

## Chapter 4

### Key issues in the legal and administrative framework

*This chapter reviews how policy choices affect access to, and use of, the labour migration channel, and whether the current policy is capable of meeting current and emerging needs. Germany applies a wide range of criteria in evaluating applicants, many of which overlap, but which allow, in principle, most qualified jobs to be filled by applicants with recognised tertiary qualifications. Processing is complex due to the many actors involved, and although it has been simplified recently for many categories of applicant, it lacks transparency for applicants and employers. Nonetheless, compared with other OECD countries, it is rapid and inexpensive. The system imposes numerous criteria by occupation and salary. A labour market test has been blamed for discouraging application, yet it has usually been quick and rarely leads to refusal. Salary thresholds introduced with the EU Blue Card may unintentionally penalise younger workers and women. Some mechanisms, such as the shortage list, could be used for opening channels to medium-skilled migrants, for which few options currently exist. Language, the main skill required by employers, is not a feature in admission of labour migrants, although it does affect their later residence pathway.*

## Processing times and procedural issues

In most countries, the labour migration approval process involves three actors: *i*) the consular authorities responsible for visa issuance; *ii*) the authority responsible for issuing residence permits; and *iii*) the authorities responsible for labour issues. All three are also involved in Germany, namely the consular offices abroad, the regional foreigners offices and the public employment services (Box 4.1).

### Box 4.1. Key actors in the management of labour migration to Germany

Overall labour migration policy in Germany is decided at the federal level, and the Migration Law is the same nationally, although much of the implementation is through bodies at the regional and local levels.

*German consulates abroad*, dependent on the *Ministry of Foreign Affairs*, receive visa applications from foreigners, evaluate general eligibility, and issue visas which include the work permit where the outcome is favourable. The German consulates also forward the application form as well as additional relevant data and documentation to the foreigners offices.

The *local foreigners offices* receive, evaluate and process applications for permit issuance and renewal. They operate under the *Ministry of the Interior of the respective state*, but the *Federal Ministry of the Interior* establishes guidelines for administrative procedures and criteria.

The *Ministry of Labour* is responsible for the *Federal Employment Agency*. For administrative dealings related to labour migration, it has established a separate sub-agency, the *Central Agency for Foreign Placement (ZAV)*. There are six ZAV offices around Germany which must review all applications for work permits unless otherwise specified in the legislation. The elements examined depend on the characteristics of the applicant and the job offer. The ZAV also assists in matching job seekers with employers, collaborates with the EURES job-matching platform, and conducts recruitment efforts in Germany and abroad for German employers. Where necessary, one of the local public employment offices conducts the labour market test. The Federal Employment Agency is also responsible for analysing the German labour market, monitoring vacancies and forecasting shortages. The ministry also provides instructions to employment agencies on the interpretation of legislation related to labour migration.

The BAMF, instituted in 2005 as an agency of the Federal Ministry of Interior, conducts statistical monitoring as well as performance research and policy analysis. The BAMF is also in charge of the administration of the integration courses, oversight over the central foreigner's register (which is, however, administered by the *Central Administration Office* that also plays an intermediary role in the permit application process), migration research, voluntary return, and the co-ordination of public bodies involved in migration legislation such as embassies abroad, foreigners offices and the public employment service.

**Box 4.1. Key actors in the management of labour migration to Germany (cont.)**

The *Ministry of Economics and Technology* has initiated a number of recent measures to help ensure skilled labour supply for German enterprises through facilitating international recruitment, together with the Ministry of Labour and Social Affairs.

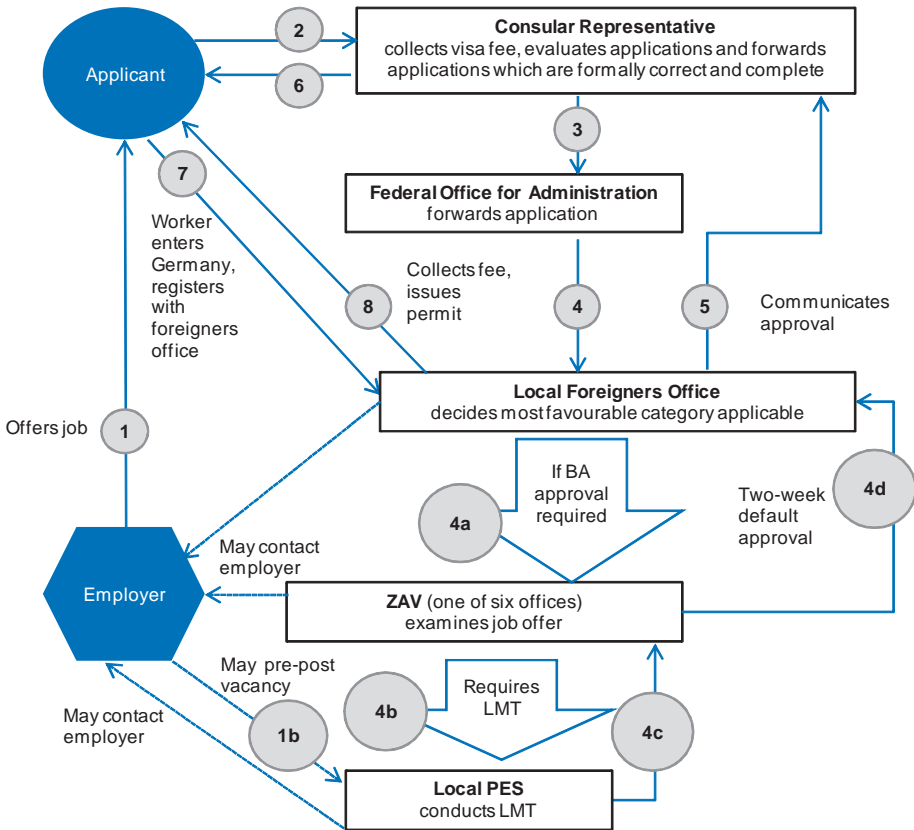
The *Ministry of Education and Research* plays a role in the qualification-related aspects of the labour migration management, through its overall responsibilities for the education system; notably regarding the co-ordination of the recognition of foreign qualifications.

Labour migration policy has largely been the result of negotiation and compromise between the *political parties*. The *social partners* do not play a direct role in the system, but act as interest groups in policy development. The *Chambers of Crafts* and the *Chambers of Industry and Trade*, however, play an important role in structuring apprenticeships and also in the recognition of vocational qualifications.

The process is initiated when a German employer offers a job to a foreigner abroad (Step 1 in Figure 4.1). The foreigner then files an application with the German consulate (Step 2), using a standard visa application form and including supporting documentation (job contract, proof of required qualifications, etc.) and the standard visa fee. The consular authority in charge checks whether the application is complete and not patently unfounded, and sends the paper documentation via diplomatic mail in paper format to the Federal Office for Administration (Step 3),<sup>1</sup> which automatically determines the competent foreigners office depending on the intended location of residence by the applicant and generally forwards the paperwork (Step 4), although foreigners offices may also accept the application electronically. The foreigners office determines whether the application is legitimate and evaluates which of the applicable permit categories – and as has been seen in the preceding chapter, there may be multiple categories applicable to a single application – is the most favourable. Since August 2012, the employer may also accelerate the procedure by submitting relevant documentation to the ZAV, which can begin examination before receiving the application from the foreigners office. Employers may also file the job listing directly with the Public Employment Service prior to the employee application (Step 1b).

If the permit is subject to approval by the employment agency – and most permit categories have required approval in the past, although exemptions are more and more common – the foreigners office forwards (Step 4a) the application to one of the offices of the ZAV, a sub-agency of the Federal Employment Agency, responsible for the geographic area.

Figure 4.1. Flowchart for workers applying from abroad



Source: OECD Secretariat analysis of procedure based on legislation and regulations.

