidly due to the increasing number of laws being enacted in the EU under ‘the Community method’. Member states have therefore adopted new legislative frameworks to transpose these rules into national law. While the EU’s role in this field is imperative, necessary and positive, the few EC Directives on the issue have at times left too much discretion in hands of the member states to justify a process of tightening legal immigration laws which position the immigrant in a vulnerable position vis-à-vis the state, the citizen and the employer.<sup>3</sup>

A trend that can be identified when looking at the situation in the national arena is that immigration laws are becoming more ‘defensive’ and ‘protective’, having as their objective ‘to manage’ and filter the movement of those not holding their nationality. The state continues to find imaginative regulatory ways to limit mobility into and inside its territory, restrict access to its labour market, welfare system and educational system and make family reunification difficult. As we will show in this paper, there is a *restrictive, utilitarian and economically-oriented trend* in the field of legal immigration consisting of two state practices:

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<sup>2</sup> The concept of legal migration includes the rules dealing with the terms of admission, stay and residence, family reunification, as well as the inclusion of immigrants in different societal dimensions (access to employment, education, housing, social benefits, etc.).

<sup>3</sup> Council Directives 2003/109 and 2003/86. T. Balzacq and S. Carrera (2006).

- tightening the rules of admission for employment purposes and applying a *selective and discriminatory approach* that gives priority and more attractive conditions to high-skilled immigrants; toughening up the rules on family reunification and not facilitating the movement of students; and
- Questionable use of ‘integration’ as a legal condition for having access to the rights provided in the rules of legal migration.<sup>4</sup>

## 2. THE LEGAL AND POLICY FRAMEWORK ON LEGAL IMMIGRATION: TRENDS AND DEVELOPMENTS

In this section we present the latest developments in the field of legal migration (labour migration, family reunification and immigration for the purpose of studies). We provide a brief overview of the policy strategies and legal responses being pursued by Austria, Belgium, France, Germany, Poland, Spain and The Netherlands.

It is our view that a *restrictive, utilitarian and economically-oriented approach* is the guiding rationale. In **Austria**, the philosophy behind the new Aliens Act Package seems rather restrictive in nature.<sup>5</sup> The tendency appears to be for Austria to implement the EC Directives in the most limited manner, for it to allow a restrictive interpretation and practice of traditionally strict immigration rules.<sup>6</sup> The double quota system that is applicable for admission and access to employment mainly focuses on the selection of key professionals and self-employed personnel. A similar approach is taken in **Germany**, where the new Immigration Act (*Zuwanderungsgesetz*)<sup>7</sup> has kept the ban on recruiting labour migration (or ‘recruitment stop’), and a clear priority is given to high-skilled migrants.<sup>8</sup> The Aliens Act of 2000 in **The Netherlands** offers to high-skilled migrants or ‘knowledge migrants’ (*kennismigranten*) a more open, faster and simpler administrative procedure than those applicable to the rest of migrant workers. Moreover, the entry into force of the new Act on Integration Abroad (*Wet inburgering buitenland*) on 15 March 2006 has involved the practice of an immigration policy that misuses the tool of integration as a juridical condition for admission, family reunification and social inclusion.<sup>9</sup> In **France**, the new *Projet de Loi relatif à l’immigration et à l’intégration* of 30 June 2006<sup>10</sup> advocates a ‘selective immigration policy’ based on the creation of a new residence permit for ‘skilled and competent’ immigrants and the mandatory nature of the integration contract (*contract d’accueil et d’intégration, CAI*) for them to have access to the rights presented in the rules on legal migration.<sup>11</sup>

<sup>4</sup> For detailed information about this issue see S. Carrera (2006a), (2006b) and (2006c).

<sup>5</sup> This package entered into force on 1 January 2006 and is made up of the Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz*), Federal Law Gazette No. 100/2005 in the version Federal Law Gazette No. 31/2006, the Aliens Police Act, and the Alien’s Employment Act (*Ausländerbeschäftigungs-gesetz*) of 1975. The Settlement and Residence Act (NAG) contains the main rules on immigration in Austria. The package primarily intended to transpose the new package of EU measures on legal migration.

<sup>6</sup> K. König and B. Perchinig, (2005).

<sup>7</sup> The Immigration Act is made up of the Residence Act, the Act on the General Freedom of Movement for EU citizens and amendments to additional legislation. Moreover a series of ordinances have been passed which complement and develop this legislative package: The Employment Ordinance – Foreign Countries (*Beschäftigungsverordnung*, 2004). This legislation was approved by the Bundestag on 1 July 2004, and was officially adopted by the Bundesrat on 9 July 2004. The Residence Act (*Aufenthaltsgesetz*) regulates the entry and stay of immigrants in Germany. It entered into force on 1 January 2005.

<sup>8</sup> N. Cyrus and D. Vogel (2005).

<sup>9</sup> Justitie, Immigratie- en Naturalisatiedienst, *The Civic Integration Examination Abroad*, March 2006.

<sup>10</sup> This law presents a series of restrictive amendments to the *Code de l’entrée et du séjour des étrangers et du droit d’asile* and transposes the new EC Directives on legal migration into the French legal system. See Collectif Uni(e)s contre une immigration jetable (2006).

<sup>11</sup> See Art. 7 of the new law modifying Art. L 314-2 of the Code.

The latest wave of EU enlargement has also played a key role in the development of new rules on legal immigration in **Poland**.<sup>12</sup> Accession acted as the main incentive for legislative reform in the field of immigration in this country. Three bills were adopted to ensure compliance of the former Aliens Law with the JHA acquis.<sup>13</sup> As Loys and Weinar argue, the Polish laws are restrictive and intend to secure the national labour market from third country nationals.<sup>14</sup> Contrary to this trend, the current government in **Spain** adopted Royal Decree 2393/2004, approving the Regulation of Organic Law 4/2000, on the rights and freedoms of foreigners in Spain and their social integration.<sup>15</sup> In contrast with the policies pursued by the previous Spanish government, which focused mainly on border control and restricting immigration (security), the positive consequences of immigration are now openly acknowledged. A series of initiatives have been passed to foster social dialogue and centre the debate on labour migration and the social inclusion of immigrants.<sup>16</sup>

## 2.1. LABOUR MIGRATION

While national practices diverge widely with regard to laws on labour immigration, there are some common features. They may be summarised as follows: 1) a *selective and discriminatory approach*; and 2) the principle of national preference (labour market test) and the key role of the employer.

First, a *selective and discriminatory approach* predominates in the majority of EU member states. This approach gives overwhelming priority to a selected immigration of those considered as beneficial to the national economy because of their skills or economic status. A substantial number of member states practise a *policy of selective high-skilled immigration* consisting of reducing and facilitating the administrative procedures applicable to the admission for employment purposes of those who are labelled as ‘high-skilled, talented or well-educated’.<sup>17</sup> This profit-oriented rationale institutionalises the state distinction between those non-nationals who are ‘useful and profitable’ and are therefore welcome, and all ‘the Others’, who are perceived as a threat, a burden and an enemy for stability and social cohesion and who need to be prevented from entering the country in order to protect the domestic labour market. In practice it is virtually impossible to determine which migrants will fall on which side of the line.

Most of the countries studied have a specific scheme for highly skilled immigrants. **The Netherlands** practises a selective and demand-driven immigration policy that is rooted in economic considerations.<sup>18</sup> An accelerated procedure for high-skilled migrants has been in force since 1 October 2004. High-skilled immigrants will not need to experience the long and tedious bureaucratic procedures of applying for a work permit.<sup>19</sup> In **Germany**, the Employment Ordinance – Foreign Countries provides that highly skilled migrants are directly

<sup>12</sup> K. Iglicka, P. Kazmierkiewicz and A. Weinar (2005).

<sup>13</sup> The main legal instrument on issues of control and regulation of immigration flows in the country is the Aliens Act of 13 June 2003 (Dz.U. 2003, No. 128 item 1175) Ministry of Internal Affairs and Administration Regulation. Rozporządzenie Ministra Spraw Wewnętrznych i Administracji, Dz.U. 2003, No. 147 item 1435 amended Administrative Code (Dz.U. 2000, No. 98 item. 1071). Issues related to immigration in Poland were first regulated in the first version of this Act, which dates back to 1997.

<sup>14</sup> P. Korys and A. Weinar (2005).

<sup>15</sup> This law provided an exceptional measure consisting of a process of normalisation or regularisation. J. Apap and S. Carrera (2005). J. Arango and R. Sandell (2004).

<sup>16</sup> Draft Strategic Citizenship and Integration Plan (*Plan Estratégico de Ciudadanía e Integración*), Secretaría de Estado de Inmigración y Emigración, DG de Integración de Inmigrantes, June 2006.

<sup>17</sup> There is a wide diversity as regards the definition given to high-skilled immigrants in each national legal system.

<sup>18</sup> Section 13 of the Aliens Act provides that “an application for the issue of residence permit shall be granted only if: (b) the presence of the alien would serve a real interest of the Netherlands”. V. Marinelli (2005).

<sup>19</sup> An immigrant is high-skilled if s/he is in possession of a contract and proves that s/he will be earning at least 45,495 or 33,363 euros if his/her age is less than 30 years old. Other countries who define who is a highly skilled immigrant based on salary are: Austria, Belgium and Germany.

eligible for a permanent settlement permit upon entering the German territory.<sup>20</sup> The Federal Employment Agency does not need to give its consent to these categories of immigrants to ensure a quick response to the application by the Foreigners Office. The new Art. 9 of the *Arrêté Royal modifiant l'Arrêté Royal du 9 juin 1999 relatif à l'occupation des travailleurs étrangers* in **Belgium** gives a clear preferential treatment to the category of persons falling within the privileged status of highly skilled workers allowing them to renew their work permit for a new period of four years.<sup>21</sup> The Settlement and Residence Act of **Austria** provides in Art. 41 a special “settlement permit – key worker” which will be granted in an accelerated procedure in the case of qualified personnel.<sup>22</sup>

In **France**, immigration is regulated according to the perceived economic needs of the country. The main principle seems to be that nobody should become a public burden, and hence that the applicant must have sufficient income and sickness/health insurance coverage. The *Projet de Loi relatif à l'immigration et à l'intégration* presents a new residence permit called “the residence permit mentioning competences and skills” (*La carte de séjour portant la mention compétences et talents*).<sup>23</sup> This permit shall be granted to those immigrants who, because of their special competences or skills, may contribute significantly and durably to the economic situation or the intellectual, scientific, cultural, humanitarian or sportive development of France and of the country of his/her nationality.<sup>24</sup>

Other countries do not have a specific system for high-skilled immigration. In the case of **Poland**, while the policy priorities of the Polish Immigration Law seem to give preference to highly skilled and qualified migrants,<sup>25</sup> there are no specific rules addressing or facilitating that goal.<sup>26</sup> **Spain** does not have a general system for the ‘highly-skilled’ either. The annual quota (*contingente*) system is one of the main mechanisms for legal labour migration. The government annually approves a quota that provides a technical estimation of the number of workers who are deemed as ‘necessary’ by employers and the Autonomous Communities.<sup>27</sup>

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<sup>20</sup> Section 19 provides that highly qualified persons are: scientists with special technical knowledge, teaching personnel in prominent positions or scientific personnel in prominent positions, or specialists and executive personnel with special professional experience who receive a salary corresponding to at least twice the earnings ceiling of the statutory health insurance scheme. Also, Section 18 says that labour migration may take place taking into account “the requirements of the German economy, according due consideration to the situation on the labour market”. “In justified individual cases, a residence permit will be issued for the purpose of taking up employment when there is a public interest, and in particular a regional interest or an interest relating to the economy or the labour market”.

<sup>21</sup> Art. 9.6. *Arrêté Royal modifiant l'arrêté royal du 9 juin 1999 relative à l'occupation des travailleurs étrangers*, 6 Février 2003. (AR 2003-02-06/41). S. Gsir et al. (2005).

<sup>22</sup> Special legal rules also exist for the health sector. Qualified personnel are defined according to income threshold. Workers will be qualified as such if they earn more than 60% of the income threshold for social security contributions (*Höchstbeitragsgrundlage*). Policy Report, National Contact Point Austria (2005).