The ZAV examines whether the job offer conforms to the recommended permit (e.g., whether it is indeed for qualified employment) and the conditions of the contract (wages, conditions),<sup>2</sup> but it does not examine the characteristics of the applicant. It may contact the employer for more information, or examine tax records to determine if the business is legitimate and has sufficient income to pay the prospective employee. The ZAV also determines whether a labour market test is applicable to the request, based on the permit category indicated by the foreigners office and other conditions, such as occupations on the shortage list. If a labour market test is applicable, it forwards the information (Step 4b) to the local public

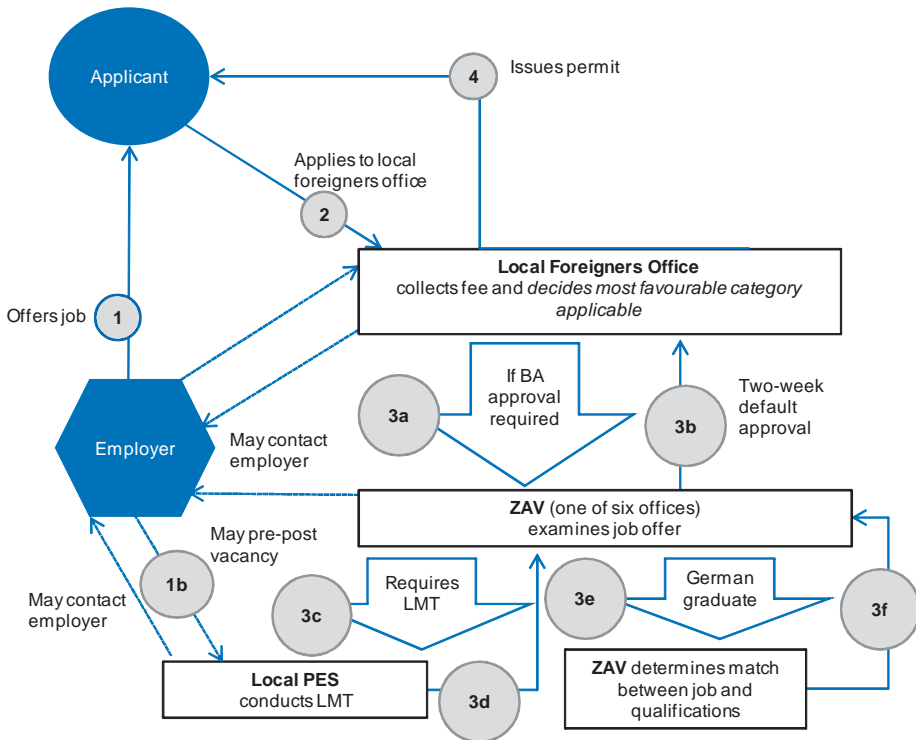
employment service responsible for the district in which the employment is located. The local public employment service examines the application and, based on its knowledge of the local labour market, decides whether or not to publish the job opening, and if so for how long it will list the vacancy (generally from seven to 14 days). It may reject the application outright if it considers that the stock of job seekers with qualifications is sufficient. It may also contact the employer for additional information, or send candidates to the employer drawing from its own lists of job seekers. The local public employment service communicates its decision to the ZAV office (Step 4c), which presents its decision to the foreigners office (Step 4d). The employment agency may impose employer or regional restrictions on the work permit. It may also recommend that the permit be issued under a different category from the one recommended by the foreigners office.

At this point, the foreigners office sends a response (via a special application for electronic communication passing through the Federal Office for Administration) to the consulate (Step 5). The consulate issues the visa (Step 6), with which the worker may enter Germany. Once in Germany, the worker may start employment with the work visa in hand, but must go to the foreigners office within 90 days to register (Step 7), paying a fee (with the introduction of the biometric permit in late 2011, fees have risen from EUR 50-60 to about EUR 110). In certain cases where the total duration of stay is not to exceed one year, a visa for employment may be granted for the entire duration of stay, in which case there is no requirement to obtain a residence permit.

Applications may also occur inside Germany, in which case the consular office is no longer involved (Figure 4.2). In-country applications may be filed by citizens of certain countries with visa exemptions, who enter Germany without going through the visa process. Similarly, the job-search visa introduced in August 2012 allows qualifying job seekers from any country to enter Germany for up to six months to search a job and apply for a work permit in-country when a job is found. Finally, in-country applications may be filed by students, or those holding post-graduate job-search permits (for up to 18 months job search), or other groups of migrants without full labour market access.

The process is similar to applications from abroad. The principal differences occur in the case of graduating students from German universities, as the issuance of work permits to this group does not require approval by the Federal Employment Agency.<sup>3</sup>

Figure 4.2. **Flowchart for workers applying from inside Germany**



Source: OECD Secretariat analysis of procedure based on legislation and regulations.

While the process is rather opaque to applicants, in that they are not informed of the Employment Ordinance grounds under which their application is being considered, nor the step at which their application is, the applicant and employers – as well as their representatives – have the right to ask the authorities about the status of their application at any point.

### Processing time

Neither visa nor permit databases allow calculation of the average time from filing to issuance, so no actual data on processing times are available. In the absence of empirical data, studies and claims by stakeholders indicate that most labour permit applications are processed in about four to eight weeks, depending on where the application is filed and whether approval by the Federal Employment Agency and labour market testing are required (Box 4.2). Processing time for graduates of German universities

transitioning from the job-search permit has been slightly longer, from six to eight weeks. However, since approval by the Federal Employment Agency is no longer needed for this group since August 2012, this should lead to a significant shortening of the procedure.

#### **Box 4.2. The labour market test in Germany compared with other OECD countries**

The labour market test (*Vorrangprüfung*) is a key element in the approval process of requests for most work permits, and one feature of the system under discussion as a possible barrier to rapid and reliable processing of requests. A labour market test is a means to verify that nobody already in the domestic labour market (including immigrants already in the country and interested candidates from the enlarged EU/EFTA) is available for the job offered to the potential labour migrant. In most countries, the test consists of a mandatory publication period – after or prior to application – or a review by public employment services. In the absence of a publication period, proof of efforts to recruit domestically may be requested (as in Australia and Norway). In some cases, both a publication with the employment service and other attempts may be required (Canada, Ireland and New Zealand for low-skill temporary permits).

The involvement of the employment service varies across countries. The employment service may send candidates for available job offers and insist that employers justify any refusal to hire them, such as in Spain. In some countries, for example in France and Sweden, the mandatory publication period is considered a default approval if no response is taken. This is now also the case in Germany, where an absence of a response by the employment service within two weeks is considered as an approval.

The German labour market test is different from those in most OECD countries as it has no fixed publication duration, and each individual application is treated by the employment service separately. The maximum duration is two weeks (down from four weeks prior to 2009), although the employment service may choose to approve the request without publication. It may also contact employers and base its decision on refusal to hire approved candidates. Until August 2012, prior advertising efforts by an employer did not affect the treatment of the application; prior listing with the public employment service may now grant immediate approval.

The labour market test rarely leads to rejection of an application. Only in about 5% of all cases in 2011 was employment refused because of a negative outcome of the labour market test. Calls in Germany to eliminate the test are based on the assumption that this will accelerate processing. This may be the case, although approval of requests for specialised and hard-to-fill jobs is generally granted in less than the maximum publication period. In addition, the test also fulfils a signalling function to the employer and the public, namely that the domestic population (including immigrants already in the country) has priority over the admission of foreign labour to fill job vacancies.

Increasingly broad categories of permits are exempt from the labour market test. Shortage lists provide an exemption, as in other countries. Jobs with a salary above the threshold for the EU Blue Card introduced in August 2012 are also exempt. The EU Blue Card threshold is expected to cover a large share of applications, restricting the test to lower salary contracts and to employment in occupations which are not considered high-skilled.

In 2011, the National Regulatory Control Council published an evaluation of the process for issuing long-term work visas and permits to foreign professionals (specialists, scientists, interns and intra-company transfers) and executives. The council surveyed major employers and actors in the public administration. The report found that processing time averaged six weeks, with some variation according to the different procedures applied. Processing time for intra-company transfers was faster, at four weeks, as employers may apply directly to the centralised office and obtain labour market approval in advance, including this documentation in the worker's visa or permit request.<sup>4</sup>

In international comparison, Germany ranks among the faster countries for issuance of work permits to skilled workers (Figure 4.3). The minimum time – for complete applications not subject to approval by the Federal Employment Agency or to labour market testing – is less than a month. Processing time for certain applicants – especially those for whom a labour market test is applied – can, however, exceed the OECD average. As there are no numerical limits on permits in Germany, applications may be filed at any point during the year without concern over whether or not a limit has been exceeded.

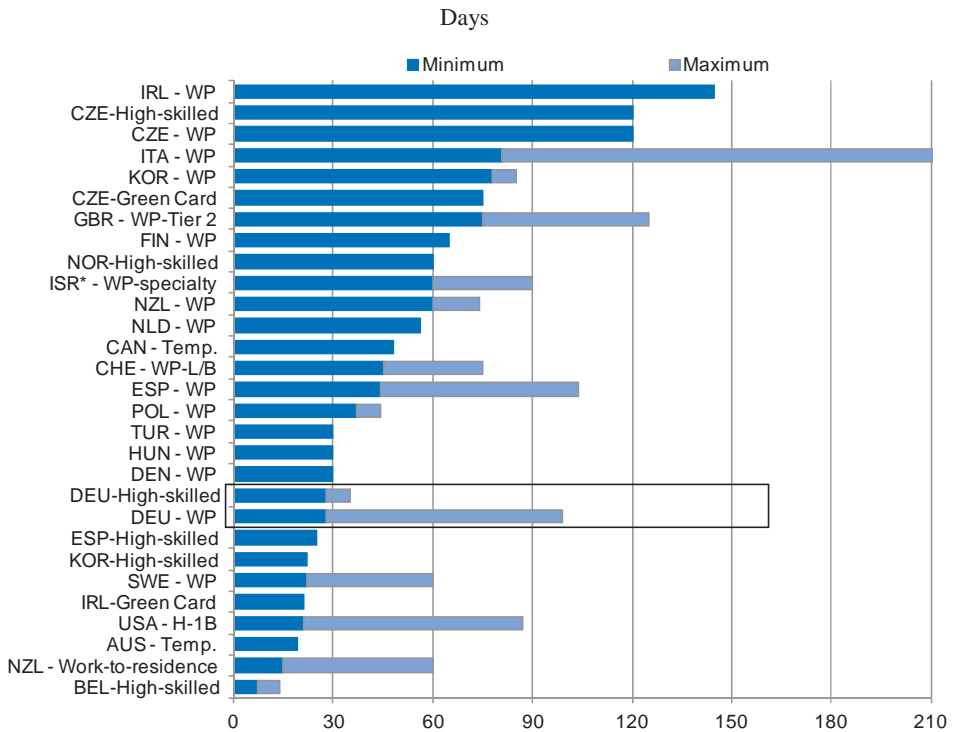
Reforms introduced in 2012 are aimed at further accelerating the processing time. Where the standard salary criteria are met, the EU Blue Card will be issued without consultation of the Federal Employment Agency, for example.

The evaluation of tertiary degrees is also conducted by foreigners offices and consulates, using a large specialised database – ANABIN – that “translates” foreign degrees into domestic ones (see below on the recognition of foreign qualifications).<sup>5</sup>

In addition, two major procedural changes, introduced in 2012, will significantly speed up approval – where required – by the Federal Employment Agency. The first allows for preliminary labour market testing by the Federal Employment Agency prior to the actual request for approval in the context of the residence permit procedure. The second is the presumption of approval if the Federal Employment Agency does not reply within two weeks.<sup>6</sup> The introduction of the electronic residence title in late 2011, however, has slowed down permit issuance in Germany, as the biometric permits are printed centrally in Berlin and generally require about four weeks to produce.



Figure 4.3. **Processing times for permits for selected work permits for skilled workers or including skilled workers, selected countries, 2010**



Note: WP refers to work permit.

\* Information on data for Israel: <http://dx.doi.org/0.1787/888932315602>.

Source: National authorities responsible for issuing permits.

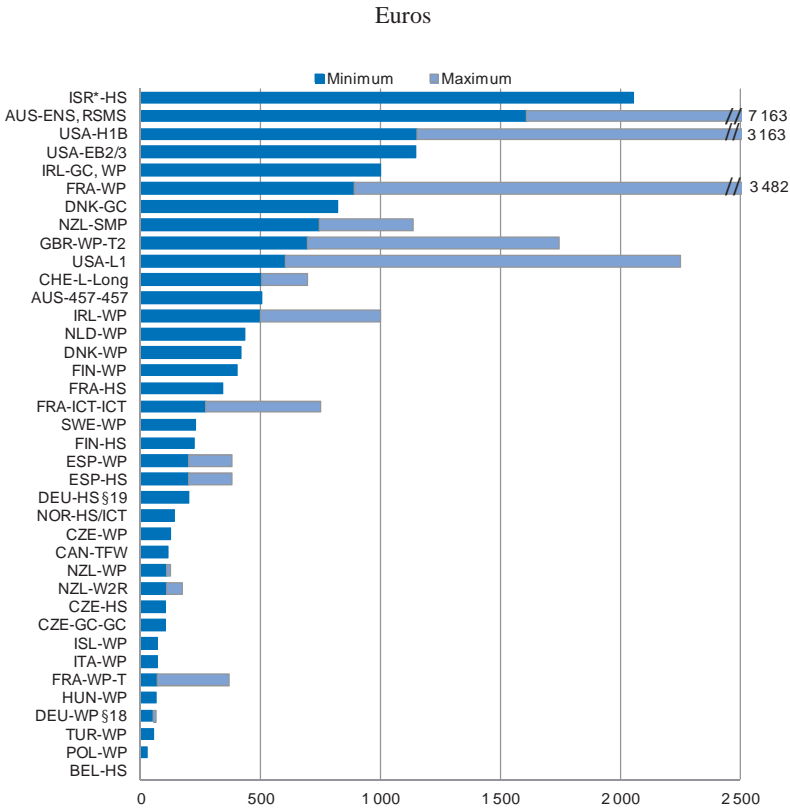
Stakeholders indicate that the assessment procedure of permit applications is highly heterogeneous across regional foreigners offices in Germany. Indeed, labour migration applications are only a small part of the permit processing conducted in foreigners offices, which largely work on family and humanitarian migration issues. Staff are not generally specialised in labour migration, and applications are not handled by labour migration specialists. This may slow down processing time and lead to mistakes and misclassification in applications.

### ***Cost of application***

The costs of application in Germany are not high in international comparison. The cost of a permanent residence permit under §19 was

EUR 200 in 2011, and the regular work permits cost EUR 60 (not including visa fees paid at consulates, of about EUR 60). Cost of the latter have since almost doubled to EUR 110, to cover the cost of the electronic residence title. Similar increases have occurred in other European countries adopting biometric permits. Permit fees for settlement countries such as Australia, or for work permits in the United States, are much higher (Figure 4.4).

Figure 4.4. Costs of permit issuance, different permits for skilled workers, OECD countries, by permit category, 2010



Note: EB2/3: permanent residence for employment; GC: “Green Card”; HS: high skilled; ICT: intra-corporate transfer. RSMS: regional sponsor; SM: skilled migrant; T: temporary; TFW: temporary foreign worker; WP: work permit; W2R: work to residence. For most countries, consular visa fees are not included. France: calculated range using 2011 SMIC. Israel: Includes levy based on one year contract at minimum qualifying salary. Fees are converted to euros using current market exchange rates.

\* Information on data for Israel: <http://dx.doi.org/0.1787/888932315602>.

Source: National authorities.

The above costs do not include private mediation and legal services, frequently used in the United States and other countries. The German system is not immediately transparent for employers and applicants, and legal counsel to improve the likelihood of a successful outcome can add significantly to the cost of recruitment. However, even with recourse to legal services, direct employer costs will rarely exceed one month's salary.

However, it appears that employers – in particular SMEs – rarely have recourse to legal assistance. Specialisation in labour migration is rare among immigration lawyers, and firms providing these services report difficulty in finding experienced lawyers. Potential employers of skilled labour migrants are generally willing to pay higher fees to accelerate the process; this is especially true for intra-company transfers where decisions are taken at the last minute, or for key personnel.

### *Rejection rates*

Rejection rates can reflect many different issues: few barriers to application tempting more employers on the margin of qualification to try their chances; complex or opaque regulations leading to many incomplete or ineligible applications; or rigid treatment of applications by authorities. High rejection rates may suggest a labour migration system whose requirements are not entirely transparent.