<sup>23</sup> See R. Blio, C. Wihl de Wenden and N. Meknache (2003). Article L341-2 Code du Travail (Loi n° 2005-32 du 18 janvier 2005 art. 147 Journal Officiel du 19 janvier 2005 en vigueur le 1er janvier 2006).

<sup>24</sup> This type of residence permit is valid for three years and may be renewed once if the holder is a national of one of the countries having special historical ties (*zone de solidarité prioritaire*) with France. The permit allows the bearer to carry out a professional activity of his/her choice as part of the law.

<sup>25</sup> Art. 53.1.2. The Aliens Law which states that a residence permit will be granted to an immigrant who “carries out an economic activity which is beneficial to the national economy and in particular, contributes to the development of investments, transfer of technology, innovations or job creation”.

<sup>26</sup> In 2004 a few amendments were introduced in the new laws regulating the access to labour market by immigrants, yet there is no system for highly qualified immigrants. Regulation of 9 February 2004 of the Minister of Labour, Economy and Social Policy to amend the Regulation concerning detailed principles on issuance of promises of work permits and work permits to foreign workers, of 19 December 2001, Text No. 236. *Dziennik Ustaw*, 25 February 2003, No. 27, pp. 1494-1503.

<sup>27</sup> Quotas are established according to the labour sector, territory and kind of employment. The competent authority drawing up the *contingente* is the *Secretaría de Estado de Inmigración y Emigración*, after consulting the

The administrative mechanisms for their incorporation into the labour market are simplified.<sup>28</sup> It also encourages hiring immigrant workers in the countries of origin.<sup>29</sup>

A second trend that we identified is the application of *the principle of national preference* by which, before those immigrants who are not highly skilled are allowed to take up a job, a 'labour market test' is carried out by the competent authorities to check whether the post cannot be filled by a national or any other privileged immigrant.<sup>30</sup> *The role of the employer* is a very important common ingredient in the initiation, continuity and ending of the processes of immigration for labour purposes. In **Germany**, there will be first an 'individual labour market test' proving that the employment of an immigrant does not have a negative impact on the national labour market and that no other privileged worker is available.<sup>31</sup> In **Austria**, in reaching the ceilings established in the quota immigration system preferential treatment will be given to Austrian nationals or other privileged immigrants. In **The Netherlands**, the employer plays a key role in the process of immigration for labour purposes. Legal migration for reasons of employment will only take place if the migrant finds an employer who will initiate the procedure by signing a declaration, and the existence of an insufficient labour supply between EU/EEA to meet this labour shortage has been proven.<sup>32</sup> In **France**, the new law allows legal residence to be given if the applicant has a job contract, something which makes the position of the immigrant more vulnerable towards the employer.<sup>33</sup>

## 2.2. FAMILY REUNIFICATION: TOWARDS A RECOGNISED RIGHT?

Immigration rules are subject to a number of rigid conditions that will need to be met in order for the immigrant to have the right to be reunited with her/his family.<sup>34</sup> This tendency seems to be shared by a majority of states which have enacted new legislation on immigration justified by their obligation to transpose Council Directive 2003/86/EC on the right to family reunification.<sup>35</sup> As to the personal scope, the shared norm seems to be that the sponsor's spouse, minor children of the couple, including adopted ones, minor children under the custody of either or both are eligible for family reunification.<sup>36</sup> Among the criteria that are being applied for the family reunion to take place we may underline the need by the sponsor to prove that s/he has sufficient financial resources and the existence of adequate housing

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Tripartite Employment Commission on Immigration, which is a permanent platform for cooperation between the state and the social partners (employers and trade unions). A. Balch (2005).

<sup>28</sup> It offers the possibility for them to obtain visa and residence and work permit at the same time in the embassy.

<sup>29</sup> See Art. 77-83 of the Royal Decree 2393/2004.

<sup>30</sup> E. Guild (2004). Austria applies a labour market test for highly skilled immigrants falling within special schemes.

<sup>31</sup> Those categories of employment where the Federal Employment Agency (*Bundesagentur für Arbeit*) is required to give its favourable consent (labour market test) are provided in Sections 17-31 of the Employment Ordinance – Foreign Countries..

<sup>32</sup> *Bringing a foreign employee to the Netherlands*, Justitie, Immigratie- en Naturalisatiedienst, January 2006. See Apap (2002) and Apap (2004).

<sup>33</sup> Cimade (2006).

<sup>34</sup> See Art. 8 of the European Convention of Human Rights and Fundamental Freedoms.

<sup>35</sup> Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251/12, 3.10.2003.

<sup>36</sup> Art. 10 and 40 of the *Loi du sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers*, 15 December 1980 in Belgium; Art. 53.2. of the Aliens Act of 13 June 2003 (Dz.U. 2003 No. 128 item 1175) Ministry of Internal Affairs and Administration Regulation in Poland, Rozporządzenie Ministra Spraw Wewnętrznych i Administracji, Dz.U. 2003, No. 147 item 1435 amended Administrative Code (Dz.U. 2000, No. 98 item. 1071); Art. 46 and 47 of the Austrian Federal Act concerning settlement and residence in Austria (the Settlement and Residence Act –SRA), Federal Law Gazette No. 100/2005 in the version Federal Law Gazette No. 31/2006; Art. 39 and 42 of the Royal Decree 2393/2004, approving the Regulation of the Organic Law 4/2000, on the rights and liberties of foreigners in Spain and their social integration, 30 December 2004, Spain.

according to the standards in the receiving state, in addition to some other norms which are characteristic of the national legal system.

In **France**, family reunion may be refused if the sponsor does not prove that they are in possession of sufficient and stable resources and have adequate housing (Art. L 411-5 of the Code). The new *Projet de Loi* introduces significant restrictions in this field. It is now provided in Art. 44 that immigrants who reside legally in France may after 18 months apply for the right to family reunification of his/her spouse and their children if they are under the age of 18.<sup>37</sup> The new law also imposes the conditionality of integration into the community on the family members in order for them to be allowed to reunite and obtain a residence permit.<sup>38</sup>

**The Netherlands** shares the same position towards the use of integration as a condition for family reunification to be allowed. In the same line, Art. 14 of the Settlement and Residence Act in **Austria** also provides a mandatory integration agreement (*Integrationsvereinbarung*), and Art. 46 submits family reunification to a sub-quota of the immigration quota.<sup>39</sup> In **Germany** the Residence Act (*Aufenthaltsgesetz*) regulates the entry and stay of immigrants in Germany. Section 32.2 imposes the conditionality of integration when the minor arrives in Germany after her/his parents.<sup>40</sup> In **Spain** the role of the Supreme Court (*Tribunal Supremo*) has been very important in interpreting immigration law proactively and openly.<sup>41</sup> It is therefore not so important to look at the precise wording of the articles provided by the law and that their conditions are met, but to show evidence of the existence of a material and personal emotional connection between the family members.<sup>42</sup> In **Belgium** the rules on family reunification have been modified recently and this legislation is expected to enter into force soon.<sup>43</sup>

### 2.3. IMMIGRATION FOR STUDY PURPOSES: FACILITATING MOBILITY?

The common trend here seems to be the existence of highly bureaucratic legal procedures which impede the movement of students. The real impact of national transposition and practical implementation of Council Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies remains to be seen.<sup>44</sup> At present, the conditions shared by most member states for them to be granted a residence permit as students usually are: presenting a certificate of admission to studies, proof that the person has sufficient financial means for subsistence, a medical certificate and a certificate declaring that s/he does not have any criminal record. Similar criteria are required to be met in Belgium,<sup>45</sup> in France,<sup>46</sup> in Poland,<sup>47</sup> Spain,<sup>48</sup> etc.

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<sup>37</sup> In the previous version of this article the period of legal residence necessary for applying was one year and the age was unspecified as it said only minor children.

<sup>38</sup> See art. 45.

<sup>39</sup> The Aliens Reform of 2005 has established that the application of the sub-quota system will not be applicable when the application has been under consideration for a period of three years.

<sup>40</sup> The German government succeeded in pushing through the introduction of the last paragraph of Article 4 of the EC Directive on the right to family reunification 2003/86. See H. Schneider and A. Wiesbrock (2005). This provision says that "A minor, unmarried child who is 16 years of age or older shall be granted a residence permit if he or she has a command of the German language or if it appears on the basis of the child's education and way of life to date that he or she will be able to integrate into the way of life which prevails in the Federal Republic of Germany and both parents or the parent possessing the sole right of care and custody hold a residence permit or settlement permit".

<sup>41</sup> Art. 39 and 42, Royal Decree 2393/2004, approving the Regulation of the Organic Law 4/2000, on the rights and liberties of foreigners in Spain and their social integration, 30 December 2004. Ortega (2005).

<sup>42</sup> P. Santolaya (2005).

<sup>43</sup> *Projet de Loi modifiant la loi du 15 décembre 1980, sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers*, 4 juillet 2006, DOC 51 2478/008, Chambre des Représentants de Belgique.

<sup>44</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.

<sup>45</sup> Art. 59 *Loi sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers*. Art. 58 however says that in those cases where no proof has been presented concerning the medical certificate and the certificate



Some of the EU states allow ‘immigrant-students’ access to employment during their studies and at times even after their completion. In **Belgium** the law offers the possibility for students to work where it does not exceed 20 hours per week and is compatible with their studies.<sup>49</sup> In **France**, those holding a temporary ‘student’ residence permit may apply for authorisation to have access to employment.<sup>50</sup> If the authorisation is granted they will have this right but subject to it being a part-time job. In **Spain**, Art. 90 of Royal Decree 2393/2004 establishes that immigrants will be authorised to take up employment activities when these are compatible with the studies and the income received does not represent their main resource of subsistence in the country. The employment contract must also be part time, and in those cases where the contract is full time the total duration of the employment contract must not exceed three months and must not coincide with the given institution’s educational periods. According to the Immigration Law in **Germany**, foreign students may remain in the country for one year following completion of their studies in order to find a job commensurate with their academic degree.<sup>51</sup> In **Poland** the initiative to offer a pro-student immigration policy was finally rejected in the debates about the Aliens Act of 13 June 2003.<sup>52</sup>

The *utilitarian approach* highlighted in the beginning of the paper can be also seen in **Scotland**, where the *Fresh Talent Initiative: Working in Scotland Scheme* has been implemented since summer 2005. This initiative offers a visa extension scheme designed to help overseas ‘talented graduates’ from Scottish educational institutions to stay and work in Scotland.<sup>53</sup> A similar situation applies in **Austria**, where according to Art. 41.5 of the Settlement and Residence Act (NAG), holders of a valid residence permit for students, may, after completing their studies at a university, be issued a ‘settlement permit – key worker’.

### 3. CONCLUSIONS

The *restrictive, utilitarian and economically-oriented trend* in the field of legal migration at the EU national level is based on a questionable confidence of state authorities in their ability to determine the future needs of the labour market. Moreover, a policy of selecting high-skilled and educated immigrants may be described as ‘discriminatory’ in its nature and effects. Facilitating the admission and residence of only those falling within the domestic definition of ‘highly skilled or talented immigrant’ creates direct discrimination against those not falling within that privileged status as defined by national law.

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proving that applicants do not have a criminal record the Ministry can nevertheless, according to the particular circumstances, grant the residence permit to the student.

<sup>46</sup> Art. 9 of the *Projet de Loi relatif à l’immigration et à l’intégration*.

<sup>47</sup> Art. 53.6. Aliens Act of 13 June 2003 provides that “An alien is obliged to confirm his/her will to take up or continue studies on the territory of the Republic of Poland by providing a certificate of admission to studies, issued by the institution appropriate for his/her studies.”

<sup>48</sup> Art. 86 of the Royal Decree 2393/2004.

<sup>49</sup> Art. 17 of *Loi du 15 décembre 1980 sur l’accès au territoire, le séjour, l’établissement et l’éloignement des étrangers*.

<sup>50</sup> Art. 9 of the new law and Art. L313-7 of *Code de l’entrée et du séjour des étrangers et du droit d’asile*.

<sup>51</sup> Section 16.4 § “After successful completion of the studies, the residence permit may be extended by up to one year for the purposes of seeking a job commensurate with this qualification, provided that it is permissible to fill the vacancy concerned with foreigners”.