The multi-step procedure used in Germany means that rejection of applications can occur at a number of points: at the filing of the initial application with the consular authorities, at the foreigners office, or at the Employment Agency. Partial or missing data from some of these steps make it difficult to compare German rejection rates with those in other countries.

The individual clauses of the Employment Regulation leave considerable scope of discretion for administrators in the foreigners offices when assessing individual applications. For example, there is no standard for establishing the “equivalence” between a university diploma and occupation when assessing the application of an international student graduate for a status change. Likewise, terms such as “public interest” or “integration in the public life of Germany”, which appear in the Residence Act, are subject to the individual interpretation of staff at foreigners offices although there are some guidelines to be respected.

Rejection data for consular applications for labour migrants are not available, as only aggregate data on rejections are available. The overall rejection rate for national/Category D visas – for stays exceeding three months – was about 13% in 2011, although this includes many other

types of visa for family reunification and other long-term stays. The city of issuance provides some indication of the nature of the facility of obtaining a visa, however. The 2011 rejection rate for applications from the Indian city of Bangalore was low (2%), as were those from most other Indian cities and most cities in OECD countries (Israel and some US cities – Atlanta, Houston and Los Angeles – are exceptions). The highest rejection rates were for Africa and certain Southeastern European countries.

There is no data on rejection of applications by foreigners offices, as the Central Foreigners Registry does not maintain records on applications received, nor do local foreigners offices. As has been seen above, the foreigners offices act as the main filter, deciding eligibility for work permits, and denying applications which appear patently ineligible. In Cologne, for example, about half of permit requests regard medium- or low-skilled occupations and most of these are rejected outright. For other categories, such as the post-graduation permit for job search (issued only to those who have completed their studies within the designated time, and who have sufficient resources), it is the foreigners offices which would reject the issuance of this permit, and no statistics are available on rejection rates or reasons for rejection.

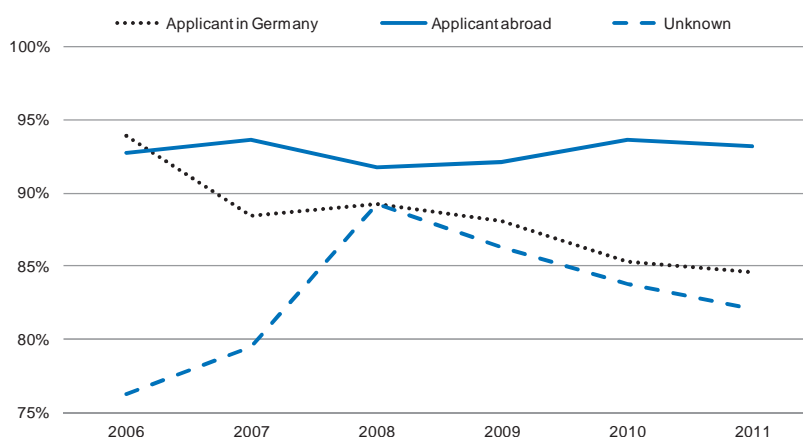
After being accepted by the foreigners office, most applications in the past were sent to the Employment Agency for review, including, where required, a labour market test.<sup>7</sup> The Employment Agency records information on rejections according to the location of the applicant, their nationality, the occupation, and the grounds for rejection. There are no data on the category under which they were considered potentially eligible, however. It is thus not possible to examine the approval rate for specific groups of labour migrants.

The overall approval rate at the Employment Agency has fallen slightly since 2008, from 90% to 87% in 2010-11. The approval rate varies according to the place of residence of the applicant (Figure 4.5). For applications from abroad, approval has been stable at about 93%. The approval rate for in-country applications has declined since 2007, falling from 94% in 2006 to 84% in 2011. This analysis, however, suffers from a large number of applications for which location data are missing (almost half in 2011). The approval rate for applications missing location data was lower.

Rejection rates by the Employment Agency vary greatly according to the occupation of the applicant (Figure 4.6). The rejection rate is consistently low for engineers and medical professionals (2-4%). It is also low for domestic workers, most of whom are au pairs, and for skilled white-collar jobs, research and technical staff. Cooks, most of whom are under the

specialty cook programme, have about a 20% rejection rate. Indeed, the largest share of rejections occurs in the restaurant sector (36% of the 10 000 rejections in 2011). Applications by persons seeking less-qualified service jobs have higher rejection rates, above 50% for labourers and cleaning staff, but rejection rates were also above 25% for office and retail staff, as well as for employment in personal services. This may reflect mismatched occupations by graduating students, or applications which should have been filtered out by the foreigners offices, as well as other factors. Those which are approved, instead, are often for temporary contract workers, au pairs or privileged nationalities, as these are the main exceptions to the recruitment ban for lower-skilled employment. It is clear in any case, however, that non-specialised service jobs face a high chance of rejection at both the foreigners office and under review at the Employment Agency.

Figure 4.5. **Rate of approval of applications by the Employment Agency, by place of filing, 2006-11**

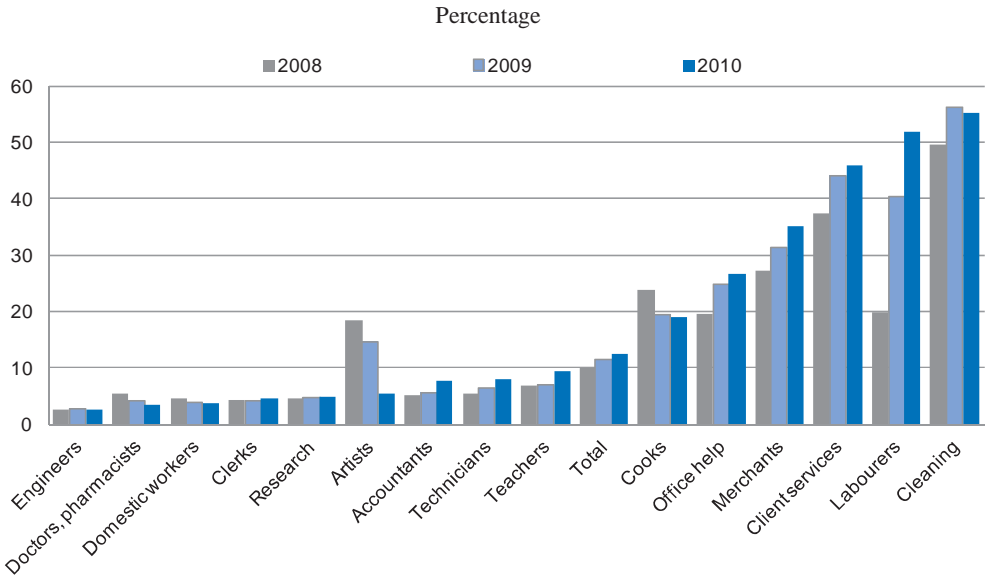


Note: “Unknown” accounted for 45% of the total in 2011.

Source: OECD Secretariat calculations based on data provided by the Federal Employment Agency.

Although the Employment Agency tends to approve most applications for skilled employment, there appears to be some variation over the business cycle, with an upward trend in approvals since 2009 (Table 4.1). In 2011, almost all (98.3%) applications for skilled workers with a tertiary-level occupation were approved. Most intra-corporate transfer requests are also approved. There is more variation in the treatment of applications where the privileged nationality exception applies (the approval rate is 92%), although this is a heterogeneous category containing both skilled and low-skilled employment.

Figure 4.6. **Rate of rejection of applications by the Employment Agency, by occupation, 2008-10**



Source: OECD Secretariat calculations based on data provided by the Federal Employment Agency.

The rate of rejection varies by nationality (Figure 4.7). Nationals of African countries face the highest rejection rates, while those from the Americas have the lowest rates.

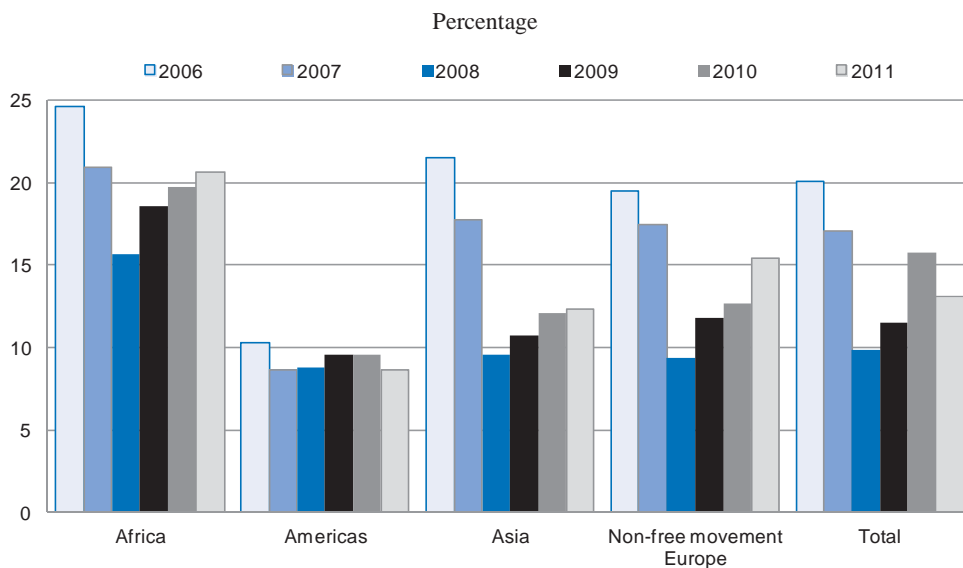
The largest proportion of applications is rejected on “other” grounds and on the basis of the labour market test (Figure 4.8). The “other” category is a heterogeneous one and often reflects an assessment of the employer, rather than of the occupation or the contractual conditions. The Employment Agency must verify whether the employer is legitimate, and has sufficient means and demand to justify the application. Such checks are more severe when the employer is not well-known or is in a high-risk sector such as specialty restaurants. Regarding the evaluation of the actual job application, following the labour market test, the main other ground for rejection is that the contract provides for wage or working conditions below the standard for German employees in the same occupation.

**Table 4.1. Rate of rejection by the Employment Agency of applications for work permits, skilled employment, by grounds, 2006-11**

	Percentage						
	2006	2007	2008	2009	2010	2011	2011 (total applications)
IT workers	3.1%	2.2%	3.2%	6.2%	6.2%	3.4%	6 766
Skilled workers, university-level employment	7.4%	6.6%	5.2%	3.2%	2.2%	1.7%	2 055
Skilled workers, German university degree	8.0%	6.6%	5.3%	7.4%	7.4%	4.4%	7 736
Intra-corporate transfer, executives and specialists	4.7%	4.2%	5.2%	4.4%	5.9%	4.6%	2 282
Privileged nationalities (may include skilled employment)	13.7%	11.4%	9.1%	10.8%	11.4%	7.8%	6 192

Source: OECD Secretariat calculations based on data provided by the Federal Employment Agency.

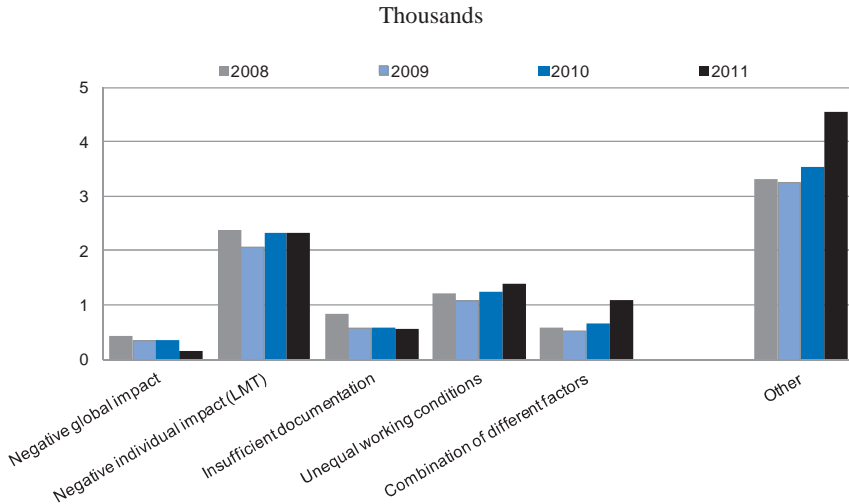
**Figure 4.7. Rate of rejection of applications by the Employment Agency, by continent of citizenship, 2006-11**



Note: Totals do not include “not allocated” or “unknown” responses.

Source: OECD Secretariat calculations based on data provided by the Federal Employment Agency.

Figure 4.8. Rejection of applications by the Employment Agency, by ground, 2008-11



Note: LMT refers to labour market test.

Source: OECD Secretariat calculations based on data provided by the Federal Employment Agency.

It is difficult to calculate precisely how often the labour market test results in a rejection, as no data are available on exactly how many applicants are subject to a labour market test. Whether or not the occupation is on a shortage list or is exempted from a test is not noted. An estimate is possible on the basis of the grounds for which permits are authorised by the Employment Agency. In 2011, about 50 000 applications were, in principle, subject to the labour market test. The labour market test, then, led to a rejection of the application in about 5% of the cases. The largest single category for rejections was that of occupations in the restaurant sector.

These partial data, which refer only to the Employment Agency's role in the process, do not allow a full analysis of the risk of rejection in the migration system and therefore a clear picture of the difficulty of using labour migration channels. In particular, since the Employment Agency is now excluded from the review of a range of permits under the changes introduced in August 2012, the absence of rejection data from foreigners offices will hamper future evaluation of access and use of the labour migration channel.

In sum, the risk of rejection for applications for permits for skilled workers is relatively low, while the chance of rejection for less skilled occupations is much higher. The labour market test, which has been the



object of criticism and the cause for the creation of a shortage list, may slow down the process of approval somewhat, but it cannot be described as an overly restrictive measure overall, certainly not for skilled employment.

### *Procedural experience*

As noted, applications for labour migration are generally handled together with all applications for migration, often without specialised staff or one-stop shops in the foreigners offices. The bulk of processing work by foreigners offices is for family reunification and humanitarian migration. Labour migrants thus generally need to make appointments and wait in line with all other applicants. One attempt to create a business-oriented service experience is the Hamburg Welcome Centre (Box 4.3).

#### **Box 4.3. Hamburg Welcome Centre**

One common solution to improving the processing of applications and client experience in a multi-actor procedure is to create a one-stop shop. Such shops bring together different institutional actors in the same space, or provide a single caseworker to handle subsidiary procedures and interact with the client. Complete one-stop shops, such as the National Immigrant Support Centres in Portugal, also include other public services such as social security and health services in the same location (OECD, 2008). In labour migration systems, one-stop shops facilitate the permit authorisation procedures for employers and employees, providing a single interlocutor and clear indications. One-stop shops are also a means to separate labour migration processes from other, generally more restrictive and backlogged migration services addressing family reunification or humanitarian requests.

One example in Germany is the *Hamburg Welcome Centre*, created in 2007 as part of a multi-pronged effort to improve the position of Hamburg as a destination for skilled immigration. The centre is funded by the state and other public and private local actors, and employs 13 persons. It provides pre-arrival orientation through a website ([welcome.hamburg.de](http://welcome.hamburg.de)), initial reception, and ongoing orientation towards mainstream services located elsewhere.

The Centre caters to newcomers arriving in Hamburg for employment, including graduates of German universities. Although it provides information to all foreigners, it limits its services to first-permit issuances to labour migrants and their families. It handles about 5 500 cases of permit requests annually. The centre does not process applications from abroad, but acts as a foreigners office in evaluating permit requests filed locally, including cases of visa-free entry. The Centre operates in parallel with the foreigners offices located in other districts of Hamburg; labour migrants may choose to submit their applications at other offices, where interpretation of regulations may occasionally vary.

While the centre does not accelerate the procedure, it does provide a single and welcoming face to the user. The Hamburg Welcome Centre provides all services in English as well as German – bilingual services are not the rule in German foreigners offices – and also gives some general counselling. It also promotes integration initiatives such as bilingual events, orientation sessions, and promotion of local cultural activities.

The limited attention to labour migration is also reflected in the widespread absence of specific application forms for labour migrants. Although permit application forms vary according to the local foreigners offices, consular authorities use a single standard paper form for all visa applications. Applications for the special high-skilled permanent residence permit, for example, are usually filed with the same form used for permanent permits issued for other purposes, even if the requisite criteria are quite different from other forms of permanent residence.