<sup>52</sup> See Art. 53 of the Aliens Law.

<sup>53</sup> To qualify for an extension of stay under this initiative the candidate must meet the following requirements: having been awarded a Higher National Diploma or a UK-recognised undergraduate degree, Master’s degree or PhD at a Scottish publicly-funded institution of further or higher education or *bona fide* private education institution; have completed the course concerned in the last 12 months; have lived in Scotland for an appropriate period while studying for the HND, undergraduate degree, Master’s degree or PhD; and having had the intention to seek and take work in Scotland during any leave granted under the scheme. For more info, see [www.scotlandistheplace.com](http://www.scotlandistheplace.com).

An open approach that respects human rights should guide the discussions and responses at national and EU level in the area of legal migration.<sup>54</sup> This approach would be based on the direct dismissal of the idea that the immigrant is merely human capital to be deployed according to the economic needs and priorities of the receiving country. It would also imply the abandonment of the existing restrictive rules on admission for family reunification and studies. Immigrants are holders of the set of human rights recognised by common international and European legal instruments, such as the ECHR, the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families of 1990, the ILO Conventions, etc.<sup>55</sup> Economic and political considerations must not prevail over a comprehensive set of human rights such as non-discrimination, access to justice and the principle of equality, fair treatment and solidarity.

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<sup>54</sup> See S. Carrera and M. Formisano (2005).

<sup>55</sup> See European Economic and Social Committee, Opinion on the International Convention of Migrants, SOC/173, 30 June 2004, Brussels.

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## ANNEX 1. PROFILE AUSTRIA

| Main Legal Framework                                                                                                                                                                                                                                                                                                                                                                                                 | Labour Migration                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Family Reunification                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Students                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Institutional framework                                                                                                                                                                                                                                                                                |
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| <p>The new Austrian's Aliens Act Package that entered into force on 1<sup>st</sup> January 2006. This package is composed by the Settlement and Residence Act (<i>Niederlassungs- und Aufenthaltsgesetz</i>) and the Aliens Police Act, and the Alien's Employment Act (<i>Ausländerbeschäftigungsgesetz</i>) of 1975. The Settlement and Residence Act (NAG) contains the main rules on immigration in Austria.</p> | <p><b>Personal scope:</b></p> <p>Residence permits subject to the annual quota restrictions:</p> <ol style="list-style-type: none"> <li>1. Key professionals and self-employed key personnel and their family members</li> <li>2. Third country nationals holding an EC long-term residence status entering for employment purposes</li> <li>3. Family Members of permanent legal residents or long-term stay</li> <li>4. Nationals of an EU Member State and their family who are long-term residents</li> <li>5. Family Members of an Austrian, Swiss and EEA national not having already exercised their rights of free movement in the EU</li> <li>6. Persons of independent means, pensioners and family members</li> </ol> <p><b>Conditions / criteria:</b></p> | <p><b>Personal scope</b></p> <ol style="list-style-type: none"> <li>1. The spouse of the sponsor with majority of age</li> <li>2. Minor children, and adopted children.</li> </ol> <p><b>Conditions / criteria</b></p> <ul style="list-style-type: none"> <li>• Family Reunion Annual Quota (this restriction is lifted after three years of having processed the application for family reunification)</li> <li>• Proof of non dependence on social welfare system (social security, health certificate and housing)</li> <li>• No criminal records (public order clause)</li> <li>• Integration contract (Integrationsvereinbarung)</li> </ul> <p><b>Provisions on the right to family reunification</b></p> <p><b>Article 46.</b> (1) Family members of third-country nationals pursuant to Art. 42 may be issued a "settlement permit- for private purpose" if:</p> <ol style="list-style-type: none"> <li>1. the requirements of the chapter I are satisfied and</li> <li>2. in case of family members of third-country nationals within the meaning of Art. 42, paragraph 1, a space within the quota system is available</li> </ol> <p>(2) Family members of third-country nationals</p> | <p><b>Article 64.</b> (1) Third-country nationals may be granted a residence permit as students if they:</p> <ol style="list-style-type: none"> <li>1. meet the requirements of the chapter I</li> <li>2. pursue a ordinary or extraordinary study at a university, university of applied sciences, or accredited private university, and in case of a CVET university course, the attending of such is not solely for the purpose of imparting of language. A liability declaration is admissible.</li> </ol> <p>(2) The pursue of an employment activity is subject to the Aliens Employment Act. This activity shall not detract from the actual purpose of residence which is study.</p> | <p>- Ministry of Interior</p> <p>- Asylum and Migration Advisory Board (Beirat für Asyl-und Migrationsfragen)</p> <p>- The Menschenrechtsbeirat (Human Rights Advisory Board)</p> <p>-The competent authority is the governor of the province where the application is proceeded (Landeshauptmann)</p> |

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|  | <ol style="list-style-type: none"> <li>1. Quota Regulations</li> <li>2. No criminal records (public order clause)</li> <li>3. Integration contract (Integrationsvereinbarung)</li> </ol> <p><b>Section 1: Settlement of third-country nationals</b></p> <p><b>Article 41.</b> (1) Third-country nationals may be issued a “settlement permit: key worker” if:</p> <ol style="list-style-type: none"> <li>1. the requirements set out in the chapter I are fulfilled;</li> <li>2. a quota space is available and</li> <li>3. a written notice of the regional office or an expert opinion from the provincial office of the Labour Market Service pursuant to Art. 12, paragraph 4 or 24 of the AuslBG is available.</li> </ol> <p>(2) Decisions relating to the granting of a “settlement permit- key worker” shall be taken by the competent authority in accordance with the provisions of Art. 12 or 24 of the AuslBG, without delay and within six weeks at the latest, following submission of the application. The obtaining of a written communication from the regional office or an expert opinion from the provincial office of the Labour Market Service shall be dispensed with if the application:</p> | <p>according to Art. 44, paragraph 2 may be granted a quota-free “settlement permit- for private purpose” if they fulfil the requirements of the chapter I.</p> <p>(3) Family members of key workers (Art. 41) may be issued a “settlement permit- restricted” for a period of validity not exceeding eighteen months if:</p> <ol style="list-style-type: none"> <li>1. they meet the requirements of the chapter I</li> <li>2. a space within the quota system is available.</li> </ol> <p>(4) Family members of third-country nationals shall be granted a “settlement permit- restricted” if:</p> <ol style="list-style-type: none"> <li>1. they fulfil the requirements of the chapter I</li> <li>2. a space within the quota system is available, and</li> <li>3. the sponsor <ol style="list-style-type: none"> <li>a) possesses a residence title “long-term resident’s EC residence permit”;</li> <li>b) holds a “settlement permit- unrestricted”</li> <li>c) has a settlement permit, except “settlement permit- for private purpose” within the meaning of Art. 42 and has complied with the integration agreement (Art. 14) or</li> <li>d) is entitled to asylum and Art. 34, paragraph 2 of the Asylum Act is not admissible</li> </ol> </li> </ol> <p>(5) Family members of third-country nationals shall, in the event of paragraph 4 Z 3 a, b and d, and if they continue to fulfil the requirements of the chapter I, be granted a “settlement permit- unrestricted” following the expiry of the twelve-month period from the granting of a settlement permit.</p> <p><b>Section 2: Family members and other relatives of sponsors permanently residing in Austria</b></p> |  |  |
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|  | <p>1. shall be refused on grounds of lack of form (Art. 21-24)</p> <p>2. shall be rejected on grounds of immediate obstacles to the issue of settlement permit (Art. 11, paragraph 1) or</p> <p>3. shall be refused on grounds of non-availability of a quota space</p> <p>(3) If a negative decision by the regional office of the Labour Market Service concerning the admission of a key worker (Art. 12, AEA) becomes final and binding, the procedure shall be discontinued without formality. If the expert opinion of the provincial office of the Labour Market Service relating to the application for granting of a settlement permit for key worker (Art. 24, AEA) is negative, the application shall be dismissed without further delay.</p> <p>(4) The initial settlement permit for a key worker shall be issued for a period of validity not exceeding eighteen months.</p> <p>(5) Holders of a valid residence permit for students (Art. 64) may, in the course of the procedure for changing of purpose after completing of their studies at a university, vocational school or accredited private university be issued with a “settlement permit-key worker” if the requirements set out pursuant to paragraph 1 Z 1 and 3</p> | <p><b>Residence title- “family member” and “settlement permit- relative”</b></p> <p><b>Article 47.</b> (1) Sponsors within the meaning of paragraph 2-4 are Austrian nationals and EEA nationals or Swiss nationals who reside permanently in Austria and have the right of free movement within the EU.</p> <p>(2) Third-country nationals who are family members of the sponsors under paragraph 1 shall be granted a residence title “family member” if they fulfil the requirements of the chapter I. This residence title shall be renewable if the requirements of the chapter I are satisfied, once for the period of twelve months, afterwards for a twenty-four months period in each case.</p> <p>(3) Relatives of the sponsors within the meaning of paragraph 1 may, upon application, be issued a quota-free “settlement permit- relative” if they meet the requirements of the chapter I and:</p> <p>1. are first-degree relatives in the direct ascending line of the sponsor or his spouse, in case they actually enjoy family support</p> <p>2. are unmarried partner, who can provide evidence for the existence of a long-term relationship and who enjoy financial support from the sponsor in the country of origin; or</p> <p>3. are other relatives of the sponsor who</p> <p>a) have already enjoyed financial support through the sponsor in the country of origin</p> <p>b) have already lived with the sponsor under the same roof in the country of origin and were financially supported by him</p> |  |  |
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|  | are fulfilled. | <p>c) on grounds of their severe health problems are dependent on the personal care through the sponsor</p> <p>Without prejudice to his own maintenance, the sponsor shall in any case submit a liability declaration.</p> <p>(4) Relatives of the sponsors within the meaning of paragraph 1 who hold a “settlement permit-relative” (paragraph 3) may be granted a “settlement permit-restricted” if:</p> <ol style="list-style-type: none"> <li>1. they fulfill the requirements of the chapter I</li> <li>2. a quota space is available</li> <li>3. a work permit pursuant to the Aliens Employment Act is available.</li> </ol> |  |  |
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## ANNEX 2. PROFILE BELGIUM

| Main Legal Framework                                                                                                                                                                                                                                                                                                         | Labour Migration                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Family Reunification                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Students and Vocational Training                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Institutional framework                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| <p>LOI DU 15 DÉCEMBRE 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers.</p> <p>Arrêté Royal Portant exécution de la loi du 30 avril 1999 relative à l'occupation des travailleurs étrangers, 26.06.1999.</p> <p>Arrêté Royal modifiant l'arrêté royal du 9 juin 1999 relative à</p> | <p>CHAPITRE III. - Catégories de permis de travail et dispositions générales. Art. 3 Le permis de travail appartient à l'une des catégories suivantes: 1° le permis de travail A : le permis de travail d'une durée illimitée et valable pour toutes les professions salariées; 2° le permis de travail B : le permis de travail d'une durée déterminée, de maximum douze mois et limité à l'occupation auprès d'un seul employeur; (3° le permis de travail C : le permis de travail d'une durée limitée et valable pour toutes les professions salariées.</p> <p>"A" Work Permit : Art. 16 Le permis de travail A est accordé au ressortissant étranger qui justifie, sur une période maximale de dix ans de séjour légal et ininterrompu précédant immédiatement la demande, de quatre années de travail couvertes par un permis B.</p> <p>Art. 9 Par dérogation à l'article 8, il n'est pas tenu compte de la situation du marché de l'emploi pour l'octroi de l'autorisation d'occupation lorsqu'il s'agit : 6. du personnel hautement qualifié pour autant que la durée de leur occupation n'excède pas quatre ans et que leur rémunération annuelle dépasse le montant indiqué à l'article 67 de la loi du 3 juillet 1978 relative aux contrats de travail, calculé et adapté</p> | <p><b>Article 10</b> sont de plein droit admis à séjourner plus de trois mois dans le Royaume:</p> <p>4° le conjoint étranger d'un étranger admis ou autorisé à séjourner dans le Royaume ou autorisé à s'y établir, qui vient vivre avec lui à condition que les deux personnes concernées soient âgées de plus de dix-huit ans, ainsi que leurs enfants s'ils sont à leur charge, et viennent vivre avec eux avant d'avoir atteint l'âge de dix-huit ans, à moins qu'un accord international liant la Belgique ne prévoie des dispositions plus favorables.</p> <p><b>Article 40</b></p> <p>§ 3.- Sauf dispositions contraires de la présente loi, sont assimilées à l'étranger C.E., visé au §2, 1°, 2° et 3°, quelle que soit leur nationalité, les personnes ciaprès, à condition qu'elles viennent s'installer ou s'installent avec lui :</p> <p>1° son conjoint ;</p> <p>2° ses descendants ou ceux de son conjoint, âgés de moins de 21 ans ou qui sont à leur charge ;</p> <p>3° ses ascendants ou ceux de son conjoint qui sont à leur charge ;</p> | <p><b>Article 58</b></p> <p>1° une attestation délivrée par un établissement d'enseignement conformément à l'article 59;</p> <p>2° la preuve qu'il possède des moyens de subsistance suffisants;</p> <p>3° un certificat médical d'où il résulte qu'il n'est pas atteint d'une des maladies ou infirmités énumérées à l'annexe de la présente loi;</p> <p>4° un certificat constatant l'absence de condamnations pour crimes ou délits de droit commun, si l'intéressé est âgé de plus de 21 ans.</p> <p>A défaut de production du certificat prévu au 3° et au 4° de l'alinéa 1er, le Ministre ou son délégué peut néanmoins, compte tenu des circonstances, autoriser l'étranger à séjourner en Belgique pour y faire des études.</p> <p>Lors de circonstances exceptionnelles, l'autorisation de séjourner plus de trois mois dans le Royaume peut être demandée par l'étranger selon les modalités</p> | <p>- <b>L'Office des Etrangers</b> assiste le Ministre de l'Intérieur dans la gestion de la politique des étrangers.</p> <p>L'Office des étrangers veille à ce que l'étranger respecte les règles en matière d'immigration et de séjour. Si c'est le cas, l'Office des étrangers enverra des instructions afin de délivrer un visa ou un permis de séjour à l'intéressé.</p> <p><b>Compétences:</b> Examen des demandes de visa dans le cadre de l'article 10, alinéa 1er, 1° et 4° (membres de famille d'un ressortissant non E.E.E.(1)) et de l'article 40 (membres de famille d'un ressortissant de l'E.E.E. ou d'un Belge) de la loi du 15 décembre 1980, y compris les demandes en vue d'obtenir un visa de retour.</p> <p>- Examen des demandes de visa introduites dans le cadre d'une adoption.</p> <p>- Suivi de ces décisions à partir de l'entrée sur le territoire.</p> |

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| <p>l'occupation des travailleurs étrangers, 6 Février 2003</p> | <p>suivant l'article 131 de la même loi; cette période de quatre ans peut être renouvelée une fois pour une nouvelle période de quatre ans. L'autorité compétente pour délivrer le permis peut subordonner le renouvellement de celui-ci au respect par l'employeur des conditions qui lui ont été imposées par cette autorité, au moment de la première délivrance du permis et dans la perspective d'un renouvellement éventuel de celui-ci, et qui visent la lutte proactive contre la pénurie sur le marché de l'emploi et le fait de tendre vers une participation au travail équilibrée des groupes à risque; La limitation de la durée de l'occupation visée à l'alinéa précédent, n'est pas d'application si l'occupation ne s'exerce pas dans le cadre d'un détachement de travailleurs salariés et pour autant : - que le travailleur soit ressortissant d'un pays avec lequel l'Union européenne a clôturé les négociations d'adhésion dans le cadre de l'élargissement de l'Union européenne; ou que sa rémunération annuelle dépasse le montant indiqué à l'article 69 de la loi précitée du 3 juillet 1978, calculé et adapté suivant l'article 131 de la même loi.</p> | <p>4° le conjoint des personnes visées au 2° et au 3°.</p> <p><b>§ 4.-</b> Sauf dispositions contraires de la présente loi, sont assimilées à l'étranger C.E. visé au §2, 4° et 6°, quelle que soit leur nationalité, les personnes ci-après, à condition qu'elles viennent s'installer ou s'installent avec lui :</p> <p>1° son conjoint;</p> <p>2° ses descendants ou ceux de son conjoint qui sont à leur charge;</p> <p>3° ses ascendants ou ceux de son conjoint qui sont à leur charge;</p> <p>4° le conjoint des personnes visées au 2° et au 3°.</p> <p><b>§ 5.-</b> Sauf dispositions contraires de la présente loi, sont assimilés à l'étranger C.E. visé au §2, 5°, quelle que soit leur nationalité, son conjoint et ses enfants ou ceux de son conjoint qui sont à leur charge, à condition qu'ils viennent s'installer ou s'installent avec lui.</p> <p><b>§ 6.-</b> Sont également assimilés à l'étranger C.E. le conjoint d'un Belge, qui vient s'installer ou s'installe avec lui, ainsi que leurs descendants âgés de moins de 21 ans ou à leur charge, leurs ascendants qui sont à leur charge et le conjoint de ces descendants ou de ces ascendants, qui viennent s'installer ou s'installent avec eux.</p> | <p>prévues à l'alinéa 3 de l'article 9.</p> <p><b><u>Article 17 : « C » Residence Permit</u></b></p> <p>6. aux étudiants séjournant légalement en Belgique qui sont inscrits dans un établissement d'enseignement en Belgique pour suivre un enseignement de plein exercice, pour des prestations en dehors des vacances scolaires, pour autant que leur occupation n'excède pas vingt heures par semaine et qu'elle soit compatible avec leurs études</p> | <ul style="list-style-type: none"> <li>- Examen des demandes de séjour introduites en Belgique en application des articles 10 et 40 de la loi du 15 décembre 1980.</li> <li>- Examen des demandes d'autorisation de séjourner plus de trois mois en Belgique, y compris les demandes en vue de faire des études en Belgique.</li> <li>- Suivi de ces décisions à partir de l'entrée sur le territoire. - Gestion des dossiers long séjour (plus de trois mois) de ressortissants E.E.E. et non E.E.E.</li> <li>- Examen des demandes de visa court séjour (3 mois au maximum). - Suivi des décisions à partir de l'entrée sur le territoire.</li> <li>- Gestion des dossiers court séjour des étrangers ((suivi et prolongation des déclarations d'arrivée (délivrées entre autres dans le cadre d'une procédure d'adoption) et/ou des délais accordés pour quitter le territoire.</li> </ul> <p><a href="http://www.dofi.fgov.be/fr/structuur/new/structuur_new.htm">http://www.dofi.fgov.be/fr/structuur/new/structuur_new.htm</a></p> |
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|  |  |  |  | <b>- Ministère de l'Emploi et du Travail</b> – Article 16 of the Arrêté Royal (AR 2003-02-06/41) – surveiller le respect de la loi et de ses arrêtés d'exécution. |
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**PROJET DE LOI modifiant la loi du 15 décembre 1980, sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers,**  
4 juillet 2006, DOC 51 2478/008, CHAMBRE DES REPRÉSENTANTS DE BELGIQUE

## **II. LE REGROUPEMENT FAMILIAL<sup>56</sup>**

The transposition of the Council Directive 2003/86 is presented as the main justification for the legislative reform presented in the projet de loi. The projet distinguishes between:

- Family reunification of immigrants who have been admitted on the basis of an authorization of permanent residence;
- Family reunification of immigrants holders of rights of residence of a limited period – temporary residence

The time of validity of the residence permit that will be granted to the family member will be in accordance with the limitations and conditions of the right of residence of the sponsor.

The number of foreigners that can benefit the right to family reunification is enlarged in order to comply with the Council Directive:

« 1. Outre le conjoint, les enfants mineurs et les enfants majeurs handicapés, à l'avenir, les parents de l'étranger mineur reconnu réfugié pourront faire valoir un droit au regroupement familial.

2. Afin d'assurer la sécurité juridique, on a également choisi d'inscrire dans la loi la réglementation contenue dans la circulaire du 30 septembre 1997 relative à l'octroi d'une autorisation de séjour sur la base de la cohabitation dans le cadre d'une cohabitation durable. De cette façon, l'étranger lié, par un partenariat enregistré conformément à une loi, à un étranger admis ou autorisé à séjourner en Belgique peut également obtenir une autorisation de séjour. Il est cependant stipulé pour ce groupe que le droit de séjour est lié à la preuve d'une relation stable qui dure depuis au moins un an.

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<sup>56</sup> Text taken from the Projet de Loi DOC 51 2478/008.

3. L'ancienne interdiction de «la cascade» est supprimée de la loi, dès lors qu'une telle interdiction, dans sa forme actuelle, n'est plus autorisée par la réglementation européenne. La personne ayant acquis elle-même un droit de séjour au titre du regroupement familial pourra donc à l'avenir constituer à son tour la base d'un nouveau regroupement familial.

Les possibilités de recours au droit au regroupement familial sont donc élargies ».

The *projet* expressly mentions that because of the Government knows about the abuses that take place under the framework of family reunification, a number of supplementary conditions are needed. In the light of this a system of control is elaborated in order for the authorities to have the power to intervene after family reunification has been granted to check whether the family unit really exists or not, that the conditions have been met and that no fraud has occurred.

### **Supplementary Conditions**

The following supplementary conditions are added:

« Outre ces conditions, il est clair que les conditions existantes sont maintenues. Un regroupement familial ne peut avoir lieu :

- que si les liens de parenté ou d'alliance peuvent être prouvés;
- et que si l'étranger qui souhaite venir en Belgique ne constitue pas un danger pour l'ordre public, la sécurité nationale et la santé publique.

Dans le projet de loi, le gouvernement a choisi de ne pas permettre le regroupement familial pour les ascendants. Il va de soi qu'un ascendant peut demander une autorisation de séjour ».

### **Contrôles**

« Après un regroupement familial, l'administration doit avoir la possibilité de vérifier si les étrangers concernés forment de facto une cellule familiale et remplissent les autres conditions. Auparavant, l'Office des étrangers disposait d'un délai de contrôle d'un an, éventuellement prorogeable de trois mois. La pratique enseigne qu'un tel délai est trop court.

C'est la raison pour laquelle le projet de loi prévoit un délai de contrôle de trois ans. Ce délai est subdivisé en deux phases:

1. Au cours des deux premières années, l'Office des étrangers peut mettre fin au titre de séjour d'un étranger qui a bénéficié d'un regroupement familial sur la base de la constatation objective que la cellule familiale a disparu.
2. Dans une deuxième phase, au cours de la troisième année, il peut être mis fin au titre de séjour si le défaut de cohabitation est complété par des indications selon lesquelles il existe une situation de complaisance.

De telles indications découlent, par exemple, d'une demande du parquet en vue de l'annulation du mariage ou de la constatation que l'étranger a entamé, dès son arrivée, une relation avec une autre personne que son partenaire légal.

Par le biais d'une intervention purement administrative, certes sous le contrôle d'une juridiction administrative, il sera donc possible de lutter contre les abus du système du regroupement familial. De cette façon, on pourra éviter qu'il faille toujours recourir à une procédure souvent longue devant le juge civil ou le juge pénal ».