## **Selection of migrants**

Selection and admission in the German labour migration system is based on different and often cumulative parameters. This section reviews the parameters and the consequences of each parameter.

### *Job offer*

Under the current system, immigrants are admitted based on their contract with a German employer, rather than purely on their qualifications or skills. The task of selecting the most highly qualified migrants is left to employers. Thus far, even in the face of declared shortages of skilled workers, German employers have not made great recourse to recruitment from abroad. To some extent, this could reflect a general reluctance of employers to search beyond the known and familiar even when facing staff shortages as seen in Chapter 1 above. It also may reflect the undeveloped nature of recruitment networks abroad, and the absence of trusted intermediaries in the public and private sectors. The German Public Employment Service has not yet played a major role in mediating international recruitment, with the exception of the special schemes for the Central and Eastern European countries.<sup>8</sup> Employer associations have not generally stepped in directly to help members pool their resources to develop international recruitment responses to staff shortages, and private recruitment agencies are not prominent in the market.

One response to the absence of recruitment networks abroad is to allow job seekers into the country, giving them a fixed period within which they must find work. The principle is that this will lower transaction costs for employers, by giving them a chance to meet the job seekers and allowing for rapid hiring. Any stay beyond the job-search period is contingent on finding a qualifying job.

Denmark introduced this possibility in 2009, allowing qualifying job seekers into the country for up to three years, during which they could work in any job. At the end of three years, they had to find a job qualifying for a

work permit (either by the qualified nature of the job or the salary paid). Selection has been largely based on tertiary education and language skills, and no access to welfare benefits is provided. Most of the initial recipients of the Danish Green Card – most of whom were educated outside Denmark and spoke other European languages rather than Danish – did not move into skilled employment by the end of the first year.<sup>9</sup> Norway introduced a more limited job-search visa in 2010, granting six-months stay to qualified job seekers, who may not work until they find a qualifying skilled job. Fewer than one in four recipients found a qualifying job, although about one in five transitioned to other grounds (language study, etc.), leading the Norwegian authorities to suspend issuance in July 2012.

The German approach has been cautious, granting since August 2012 a six-month visa to foreigners with a recognised tertiary degree and adequate means for self-support; they may not work while job hunting and, in order to remain in Germany, must qualify for one of the skilled work-permit categories.<sup>10</sup> Under the previous framework, people entering Germany to directly seek employment had to enter with a tourist or business visitor visa (up to three months) but had, except for nationals of certain countries exempt from visa requirements, to leave the country to receive the work visa since applications were only possible from abroad. More importantly, because pre-recognition of the degree is a prerequisite for obtaining the visa, the employer can be sure that a person with a job-search visa can be hired without any additional labour market test, provided that the job offer meets the criteria for issuance of a work permit (*e.g.*, the EU Blue Card or shortage occupation).<sup>11</sup>

The job-search visa thus solves the problem of employers having to wait to hire a skilled worker, and admits only those whose qualifications have been formally recognised, but does not address other issues such as language skills and employer perception of foreign qualifications. The implementation of this visa should be monitored to examine its uptake (who requests and receives it) and the characteristics of recipients (who transitions to work permits, and in what occupations). If businesses take advantage of applicants arriving under the visa, it would suggest that one barrier to use of the labour migration channel is that they have had difficulty identifying suitable candidates abroad. If job-search visas do *not* lead to hiring, this might suggest that employers are not accepting foreign candidates even if they have formally recognised qualifications and are available immediately.

### ***Occupational characteristics***

Debate and policies have given priority to skilled occupations, and specifically a short list of occupations such as physicians and engineers. The permit regime specifically identifies IT workers separately from other

workers, and the main entry channels are limited to those in occupations requiring tertiary qualifications. Overall, it is mainly open to such occupations.

The German shortage list, however, already includes several skilled trades – those requiring post-secondary vocational education – in waste disposal and mechanical / technical positions. The shortage list is thus an instrument which could open up more vocational positions for recruitment of experienced workers from abroad.<sup>12</sup> As vacancies and shortages increase, the shortage list could become a means to extend flexibly opportunities to better-paid medium-skilled occupations. A further step in this was already taken with the August 2012 reforms, which opened the labour market for persons with German vocational degrees who have a job offer in a medium-skilled occupation.

Regarding low-skill occupations, there is currently little possibility for admission, except for privileged nationalities passing a labour market test and participants in bilateral agreements or specialised channels, none of which permit long-term stay or family reunification. One occupation which has seen expansion of labour migration in many OECD countries is long-term care. This is not a channel in Germany, which regulates care work in the household, considered a medium-skilled occupation. It does however have a bilateral agreement for household helpers, based on the principle that these helpers do not provide care work while they perform domestic tasks in the home for employers who are not self-sufficient. The programme started in 2002 and was institutionalised in the 2005 reform, with strict limits on the salaries, hours and tasks for the workers, and limited to recruits from the new EU member countries. The programme was not large – about 3 000 workers, mostly Polish, in 2008 – and the numbers have declined in recent years. The high-cost and agency-based model for household help seems to be an obstacle to expansion of the scheme, as is the ban on care work by household helpers. Nonetheless, it serves as an example of a specific scheme for a low-skilled occupation. Finally, Germany has a specialty chef programme, dominated by Asian cooks, to provide temporary workers to restaurants which cannot find experienced staff locally.

### *Educational characteristics*

The labour migration system in Germany generally requires labour migrants to have qualifications matching their occupation; a tertiary-equivalent degree is generally required. Discussion over changes in Germany has repeatedly raised the idea of admitting tertiary-educated foreigners without a job offer on the assumption that they will find appropriate employment quickly.

Where such supply-driven selection systems aim to fill high-skilled occupations, the main counterargument lies in the general risk facing immigrants – in Germany as in other OECD countries – of so-called “overqualification” (employment in jobs below one’s actual qualification level). The consequent waste of skills is a loss for the migrant and a failure for the admitting country. Across the OECD, immigrants are at a higher risk of being overqualified than the native-born, especially if they were born in a lower-income country and obtained their highest degree abroad (OECD, 2012a). In Germany, roughly 30% of the tertiary-educated foreign-born work in jobs below their formal qualification level. The incidence of overqualification is lower among the native-born, concerning only 20% of the employed. These averages are close to the OECD and EU averages (Figure 4.9; OECD, 2012b).

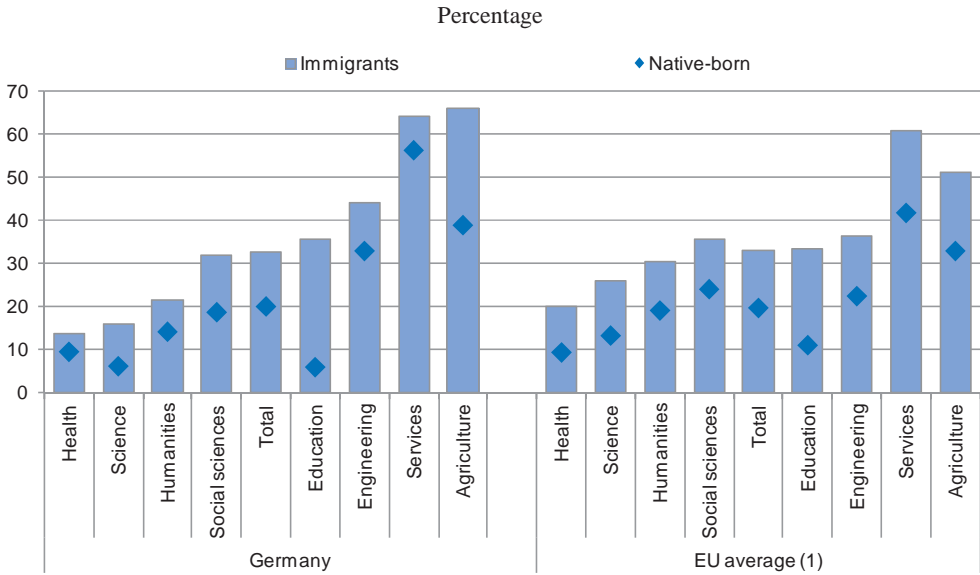
Even more important than the migration background appears to be the study background when it comes to the determining the prospects of being in a well-matched job. As shown in Figure 4.9, overqualification rates of tertiary-educated in employment vary substantially, depending on the field of study in which they received their highest degree.