### **Main Sources:**

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### ANNEX 3. PROFILE FRANCE

| Main Legal Framework                                                                                                                                                      | Labour Migration                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Family Reunification                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Students and Vocational Training                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Institutional framework                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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| <p>- Code de l'entrée et du séjour des étrangers et du droit d'asile</p> <p>- Project de Loi relatif à l'immigration et à l'intégration, 30 June 2006, No. 132 Sénat.</p> | <p><b>Code de l'entrée et du séjour des étrangers et du droit d'asile</b></p> <p><b>Article L322-1</b><br/>(Loi n° 2005-32 du 18 janvier 2005 art. 145 Journal Officiel du 19 janvier 2005)</p> <p>Pour exercer en France une activité professionnelle salariée, les étrangers doivent se conformer aux dispositions des articles L. 341-1 à L. 341-4, L. 341-8, L. 831-1, L. 831-1-1 et L. 831-2 du code du travail ci-après reproduites.</p> <p><b>Art. L. 341-2</b> du code du travail.</p> <p>Pour entrer en France en vue d'y exercer une profession salariée, l'étranger doit présenter, outre les documents et visas exigés par les conventions internationales et les règlements en vigueur, un contrat de travail visé par l'autorité administrative ou une autorisation de travail et un certificat médical.</p> <p><b>Art. L. 341-4</b> du code du travail.</p> <p>"Un étranger ne peut exercer une activité professionnelle salariée en France sans avoir obtenu au préalable l'autorisation mentionnée à l'article L. 341-2. "Cette autorisation est délivrée dans des conditions qui sont fixées par un décret en Conseil d'Etat, sous réserve des dispositions applicables en vertu des troisième et quatrième alinéas du présent article. "L'autorisation de travail</p> | <p><b>Chapitre unique - Article L411-1</b></p> <p>Le ressortissant étranger qui séjourne régulièrement en France depuis au moins un an, sous couvert d'un des titres d'une durée de validité d'au moins un an prévus par le présent code ou par des conventions internationales, peut demander à bénéficier de son droit à être rejoint, au titre du regroupement familial, par son conjoint et les enfants du couple mineurs de dix-huit ans.</p> <p>The New Law: CHAPITRE II, <b>Dispositions relatives au regroupement familial</b></p> <p><b>Article 44 :</b> Dans l'article L. 411-1 du code de l'entrée et du séjour des étrangers et du droit d'asile, les mots : « depuis au moins un an » sont remplacés par les mots : « depuis au moins dix-huit mois », et après les mots : « par son conjoint », sont insérés les mots : « , si ce dernier est âgé d'au moins dix-huit ans, ».</p> | <p>In the <i>Code de l'entrée et du séjour des étrangers et du droit d'asile</i> it was stated that:</p> <p><b>Article L313-7</b></p> <p>La carte de séjour temporaire délivrée à l'étranger qui établit qu'il suit en France un enseignement ou qu'il y fait des études et qui justifie qu'il dispose de moyens d'existence suffisants porte la mention "étudiant". En cas de nécessité liée au déroulement des études, et sous réserve d'une entrée régulière en France, l'autorité administrative peut accorder cette carte de séjour même en l'absence du visa de long séjour requis. Sous les mêmes réserves, il peut également la délivrer à l'étranger qui a suivi une scolarité en France depuis l'âge de seize ans au moins et qui poursuit des études supérieures.</p> <p>Un décret en Conseil d'Etat</p> | <p>- <b>L'Agence nationale de l'accueil des étrangers et des migrations</b> a été mise en place le 25 juillet 2005. Ce nouvel établissement public administratif résulte de la fusion de deux organismes : l'Office des migrations internationales (OMI), établissement public administratif qui existait depuis 1945, et le Service social d'aide aux émigrants (SSAE) association reconnue d'utilité publique créée en 1927.</p> <p>L'ANAEM est chargée, sur l'ensemble du territoire, du service public de l'accueil des étrangers qui se voient délivrer, pour la première fois, un titre les autorisant à séjourner durablement en France. A ce titre, l'ANAEM est en particulier responsable de la mise en œuvre du <a href="#">contrat d'accueil et d'intégration</a></p> <p>A cette mission d'accueil, s'ajoutent des missions concernant :</p> |

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|  | <p>peut être délivrée à un étranger qui demande l'attribution de la carte de séjour temporaire sous la forme de la mention "salarié" apposée sur cette carte. Elle habilite cet étranger à exercer les activités professionnelles indiquées sur cette carte dans les zones qui y sont mentionnées.</p> <p>"L'autorisation de travail peut être délivrée à un étranger sous la forme d'une carte de résident qui lui confère le droit d'exercer sur l'ensemble du territoire de la France métropolitaine toute activité professionnelle salariée de son choix dans le cadre de la législation en vigueur."</p> <p><b>"Art. L. 341-8</b> du code du travail.</p> <p>"Le renouvellement des autorisations de travail prévues à l'article L. 341-2 donne lieu à la perception au profit de l'Agence nationale de l'accueil des étrangers et des migrations d'une taxe dont le montant et les modalités de perception sont fixés par décret.</p> <p>"La participation de l'Etat aux frais d'introduction des familles de travailleurs étrangers et les sommes versées par les employeurs à l'Agence nationale de l'accueil des étrangers et des migrations à titre de remboursement forfaitaire des frais d'introduction des travailleurs étrangers sont réduites en fonction du rendement de ladite taxe.</p> <p><b>"Art. L. 831-1-1</b> du code du travail. "Nul ne peut, directement ou par personne interposée, engager, conserver à son service ou employer pour quelque durée que ce soit un étranger non muni du titre l'autorisant à exercer une activité salariée dans la collectivité territoriale de Saint-Pierre-et-Miquelon. Les conditions de délivrance de cette autorisation de travail sont fixées par voie</p> | <p><b>Article L411-2,</b> Le regroupement familial peut également être sollicité pour les enfants mineurs de dix-huit ans du demandeur et ceux de son conjoint dont, au jour de la demande, la filiation n'est établie qu'à l'égard du demandeur ou de son conjoint ou dont l'autre parent est décédé ou déchu de ses droits parentaux.</p> <p><b>Article L411-3,</b> Le regroupement familial peut être demandé pour les enfants mineurs de dix-huit ans du demandeur et ceux de son conjoint, qui sont confiés, selon le cas, à l'un ou l'autre, au titre de l'exercice de l'autorité parentale, en vertu d'une décision d'une juridiction étrangère.</p> <p><b>Article L411-5,</b> Le regroupement familial ne peut être refusé que pour l'un des motifs suivants:</p> <p>1°Le demandeur ne justifie pas de ressources stables et suffisantes pour subvenir aux besoins de sa famille. Sont prises en compte toutes les ressources du demandeur et de</p> | <p>précise les conditions d'application de ces dispositions, en particulier en ce qui concerne les ressources exigées et les conditions d'inscription dans un établissement d'enseignement. See Decree of 03/026/2002.</p> <p>CHAPITRE II</p> <p><b>Dispositions relatives à l'entrée et au séjour des étudiants étrangers en France</b></p> <p><b>Article 9</b></p> <p>I. - L'article L. 313-7 du code de l'entrée et du séjour des étrangers et du droit d'asile est ainsi rédigé :</p> <p>« <i>Art. L. 313-7.</i> - I. - La carte de séjour temporaire accordée à l'étranger qui établit qu'il suit en France un enseignement ou qu'il y fait des études et qui justifie qu'il dispose de moyens d'existence suffisants porte la mention «étudiant». En cas de nécessité liée au déroulement des études ou lorsque l'étranger a suivi sans interruption une scolarité en France depuis l'âge de seize</p> | <ul style="list-style-type: none"> <li>• l'introduction en France des étrangers au titre du regroupement familial (contrôle du logement et des ressources),</li> <li>• le travail salarié (visite médicale spécifique, organisation de l'acheminement des travailleurs saisonniers...),</li> <li>• la lutte contre l'emploi illégal des étrangers,</li> <li>• l'accueil des demandeurs d'asile,</li> <li>• le contrôle médical des étrangers,</li> <li>• le contrôle du logement dans le cadre de la délivrance des attestations d'accueil,</li> <li>• l'aide au retour volontaire et à la réinsertion des étrangers dans leur pays d'origine,</li> <li>• l'emploi des Français à l'étranger.</li> </ul> <p>L'ANAEM a été instituée par la loi n°2005-32 du 18 janvier 2005 de programmation pour la cohésion sociale. Le décret n°2005-381 du 20 avril 2005, paru au journal officiel du 24 avril 2005, précise les missions et</p> |
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|  | <p>réglementaire.</p> <p>Art. L. 831-2 du code du travail. "L'autorisation de travail peut être délivrée à un étranger sous la forme d'une carte de résident qui lui confère le droit d'exercer, sur le territoire du département dans lequel elle a été délivrée, toute activité professionnelle salariée de son choix dans le cadre de la législation en vigueur."</p> <p><b>Project de Loi relatif à l'immigration et a l'intégration</b></p> <p><b>Article 12</b></p> <p>I. - L'intitulé de la sous-section 5 de la section 2 du chapitre III du titre I<sup>er</sup> du livre III du code de l'entrée et du séjour des étrangers et du droit d'asile est ainsi rédigé : « La carte de séjour temporaire autorisant l'exercice d'une activité professionnelle ».</p> <p>II. - L'article L. 313-10 du même code est ainsi rédigé :</p> <p>« Art. L. 313-10. - La carte de séjour temporaire autorisant l'exercice d'une activité professionnelle est délivrée :</p> <p>« 1° À l'étranger titulaire d'un contrat de travail visé conformément aux dispositions de l'article L. 341-2 du code du travail.</p> <p>« Pour l'exercice d'une activité professionnelle salariée dans un métier et une zone géographique caractérisés par des difficultés de recrutement et figurant sur une liste établie au plan national par l'autorité administrative, après consultation des organisations syndicales d'employeurs et de</p> | <p>son conjoint indépendamment des prestations familiales. Les ressources doivent atteindre un montant au moins égal au salaire minimum de croissance mensuel;</p> <p>2° Le demandeur ne dispose pas ou ne disposera pas à la date d'arrivée de sa famille en France d'un logement considéré comme normal pour une famille comparable vivant en France.</p> <p>The New Law : CHAPITRE II, <b>Dispositions relatives au regroupement familial</b></p> <p><b>Article 45</b>, L'article L. 411-5 du code de l'entrée et du séjour des étrangers et du droit d'asile est ainsi modifié :</p> <p>1° La deuxième phrase du 1° est complétée par les mots : « et des allocations prévues à l'article L. 262-1 du code de l'action sociale et des familles, à l'article L. 815-1 du code de la sécurité sociale et aux articles L. 351-9, L. 351-10 et L. 351-10-1 du code du travail » ;</p> <p>2° Dans le 2°, les mots : « vivant en France » sont remplacés par les mots : « vivant dans la même région géographique » ;</p> <p>3° Il est ajouté un 3° ainsi</p> | <p>ans et y poursuit des études supérieures, l'autorité administrative peut accorder cette carte de séjour sans que la condition prévue à l'article L. 311-7 soit exigée et sous réserve d'une entrée régulière en France.</p> <p>« La carte ainsi délivrée donne droit à l'exercice, à titre accessoire, d'une activité professionnelle salariée dans la limite de 60 % de la durée de travail annuelle.</p> <p>« II. - Sauf si sa présence constitue une menace pour l'ordre public, la carte mentionnée au I est accordée de plein droit :</p> <p>« 1° À l'étranger auquel un visa pour un séjour d'une durée supérieure à trois mois a été accordé dans le cadre d'une convention signée entre l'État et un établissement d'enseignement supérieur et qui est inscrit dans cet établissement ;</p> <p>« 2° À l'étranger ayant satisfait aux épreuves du concours d'entrée dans un établissement d'enseignement supérieur ayant signé une convention avec l'État ;</p> | <p>l'organisation de l'Agence.</p> <p><b>- la direction de la population et des migrations</b> est chargée de:</p> <ul style="list-style-type: none"> <li>• contribuer à la définition d'une politique de population et participer à la réflexion au sein des instances internationales ;</li> <li>• participer à l'élaboration de la législation relative aux étrangers en lien avec le ministère de l'intérieur, de traiter les demandes d'autorisation de travail et de regroupement familial ;</li> <li>• participer à la politique des migrations internationales, et aux actions de réinsertion et de codéveloppement ;</li> <li>• organiser l'accueil et l'hébergement des demandeurs d'asile et des réfugiés ;</li> <li>• définir et impulser les actions d'intégration des populations d'origine étrangère et lutter contre les discriminations, en liaison avec les autres départements ministériels et les acteurs locaux ;</li> <li>• gérer les demandes d'acquisition de la</li> </ul> |
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|  | <p>salariés représentatives, l'étranger se voit délivrer cette carte sans que lui soit opposable la situation de l'emploi sur le fondement du même article L. 341-2.</p> <p>« La carte porte la mention «salarié» lorsque l'activité est exercée pour une durée supérieure ou égale à douze mois. Elle porte la mention «travailleur temporaire» lorsque l'activité est exercée pour une durée déterminée inférieure à douze mois. Si la rupture du contrat de travail du fait de l'employeur intervient dans les trois mois précédant son renouvellement, une nouvelle carte lui est délivrée pour une durée d'un an ;</p> <p>« CHAPITRE V</p> <p><b>« La carte de séjour portant la mention compétences et talents»</b></p> <p>« Art. L. 315-1. - La carte de séjour «compétences et talents» peut être accordée à l'étranger susceptible de participer, du fait de ses compétences et de ses talents, de façon significative et durable au développement économique ou au rayonnement, notamment intellectuel, scientifique, culturel, humanitaire ou sportif de la France et du pays dont il a la nationalité. Elle est accordée pour une durée de trois ans. Elle est renouvelable. Lorsque son titulaire a la nationalité d'un pays membre de la zone de solidarité prioritaire, son renouvellement est limité à une fois.</p> <p>« Art. L. 315-3. - La carte mentionnée à l'article L. 315-1 est attribuée au vu du contenu et de la nature du projet de l'étranger et de l'intérêt de ce projet pour la France et pour le pays dont</p> | <p>rédigé :</p> <p>« 3° Le demandeur ne se conforme pas aux principes fondamentaux reconnus par les lois de la République. »</p> <p><b>Article L411-6,</b> Peut être exclu du regroupement familial :</p> <p>1° Un membre de la famille dont la présence en France constituerait une menace pour l'ordre public ;</p> <p>2° Un membre de la famille atteint d'une maladie inscrite au règlement sanitaire international ;</p> <p>3° Un membre de la famille résidant en France.</p> <p><b>Article L411-7,</b> Lorsqu'un étranger polygame réside en France avec un premier conjoint, le bénéfice du regroupement familial ne peut être accordé à un autre conjoint. Sauf si cet autre conjoint est décédé ou déchu de ses droits parentaux, ses enfants ne bénéficient pas non plus du regroupement familial. Le titre de séjour sollicité ou obtenu par un autre conjoint est, selon le cas, refusé ou retiré. Le titre de séjour du ressortissant étranger polygame qui a fait venir auprès de lui plus d'un</p> | <p>« 3° À l'étranger boursier du Gouvernement français ;</p> <p>« 4° À l'étranger titulaire du baccalauréat français préparé dans un établissement relevant de l'Agence pour l'enseignement français à l'étranger ou titulaire d'un diplôme équivalent et ayant suivi pendant au moins trois ans une scolarité dans un établissement français de l'étranger ;</p> <p>« 5° À l'étranger ressortissant d'un pays ayant signé avec la France un accord de réciprocité relatif à l'admission au séjour des étudiants.</p> <p>« Un décret en Conseil d'État précise les conditions d'application des dispositions du présent article, en particulier en ce qui concerne les ressources exigées, les conditions d'inscription dans un établissement d'enseignement et celles dans lesquelles l'étranger entrant dans les prévisions du 2° peut être dispensé de l'obligation prévue à l'article L. 311-7. »</p> <p>II. - Après l'article L. 341-4</p> | <p>nationalité française.</p> |
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|  | <p>l'étranger a la nationalité.</p> <p>« Lorsque l'étranger souhaitant bénéficier d'une carte «compétences et talents» réside régulièrement en France, il présente sa demande auprès du représentant de l'État dans le département. Lorsque l'étranger réside hors de France, il présente sa demande auprès des autorités diplomatiques et consulaires françaises territorialement compétentes. L'autorité administrative compétente pour délivrer cette carte est le ministre de l'intérieur.</p> <p>« Art. L. 315-5. - La carte de séjour mentionnée à l'article L. 315-1 permet à son titulaire d'exercer toute activité professionnelle de son choix, dans le cadre du projet mentionné à l'article L. 315-3.</p> <p>« Art. L. 315-6. - Lorsque le titulaire de la carte de séjour «compétences et talents» est ressortissant d'un pays de la zone de solidarité prioritaire, il apporte son concours, pendant la durée de validité de cette carte, à une action de coopération ou d'investissement économique définie par la France avec le pays dont il a la nationalité.</p> <p>« Lors du premier renouvellement de cette carte, il est tenu compte du non-respect de cette obligation.</p> <p>« Art. L. 315-7. - Le conjoint, s'il est âgé d'au moins dix-huit ans, et les enfants dans l'année qui suit leur dix-huitième anniversaire ou entrant dans les prévisions de l'article L. 311-3 d'un étranger titulaire de la carte de séjour mentionnée à l'article L. 315-1 bénéficient de plein droit de la carte de séjour mentionnée au 3° de l'article L. 313-11. La carte de séjour ainsi accordée est renouvelée de plein droit durant la période de validité restant à courir de la carte mentionnée à</p> | <p>conjoint, ou des enfants autres que ceux du premier conjoint ou d'un autre conjoint décédé ou déchu de ses droits parentaux, lui est retiré.</p> | <p>du code du travail, il est inséré un article L. 341-4-1 ainsi rédigé :</p> <p>« Art. L. 341-4-1. -</p> <p>L'embauche d'un salarié étranger titulaire de la carte de séjour temporaire prévue à l'article L. 313-7 du code de l'entrée et du séjour des étrangers et du droit d'asile ne peut intervenir qu'après déclaration nominative effectuée par l'employeur auprès de l'autorité administrative. »</p> |  |
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|  | l'article L. 315-1. |  |  |  |
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## ANNEX 4. PROFILE POLAND

| Main Framework                                                                                                                                                                                                                                                                                                                                                                                                                                         | Legal | Labour Migration                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Family Reunification                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Students and Vocational Training                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Institutional framework                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
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| <p>- Aliens Act of 13 June 2003 (Dz.U. 2003 No. 128 item 1175) Ministry of Internal Affairs and Administration<sup>57</sup></p> <p>- Act on Promotion of Employment and Labour Market Institutions of April 20 2004 (Dz. U. z 2004r. No. 99, item 1001)</p> <p>- Regulation (Ministry of Labour and Social Policy) on the conditions and procedures of granting the work promises and permit for foreigners, 19 December 2001, Dz. U. z 2001r, No.</p> |       | <p><b>Art. 32</b> of the Aliens Law</p> <p>1. The residence visa for the purpose of carrying out work may be issued to an alien who presents a promise to issue the work permit on the territory of the Republic of Poland or an employer's written declaration confirming the intention to employ an alien if the work permit is not required.</p> <p>2. The visa referred to in sec. 1 shall be issued for the period of residence not exceeding one year, relevant to the period indicated in the promise or the employer's written declaration.</p> <p>3. If an alien intends to carry out, within the fixed period of time, seasonal work on the territory of the Republic of Poland, the visa referred to in sec. 1 shall be issued for the period indicated in the promise to issue the work permit, not exceeding 6 months within the 12 month period, counting from the date of the first entry.</p> | <p><b>Art. 53.2.</b></p> <p>2. With reservation to sec. 3, as a member of the family of an alien referred to in sec. 1 p. 13 and art. 54 shall be regarded:</p> <p>1) a person married to an alien, such marriage being recognised under the Polish law in force;</p> <p>2) a minor child of an alien and person married to an alien, such marriage being recognised under the Polish law in force, including an adopted child;</p> <p>3) a minor child of an alien, including his/her adopted child, if the alien exercises actual parental control over the child;</p> <p>4) a minor child of a person referred to in p.1, including his/her adopted child, if he/she supports and exercises actual parental control over the child.</p> | <p><b>Art. 53.5.1.</b> The residence permit for a fixed period may be granted to an alien, who: 1) intends to take up or to continue studies or professional training on the territory of the Republic of Poland;</p> <p><b>Art. 53.6.</b> An alien is obliged to confirm his/her will to take up or continue studies on the territory of the Republic of Poland by providing a certificate of admission to studies, issued by institution appropriate for his / her studies.</p> | <p>- The Office for Repatriation and Foreigners <a href="http://www.uric.gov.pl">www.uric.gov.pl</a></p> <p>- The President of the Office for Repatriation and Aliens – Articles 141-146: shall be the central authority of governmental administration competent with respect to repatriation, entry of aliens in the territory of the Republic of Poland, the transit of aliens through that territory, the residence in and leaving it, granting to aliens the refugee status, asylum, tolerated stay and temporary protection as well as to the matters related to Polish citizenship.</p> <p>- The Voivod. This organism is the head of the State administration in the 16 voivodships that divide the Polish territory administratively.<sup>58</sup></p> |

<sup>57</sup> Rozporządzenie Ministra Spraw Wewnętrznych i Administracji, Dz.U. 2003, No. 147 item 1435 amended Administrative Code (Dz.U. 2000, No. 98 item. 1071).

<sup>58</sup> According to a decision taken by the Sejm in 1998 Poland was divided into 16 voivod-ships and 373 counties, including 65 urban counties, on 1 January 1999. See A. Kowalczyk, *Local Government in Poland*, in *Local Governments in Central and Eastern Europe, Decentralization: Experiments and Reforms*.

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| <p>153, item 1766.</p> <p>- Regulation (Ministry of Labour and Social Policy) on the conditions and procedures of granting the work promises and permit for foreigners employed at export services provided by foreign employers in the Republic of Poland, 19 December Dz. U. z 2001r No. 153, Item 1768</p> <p>- Regulation (Ministry of Labour and Social Policy) on the definition of cases, when the work promises and permits for foreigners are granted by the Voivoda regardless of the situation on the local labour market Dz. U. z 2001r No. 153, item 1767</p> <p>- Regulation (Minister of Economy and Labour) on the</p> | <p><b>Art. 53</b></p> <p>1. The residence permit for a fixed period shall be granted to an alien, who:</p> <p>1) obtained a promise to issue the work permit or prolongation of such a promise or an employer's written declaration confirming intention to employ an alien if work permit is not required;</p> <p>2) carries out an economic activity in conformity with the regulations of the law in force in the Republic of Poland, which is beneficial to the national economy and in particular, contributes to the development of investments, transfer of technology, innovations or job creation;</p> <p>3) being a person whose achievements in the field of arts has been estimated, intends to continue a creative activity in the territory of the Republic of Poland;</p> <p>4) participates in training and occupational internships effected under programs of the European Union;</p> <p>5) intends, as a family member, to accompany a migrating worker referred to in the European Social Chart;</p> <p>6) is a spouse of a Polish citizen;</p> <p>7) as a member of a family of an alien referred to in art. 54 intends to arrive on the territory of the Republic of Poland resides on that territory;</p> <p>8) is a minor, born on the territory of the Republic of Poland, child of an alien, and</p> | <p>3. As a member of family of minor alien who has been granted refugee status and resides on the territory of the Republic of Poland without care shall be also regarded his/her direct ascendant.</p> <p>4. An alien referred to in sec. 1 p.1 who carries out or intends to carry out work in the limited partnership, limited liability or stock company established by him / her; or in the company he / she joined, covered or purchased its shares, only if he / she demonstrates that operation of this company or partnership meets conditions referred to in sec. 1 p. 2.</p> <p>5. The residence permit for a fixed period may be granted to an alien, who:</p> <p>1) intends to take up or to continue studies or professional training on the territory of the Republic of Poland;</p> <p>2) demonstrates that due to the circumstances other than referred to in p. 1 and sec. 1, his / her residence on the territory of the Republic of Poland is justified within the period exceeding 3 months.</p> |  |  |
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| <p>limitations of foreign labour on the territory of the Republic of Poland, Dz. U. z 2004r, No. 198, item, 2037.</p> | <p>resides on that territory without care;</p> <p>9) is a spouse or an adult child of an alien referred to in art. 54 and has resided on the territory of the Republic of Poland for a period of at least five years on the basis of permits to reside for a fixed period, granted because of the circumstances referred to in p.7;</p> <p>10) resides on the territory of the Republic of Poland on the basis of permit to reside for a fixed period granted because of circumstances referred to in p.6, in case of widowhood or divorce, separation or death of his/her direct descendant or ascendant , if it is in good interest of an alien ;</p> <p>11) resides on the territory of the Republic of Poland on the basis of permit to reside for a fixed period, granted because of the circumstances referred to in p. 7, in case of widowhood or divorce, if it is in good interest of an alien;</p> <p>12) is a minor, born on the territory of the Republic of Poland, child of an alien possessing the permit to reside for a fixed period;</p> <p>13) possesses a long-term resident's EC residence permit granted by another member state of the European Union and is going to take up employment or carry out an economic activity in conformity with the regulations of the law in force in the Republic of Poland, to take up or continue studies or professional training,</p> | <p>According to <b>Art. 53.1.7</b> the family member will also need to be granted with a residence permit for a fixed period. <b>Art. 54</b> provides that the residence permit will be given if the alien who asks for family reunification resides in the territory of the Republic of Poland:</p> <p>1) on a basis of permit to settle;</p> <p>2) on a basis of long-term resident's EC residence permit;</p> <p>3) who has been granted refugee status;</p> <p>4) at least for two years on the basis of residence permit for a fixed period, if directly before submitting an application for granting a residence permit for a fixed period for a member of his/her family he/she resided on this territory on the basis of permit to reside for a fixed period granted for at least one year.</p> |  |  |
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|  | <p>or demonstrates that there are circumstances that justify his / her residence on the territory of the Republic of Poland;</p> <p>14) is a member of a family of an alien referred to in p.13, with whom he/she has resided on the territory of another member state of European Union, who accompanies an alien or intends to join him/her;</p> <p>15) is a victim of trafficking in human beings within the meaning of Council Framework Decision of 19 July 2002 on combating trafficking in human beings.</p> <p><b>Art. 53.4.</b></p> <p>4. An alien referred to in sec. 1 p.1 who carries out or intends to carry out work in the limited partnership, limited liability or stock company established by him / her; or in the company he / she joined, covered or purchased its shares, only if he / she demonstrates that operation of this company or partnership meets conditions referred to in sec. 1 p. 2.</p> <p><b>Art. 53.5.2.</b> The residence permit for a fixed period may be granted to an alien, who:</p> <p>2) demonstrates that due to the circumstances other than referred to in p. 1 and sec. 1, his / her residence on the territory of the Republic of Poland <u>is justified within the period exceeding 3 months.</u></p> |  |  |  |
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## ANNEX 5. PROFILE GERMANY