While the overqualification rate of tertiary-educated immigrants in Germany corresponds to that found elsewhere in the European Union, the variance by field of study is larger. Immigrants with a degree in health or sciences in Germany, for instance, are hardly affected by overqualification. Overqualification rates in these fields tend to be higher in the rest of the European Union, at 20% for immigrants trained in health and 26% for immigrants with a degree in science. At the European level, overqualification rates are more than 10 percentage points lower for the native-born trained in these fields.

The relatively good matching of educational attainment and occupational skill level for graduates of health and science programmes in Germany can be interpreted in different ways. First, it might indicate good general employment opportunities in relevant occupations. Indeed, *Physical, Mathematical and Engineering Science Professionals*, as well as *Life Science and Health (Associate) Professionals* were occupations with employment growth of 20 to 25% between 2000 and 2010. Moreover, the incidence of horizontal mismatch is low for graduates from these fields, meaning that only a small share work in a job that matches their formal qualification level but not the *content* of their field of study.

Consequently, around 85% of employed native-born and around 80% of foreign-born holders of health or science diplomas are in a job that matches both the level and content of their studies (Figure 4.10).

**Figure 4.9. Overqualification rate of tertiary-educated employed by field of study, immigrants vs. native-born in Germany and across the European Union (excluding Germany), 2006-10**



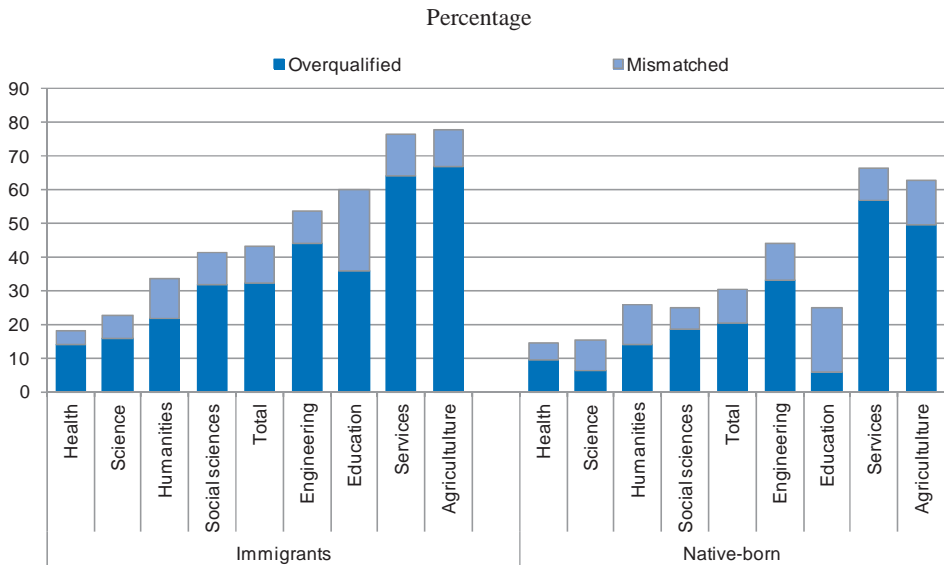
*Note:* The overqualification rate is measured as the percentage of employed individuals with a tertiary degree working in medium- and low-skilled jobs (ISCO 4-9). Managers of small enterprises, members of the armed forces and persons with non-response on the variable classifying their occupation have been excluded from the analysis. Likewise, graduates of general programmes do not show up separately but are included in the totals.

1. The EU average is a weighted average excluding Germany.

*Source:* European Union Labour Force Survey (Eurostat), OECD Secretariat calculations.

A significant share of tertiary-educated persons (both native-born and immigrants) who are trained to work in technical or civil engineering are currently not working in the designated high-skilled shortage occupations, but in medium-skilled jobs. One of the occupational categories on the current positive list is engineering occupations (mechanical and automotive), yet the overqualification rate for persons trained in engineering is relatively high. Among those trained as engineers, architects or manufacturers, 33% of the native-born and 44% of immigrants work in jobs below their qualification level. Another 10% are horizontally mismatched, that is, working in jobs which require a high level of skills but are not related to engineering, architecture or manufacturing.

Figure 4.10. **Overqualification and mismatching rates of tertiary-educated employed, by field of study, immigrants vs. native-born, Germany, 2006-10**



*Note:* The overqualification rate is measured as the percentage of employed individuals with a tertiary degree working in medium- and low-skilled jobs (ISCO 4-9). Managers of small enterprises, members of the armed forces and persons with non-response on the variable classifying their occupation have been excluded from the analysis. Likewise, graduates of general programmes do not show up separately but are included in the totals.

*Source:* European Union Labour Force Survey (Eurostat), 2006-2010, OECD Secretariat calculations.

Nonetheless, overqualified holders of engineering diplomas are employed in medium-skilled occupations that roughly relate to their field of study: 16% work as *Building Finishers and Related Trade Workers*, 12% as *Machinery Mechanics and Fitters*, 7% as *Electrical and Electronic Equipment Mechanics* and 6% as *Building Frame and Related Trade Workers*. The remainder are distributed across the range of medium- and low-skilled occupations.

The significant overqualification rate of trained engineers in Germany suggests that many German employers hire highly qualified personnel for jobs that could, formally, be done by medium-skilled staff and that a significant number of engineering graduates accept employment below their skill level. This raises questions about a *global* shortage of engineering skills in the German labour market which should, in principle, manifest itself in more favourable bargaining positions of graduates with these relatively rare skills. However, it may also reflect a lack of some specific engineering

specialisations (such as automotive and mechanical) rather than other, more general engineering specialisations (*e.g.* civil and industrial).<sup>13</sup>

All immigrants in Germany – most of whom have been admitted for reasons other than employment, such as family reunification or humanitarian reasons – potentially add to the domestic pool of skills. Indeed, mobilising the skills potential of immigrants is an important component in the overall strategy to ensure the skilled labour supply (see Chapter 1 for a more complete discussion). Good labour market outcomes of the resident migrant population (in addition to the native-born) are an important prerequisite for public acceptance of additional labour migration to alleviate shortages, although public opinion gives more weight to employment in general than employment in jobs matching qualifications.

The risk of being overqualified, in Germany as in other OECD countries, varies sharply according to the immigrant's category of entry (Figure 4.11). Family and humanitarian migrants face a greater risk of working in jobs which do not match their formal qualification level than immigrants who came to Germany for taking up employment, and three times the risk faced by the native-born. The existing filter represented by the employer-driven labour migration system, along with requirements that education and occupation match, appear to ensure a high level of job matching.

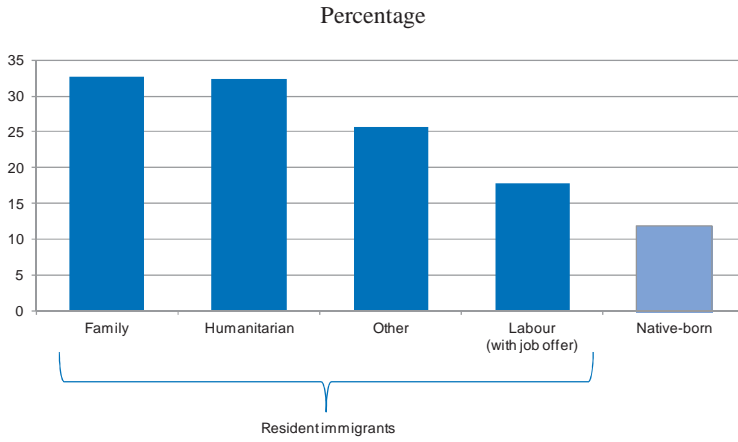
Most immigrants have obtained their highest qualification abroad and employers may have difficulties in judging its real value, particularly for qualifications obtained in education systems that differ from those in Germany and other high-income OECD countries. To some extent, this difficulty can be overcome through formal assessment. Having their qualifications assessed seems to be associated with better labour market outcomes for immigrants with credentials from lower-income countries. While only 30% of those employed who did not apply for recognition are in skills-adequate employment, this figure rises to 50% among those who obtained recognition (Figure 4.12; see also OECD, 2012a). However, even for the latter the percentage is much lower than for the native-born, and the gap is larger in Germany than in all other OECD countries for which data are available.