| Main Legal Framework                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Labour Migration                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Family Reunification                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Students and Vocational Training                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Institutional framework                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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| <p>New Immigration Act (Zuwanderungsgesetz):</p> <ul style="list-style-type: none"> <li>- The <b>Residence Act (AufenthG)</b> Federal Law Gazette Volume 2004, Part I, No. 41, issued in Bonn on 5 August 2004, Residence Act (30 June 2004), last amended by the Act Amending the Residence Act and other acts of 14 March 2005 (Federal Law Gazette I, p. 721).</li> <li>- <b>Employment Ordinance – Foreign Countries (Beschäftigungsverordnung 2004)</b></li> </ul> | <p>The <b>Employment Ordinance – Foreign Countries</b> provides the main rules for the categories of migrant workers, professions as well as countries from which employment is allowed.</p> <p><b>Section 18 Employment</b></p> <p>(1) The admission of foreign employees shall be geared to the requirements of the German economy, according due consideration to the situation on the labour market and the need to combat unemployment effectively. International treaties shall remain unaffected.</p> <p>(2) A foreigner may be granted a residence title for the purpose of taking up employment if the Federal Employment Agency has granted approval in accordance with Section 39 or if a statutory provision in accordance with Section 42 or an intergovernmental agreement stipulates that such employment may be taken up without approval from the Federal Employment Agency. Any restrictions imposed by the Federal Employment Agency in granting approval are to be specified in the residence title.</p> | <p><b>Section 29 (Residence Act) Subsequent immigration of dependents to join a foreigner</b></p> <p>(1) For the purposes of subsequent immigration to join a foreigner,</p> <ol style="list-style-type: none"> <li>1. the foreigner must possess a settlement permit or a residence permit and</li> <li>2. sufficient living space must be available.</li> </ol> <p>(2) The requirements of Section 5 (1), no. 1 and sub-section 1, no. 2 may be waived in the case of the spouse and the minor, unmarried child of a foreigner who is in possession of a residence permit in accordance with Section 25 (1) or (2) or a settlement permit in accordance with Section 26 (3).</p> <p>(3) The residence permit may only be granted to the spouse and the minor child of a foreigner who is in possession of a residence permit in accordance with Sections 22, 23 (1) or Section 25 (3) for reasons of international law, on humanitarian grounds or in order to safeguard political interests of the Federal Republic of Germany. The subsequent immigration of dependents shall not be granted in the cases covered by Section 25 (4) and (5).</p> <p>(4) By way of derogation from Section 5 (1)</p> | <p><b>Section 16 Further education; language courses; school education</b></p> <p>(1) A foreigner may be granted a residence permit for the purpose of applying to study and studying at a state or state-recognised university or comparable educational establishment, including preparatory measures for a course of study. The period of validity should not exceed two years when the residence permit is issued for the first time in connection with preparatory measures for a course of study. For study purposes, the residence permit shall be issued for two years and shall be extendable by subsequent periods of up to two years if the purpose of the stay has not yet been achieved and is achievable within a reasonable period. The maximum permissible duration of residence for a foreigner applying for a place to study is nine months.</p> | <ul style="list-style-type: none"> <li>- Federal Office for Immigration and Refugees (BAMF)</li> <li>- Federal Employment Agency (<i>Bundesagentur für Arbeit</i>).</li> </ul> <p>Those categories of employment where the Federal Employment Agency is required to give its favourable consent (labour market test) are provided in Sections 17-31 of the Employment Ordinance – Foreign Countries.</p> <ul style="list-style-type: none"> <li>- Local foreigner's office</li> </ul> |

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|  | <p>(3) A residence permit for the purpose of taking up employment pursuant to subsection 2 which does not require a vocational qualification may only be issued if regulated by an inter-governmental agreement or if issuance of approval for a residence permit for the said employment is permissible by virtue of a statutory instrument in accordance with Section 42.</p> <p>(4) A residence title for the purpose of taking up employment pursuant to subsection 2 which requires a vocational qualification may only be issued for employment in an occupational group which has been approved by virtue of a statutory instrument in accordance with Section 42. In justified individual cases, a residence permit may be issued for the purpose of taking up employment when there is a public interest, and in particular a regional interest or an interest relating to the economy or the labour market.</p> | <p>and Section 27 (3), the residence permit shall be granted to the spouse and the minor child of a foreigner or the minor child of the foreigner's spouse if the foreigner has been granted temporary protection in accordance with Section 24 (1) and</p> <ol style="list-style-type: none"> <li>1.the family household in the country of origin has been broken up as a result of the foreigner having fled said country and</li> <li>2.the dependent is admitted from another member state of the European Union or is located outside of the European Union and is in need of protection.</li> </ol> <p>(5) Without prejudice to Section 4 (2), sentence 3, the residence permit shall entitle the holder to pursue an economic occupation insofar as the foreigner who is being joined by his or her dependents by way of subsequent immigration is entitled to pursue an economic activity or if marital cohabitation has lawfully existed in the Federal territory for at least two years.</p> <p><b>Section 30 Subsequent immigration of spouses</b></p> <p>(1) A foreigner's spouse shall be granted a residence permit if the foreigner:</p> <ol style="list-style-type: none"> <li>1. possesses a settlement permit,</li> <li>2. possesses a residence permit pursuant to Section 25 (1) or (2),</li> <li>3. has been in possession of a residence permit for five years or</li> <li>4. is in possession of a residence permit, if the marriage existed at the time of said permit being granted and the duration of the</li> </ol> | <p>(4) After successful completion of the studies, the residence permit may be extended by up to one year for the purposes of seeking a job commensurate with this qualification, provided that it is permissible to fill the vacancy concerned with foreigners in accordance with the provisions contained in Sections 18 to 21. Section 9 shall not apply.</p> |  |
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|  |  | <p>foreigner's stay is expected to exceed one year.</p> <p>(2) By way of derogation from sub -section 1, no. 4, the residence permit may be granted if the foreigner possesses a residence permit.</p> <p>(3) By way of derogation from Section 5 (1), no. 1 and Section 29 (1), no. 2, the residence permit may be extended for as long as the marital cohabitation continues.</p> <p><b>Section 32 Subsequent immigration of children</b></p> <p>(1) The minor, unmarried child of a foreigner shall be granted a residence permit if</p> <ol style="list-style-type: none"> <li>1. the foreigner possesses a resident permit in accordance with Section 25 (1) or</li> <li>(2) or a settlement permit in accordance with Section 26 (3) or</li> <li>2. both parents or the parent possessing the sole right of care and custody hold a residence permit or settlement permit and the child relocates the central focus of its life together with its parents or the parent possessing the sole right of care and custody to the Federal territory.</li> </ol> <p>(2) A minor, unmarried child who is 16 years of age or older shall be granted a residence permit if he or she has a command of the German language or if it appears on the basis of the child's education and way of life to date that he or she will be able to integrate into the way of life which prevails in the Federal Republic of Germany and both parents or the parent possessing the sole right of care and custody hold a residence permit or settlement permit.</p> <p>(3) A minor, unmarried child of a foreigner</p> |  |  |
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|  |  | <p>who is under 16 years of age shall be granted a residence permit if both parents or the parent possessing the sole right of care and custody possess a residence permit or settlement permit.</p> <p>(4) A minor, unmarried child of a foreigner may otherwise be granted a residence permit if necessary in order to prevent special hardship on account of the circumstances pertaining to the individual case concerned. The child's wellbeing and the family situation are to be taken into consideration in this connection.</p> |  |  |
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## ANNEX 6. PROFILE SPAIN

| Main Legal Framework                                                                                                                                                                                                                                                                                                                                                                     | Labour Migration (not including self-employment)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Family Reunification                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Students and Vocational Training                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Institutional framework                                                                                                                                                                                                                                                                                                                                                                                                        |
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| <p>- Royal Decree 2393/2004, approving the Regulation of the Organic Law 4/2000, on the rights and liberties of foreigner in Spain and their social integration, 30 December 2004.</p> <p>- Order 140/2005, for the development of the process of normalization as provided in the third transitory provision of the Royal Decree 2393/2004, approving the Regulation of the Organic</p> | <p><b>Articles: 49 – 57:</b></p> <p><b>Artículo 49:</b> <i>Autorización de trabajo por cuenta ajena.</i> 1. La autorización inicial de residencia temporal y trabajo por cuenta ajena habilitará a los extranjeros que residen fuera de España y que hayan obtenido el correspondiente visado a iniciar una relación laboral por cuenta ajena.</p> <p>2. La autorización inicial de residencia y trabajo por cuenta ajena tendrá una duración de un año y podrá limitarse a un ámbito geográfico y sector de actividad determinado conforme a las instrucciones o directrices determinadas por la Secretaría de Estado de Inmigración y Emigración.</p> <p>3. En los supuestos previstos en este reglamento, los extranjeros residentes o los que se hallan en situación de estancia por estudios podrán acceder a la correspondiente autorización de residencia temporal y trabajo por cuenta ajena, sin que sea exigible el visado. En el caso de los que hayan sido residentes, la duración de la autorización estará en función del tiempo que hayan residido previamente en España.</p> <p>El acceso a la autorización de residencia y trabajo de quienes sean titulares de un visado de búsqueda de empleo se regirá por las disposiciones específicas de este reglamento y por el acuerdo sobre contingente.</p> | <p><b>Artículo 39.</b> <i>Familiares reagrupables.</i></p> <p>El extranjero podrá reagrupar con él en España a los siguientes familiares:</p> <p>a) Su cónyuge, siempre que no se encuentre separado de hecho o de derecho y que el matrimonio no se haya celebrado en fraude de ley. En ningún caso podrá reagruparse a más de un cónyuge, aunque la ley personal del extranjero admita esta modalidad matrimonial. El extranjero residente que se encuentre separado de su cónyuge y casado en segundas o posteriores nupcias sólo podrá reagrupar con él al nuevo cónyuge y sus familiares si acredita que la separación de sus anteriores matrimonios ha tenido lugar tras un procedimiento jurídico que fije la situación del cónyuge anterior y sus familiares en cuanto a la vivienda común, la pensión al cónyuge y los alimentos para los menores dependientes.</p> | <p><b>Autorización para investigación y estudios</b></p> <p><b>Artículo 85.</b> <i>Definición.</i></p> <p>1. Los extranjeros que deseen realizar trabajos de investigación o formación no remunerados laboralmente, o cursar o ampliar estudios, en cualesquiera centros docentes o científicos españoles públicos o privados oficialmente reconocidos, deberán disponer del correspondiente visado de estudios.</p> <p>2. El visado de estudios habilita al extranjero a permanecer en España en situación de estancia para la realización de cursos, estudios, trabajos de investigación o formación. La duración de dicha estancia será igual a la del curso para el que esté matriculado o, en su caso, del trabajo de investigación que desarrolle. Será causa de la extinción de su vigencia el cese en la actividad para la que fue concedido.</p> <p><b>Artículo 86.</b> <i>Requisitos.</i></p> <p>Son requisitos para la obtención del visado de estudios:</p> <p>a) Cumplir todos los requisitos para la</p> | <p>- <b>Oficinas de Extranjeros</b> (Articles 159-162)</p> <p>- <b>Secretaría de Estado de Inmigración y Emigración</b>, Ministerio de Trabajo y Asunto Sociales</p> <p>- <b>Comisión Laboral Tripartita de inmigración</b>, ORDEN TAS/1713/2005, de 3 de junio, por la que se regula la composición, competencias y régimen de funcionamiento de la Comisión Laboral Tripartita de Inmigración, BOE N. 138, 10 June 2005.</p> |

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| <p>Law 4/2000, on the rights and liberties of foreigner in Spain and their social integration, 30 December 2004.</p> | <p>4. Los extranjeros que obtengan una autorización deberán solicitar la tarjeta de identidad de extranjero correspondiente en el plazo de un mes desde el comienzo de la autorización.</p> <p><b>CONTINGENTE</b></p> <p><b>Artículo 77</b></p> <p>2. El contingente permitirá la contratación programada de trabajadores que no se hallan ni residen en España, llamados a desempeñar empleos con vocación de estabilidad y que serán seleccionados en sus países de origen a partir de las ofertas genéricas presentadas por los empresarios.</p> <p><b>Artículo 78. Contenido del contingente.</b></p> <p>1. El acuerdo por el que se apruebe el contingente comprenderá una cifra provisional, así como las características de las ofertas de empleo de carácter estable para un año natural que puedan ser cubiertas a través de este procedimiento por trabajadores extranjeros que no se hallen ni residan en España.</p> <p>2. Asimismo, el acuerdo de contingente podrá establecer un número de visados para búsqueda de empleo dirigidos a hijos o nietos de español de origen, así como un número de visados para búsqueda de empleo limitados a determinados sectores de actividad u ocupaciones en un ámbito territorial concreto.</p> <p>3. El acuerdo del Consejo de Ministros que apruebe el contingente podrá regular, de manera</p> | <p>b) Sus hijos o los de su cónyuge, incluidos los adoptados, siempre que sean menores de dieciocho años o estén incapacitados, de conformidad con la ley española o su ley personal, y no se encuentren casados. Cuando se trate de hijos de uno solo de los cónyuges, se requerirá, además, que éste ejerza en solitario la patria potestad o se le haya otorgado la custodia y estén efectivamente a su cargo. En el supuesto de hijos adoptivos deberá acreditarse que la resolución por la que se acordó la adopción reúne los elementos necesarios para producir efecto en España.</p> <p>c) Los menores de dieciocho años o incapaces cuando el residente extranjero sea su representante legal.</p> <p>d) Sus ascendientes o los de su cónyuge, cuando estén a su cargo y existan razones que justifiquen la necesidad de autorizar su residencia en España.</p> <p>e) Se entenderá que los familiares están a cargo del reagrupante cuando acredite que, al menos durante el último año de su residencia en España, ha transferido fondos o soportado</p> | <p>entrada establecidos en el título I.</p> <p>b) Haber sido reglamentariamente admitido en cualesquiera centros docentes o científicos españoles, públicos o privados, oficialmente reconocidos, para cursar o ampliar estudios o realizar trabajos de investigación o formación, no remunerados laboralmente, con indicación, según corresponda, de un horario que implique asistencia y/o de un plan de estudios, investigación o formación aprobado.</p> <p>c) En los supuestos de estudiantes menores de edad, cuando no vengan acompañados de sus padres o tutores y no se encuentren bajo el supuesto del artículo 92, se requerirá, además, la autorización de éstos para el desplazamiento a España para realizar los estudios, en la que conste el centro y el período de estancia previsto.</p> <p>d) Tener garantizados los medios económicos necesarios para sufragar el coste de sus estudios, así como los gastos de estancia y regreso a su país, y, en su caso, los de sus familiares. Salvo que la convocatoria excluya como beneficiarios a los estudiantes o investigadores en situación de estancia, se entenderá que tienen derecho al acceso al sistema público de becas y ayudas en las mismas condiciones que los españoles.</p> <p>Artículo 90. Trabajo de estudiantes o</p> |  |
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|  | <p>diferenciada respecto a las ofertas estables a las que se refiere, particularidades en el procedimiento de contratación de trabajadores de temporada regulados en la sección 2.ª del capítulo II del título IV.</p> <p>4. A lo largo del año se podrá revisar el número y la distribución de las ofertas de empleo admisibles en el marco del contingente, para adaptarlo a la evolución del mercado de trabajo.</p> <p>5. Las ofertas de empleo genéricas presentadas a través del contingente se orientarán preferentemente hacia los países con los que España haya firmado acuerdos sobre regulación y ordenación de flujos migratorios.</p> | <p>gastos de su familiar en una proporción que permita inferir una dependencia económica efectiva. Mediante orden del Ministro de la Presidencia, a propuesta de los Ministros de Asuntos Exteriores y de Cooperación, de Interior y de Trabajo y Asuntos Sociales, se determinará la cuantía o el porcentaje de ingresos considerados suficientes a estos efectos, así como el modo de acreditarlos.</p> <p><b>Artículo 42. Procedimiento para la reagrupación familiar.</b></p> <p>1. El extranjero que desee ejercer el derecho de reagrupación familiar deberá solicitar, personalmente ante el órgano competente para su tramitación, una autorización de residencia temporal a favor de los miembros de su familia que desee reagrupar. La solicitud de reagrupación familiar se podrá presentar por parte del extranjero que tenga autorización para residir en España durante un año y solicitado la autorización para residir por, al menos, otro año. En todo caso, no podrá concederse la autorización de residencia al familiar</p> | <p><i>investigadores.</i></p> <p>1. Los extranjeros que dispongan del correspondiente visado de estudios podrán ser autorizados a realizar actividades lucrativas laborales, en instituciones públicas o entidades privadas, cuando el empleador como sujeto legitimado presente la solicitud de autorización de trabajo y se cumplan, con carácter general, los requisitos previstos en el artículo 50, excepto sus párrafos a) y f).</p> <p>Dichas actividades deberán ser compatibles con la realización de los estudios, y los ingresos obtenidos no podrán tener el carácter de recurso necesario para su sustento o estancia.</p> <p>2. Los contratos deberán formalizarse por escrito y se ajustarán a la modalidad de contrato de trabajo a tiempo parcial. En el supuesto de ser a jornada completa, su duración no podrá superar los tres meses ni coincidir con los períodos lectivos.</p> <p>3. La autorización que se conceda no tendrá limitaciones geográficas, salvo que la actividad lucrativa coincida con períodos lectivos; en tal caso, se limitará al ámbito territorial de residencia de su titular.</p> <p>4. La vigencia de la autorización coincidirá con la duración del contrato de trabajo y no podrá ser superior a la de la duración del visado o autorización</p> |  |
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|  |  | reagrupable hasta que no se haya producido la efectiva renovación de la autorización del reagrupante, o hasta que su solicitud de renovación haya sido estimada por silencio positivo, sin perjuicio de la ulterior obligación de dictar resolución expresa, en los términos previstos en el artículo 43.4. a) de la Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común. | de estudios, cuya pérdida de vigencia será causa de extinción de la autorización.<br><br>Las autorizaciones para trabajar se renovarán si subsisten las circunstancias que motivaron la concesión anterior, siempre y cuando se haya obtenido la renovación de la estancia por investigación o estudios. |  |
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## ANNEX 7. THE NETHERLANDS

| Main Legal Framework                                                                                                                                                                                                                                                                                              | Labour Migration                                                                                                                                                                                                                | Family Reunification                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Students and Vocational Training                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Institutional framework                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| <ul style="list-style-type: none"> <li>- The Aliens Act of 2000</li> <li>- The Newcomers Integration Act (<i>Wet Inburgering Nieuwkomers</i>, WIN), Staatsblad 1997, 604.</li> <li>- The <i>new Act on Integration Abroad</i> (<i>Wet inburgering buitenland</i>) entered into force on 15 March 2006.</li> </ul> | <ul style="list-style-type: none"> <li>- See <i>Bringing a foreign employee to the Netherlands</i>, Justitie, Immigratie- en Naturalisatiedienst, January 2006.</li> <li>- See Article 13 of the Aliens Act of 2000.</li> </ul> | <p><b>Family reunification</b></p> <ul style="list-style-type: none"> <li>– You are married to, or are the (registered) partner, of someone in the Netherlands</li> <li>– You are both age 18 or over</li> <li>– Your spouse, registered partner or partner has sufficient sustainable means of support</li> <li>– You have taken and passed the civic integration examination</li> </ul> <p><b>Family formation</b></p> <ul style="list-style-type: none"> <li>– You are married to, or are the (registered) partner, of someone in the Netherlands</li> <li>– You are both age 21 or over</li> <li>– Your spouse, registered partner, or partner has sufficient sustainable means of support<sup>59</sup></li> <li>– You have taken and passed the civic integration examination</li> </ul> <p>You are a minor child and your</p> | <p>MVV or <b>residence permit to study</b> in the Netherlands.<sup>60</sup></p> <p>You wish to study at an institute for higher education / at a university</p> <ul style="list-style-type: none"> <li>– You are (provisionally) registered at an educational institute recognised or funded by the Dutch government</li> <li>– It is a full-time course</li> <li>– You have sufficient sustainable means of support</li> <li>– You are aware that your stay is of a temporary nature</li> </ul> <p>You wish to study at an institute for further or vocational education</p> <ul style="list-style-type: none"> <li>– You wish to study at an institute for further or vocational education</li> </ul> | <ul style="list-style-type: none"> <li>- Ministry of Justice (The immigration Policy Department)</li> <li>- The Immigration and Naturalization Service</li> <li>- The IND Office for Knowledge and Labour Migration, which is located in Rijswijk and handles residence permits applications for those immigrants wishing to enter the country for employment purposes, and at times bring their family members.</li> <li>- The Centre for Work and Income (CWI) issues the work permit.</li> </ul> |

<sup>59</sup> “What are sufficient sustainable means of support? This means that earned income must continue to be available for at least one year after the moment at which the application (for a residence permit or MVV) is submitted, or the moment at which the decision regarding the application is made”.

<sup>60</sup> Information taken from Justitie, Immigratie- en Naturalisatiedienst, *Residence in the Netherlands*, May 2006.

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|--|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
|  |  | <p>parent or legal representative lives in the Netherlands.</p> <ul style="list-style-type: none"> <li>– You are a biological or legal child of someone who has his/her residence in the Netherlands</li> <li>– There is a relationship of authority between the parent or legal representative and you, the child</li> <li>– The parent remaining behind in the country of origin has given permission for your departure for the Netherlands</li> <li>– You are an actual member of the parent or legal representative's family and have remained as such</li> <li>– You will be living with your parent or legal representative in the Netherlands</li> <li>– Your parent has sufficient sustainable means of support</li> <li>– If you are 16 years or older: You have taken and passed the civic integration examination</li> </ul> | <ul style="list-style-type: none"> <li>– You are (provisionally) inscribed at an educational institute recognised by the Dutch government</li> <li>– It is a full-time course</li> <li>– It is a course for which the Netherlands is the most appropriate country</li> <li>– Taking the course will allow you to make a positive contribution to the development of your country of origin</li> <li>– You have sufficient sustainable means of support</li> </ul> |  |
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