As seen above, the German labour migration system requires that labour migrants' employment matches with their qualifications unless their salary exceeds a certain amount, at which point only the qualification is considered since the salary is taken as an indication of the skills level of the job. The cautious and restrictive approach currently taken in Germany appears justified by the difficulty which non-labour migrants face in having their qualifications valued in the labour market, even for those who have obtained formal recognition. This argues against further opening to migration without a job offer based on qualifications, as migrants cannot be expected to easily find



employment matching the qualifications for which they were admitted. The two filters, first of a job offer, and then of ensuring a match between qualifications and employment, are reasonable safeguards. For skilled labour migrants who arrive with a well-matched job and who stay in employment long enough to acquire permanent residence, overqualification should be less of a risk.

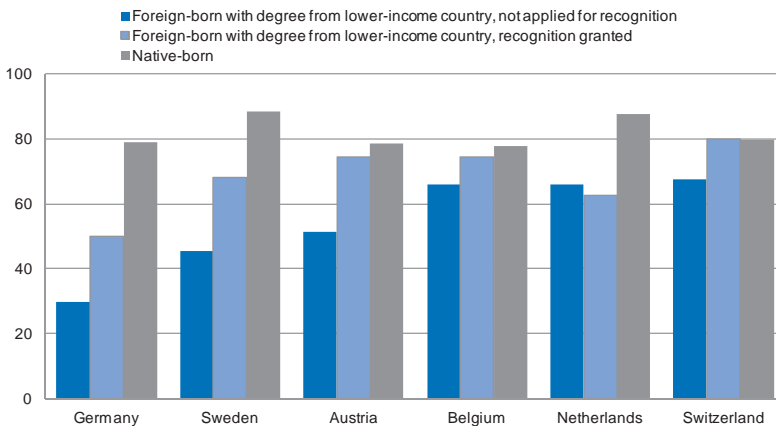
Figure 4.11. **Share of overqualified medium- and highly educated immigrants from outside of the European Union by category of entry, in employment, 2008**



*Note:* Category of entry is self-reported.

*Source:* German Microcensus, OECD Secretariat calculations based on data provided by the University of Hohenheim.

Figure 4.12. **Percentage of highly educated employees working in a highly skilled job, by origin of diploma and recognition status, 2008**



*Source:* European Union Labour Force Survey (Eurostat), OECD Secretariat calculations.

## *Salary*

One common feature of admission systems in a number of OECD countries is a salary threshold. Salary thresholds are used as a proxy for specialised employment, simplifying admission for certain jobs. The United Kingdom exempts very high earners from the ceiling applied to highly skilled migrants. A number of countries impose salary thresholds as one criterion for work permits (Ireland for its Green Cards, the Netherlands for its Knowledge Migrants, Spain and Belgium for executives, Austria for its Red-White-Red Card, Israel for foreign experts).

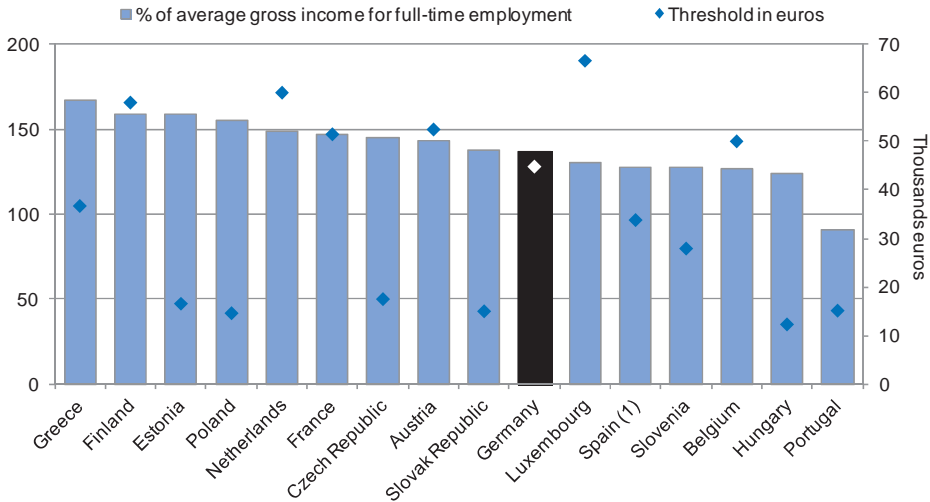
The salary threshold introduced in Germany in 2005 as one prerequisite for permanent residence under §19 occupied an outsized role in public perception although, as noted, it has been a minor channel for entry for employment. The permanent residence channel for highly paid foreigners was abolished in August 2012 with the introduction of the EU Blue Card (Directive 2009/50/EC), under which salary is one of the principal criteria for the issuance of the permit.<sup>14</sup>

The directive establishes that the EU Blue Card will be issued to foreign workers earning 1.5 times the average salary, although the benchmark for defining the average salary ranges is identified by the individual country. A lower threshold – 1.2 times the average salary – is granted for shortage occupations, with shortages to be determined by the individual country. Although not required by the directive, Germany exempts potential labour migrants who have a job offer paying more than the threshold from the labour market test.

The salary threshold in Germany was in reference to the average gross income. Relative to other European countries, Germany did not apply a particularly rigid interpretation of the salary requirement (Figure 4.13).

Figure 4.13 uses the average annual gross income for full-time employment, a benchmark which is available across the OECD. The German EU Blue Card salary threshold – EUR 44 800 when introduced in 2012 – represents 1.4 times the average German gross full-time salary. The threshold for shortage occupations – EUR 35 000 when introduced in 2012 – is equivalent to the average German gross full-time salary. By this measure, most EU countries which have so far published their EU Blue Card salary thresholds have set them below the 1.5 threshold, or even (in the case of Italy) below the annual average gross income for full-time employment. The Netherlands, which imposes a salary threshold for its skilled migration permit (the “Knowledge Migrant”), set the EU Blue Card threshold higher than that imposed on Knowledge Migrants, to reflect the additional benefits associated with the EU Blue Card.

Figure 4.13. Comparison of EU Blue Card thresholds, required salary as a percentage of the average annual gross income of full-time employed, 2010-12



*Note:* Thresholds are calculated for the top bracket, in most cases shortage occupations are subject to a threshold of 80% of the main threshold, except Germany, where it is lower (73% of the main threshold).

1. Spain applies the threshold based on average salary for each sector; threshold shown is for average income overall.

*Source:* Data on average annual gross income of full-time employed: OECD.stat.; EU Blue Card thresholds from official national publications.

Examining the actual salary range, by occupation, relative to these thresholds suggests that most skilled occupations requiring university-level qualifications already pay wages above the threshold (Figure 4.14), for both men and women. The wage gap between men and women however means that for certain occupational groups, most salaries earned by German women would not qualify for the EU Blue Card, while those earned by men would. For highly qualified and qualified administrative professionals, for example, men are paid more than the standard threshold while the salary range for women is largely below the threshold. Men in medium-skilled occupations – not currently eligible for the EU Blue Card in Germany – would also generally qualify, while most women would not. While broad occupation groups do not account for individual variations in salaries according to positions and tasks, the range of salaries paid to women is lower than that for men.

A common consideration in setting an income threshold is that of age. Older workers have more experience and generally earn more in the same occupation. Where single salary thresholds are applied, these may favour older workers over younger ones, even as the long-term benefit for the destination country of skilled labour migrants is greater for those who arrive earlier and contribute more during a longer working life. Figure 4.15 shows the salary distribution for younger (25-39) and older prime-age workers (40-49). For several categories of skilled employment, especially highly qualified and qualified administrative professionals, younger workers are generally paid below the salary threshold. Technical associate professionals also would not generally qualify for the salary threshold until they reach the older group. Other OECD countries have reacted to the bias in favour of older workers inherent in such salary thresholds by lowering wage thresholds for younger labour migrants, in the Netherlands, or by otherwise giving preference to younger migrants, for example in points systems (see below).

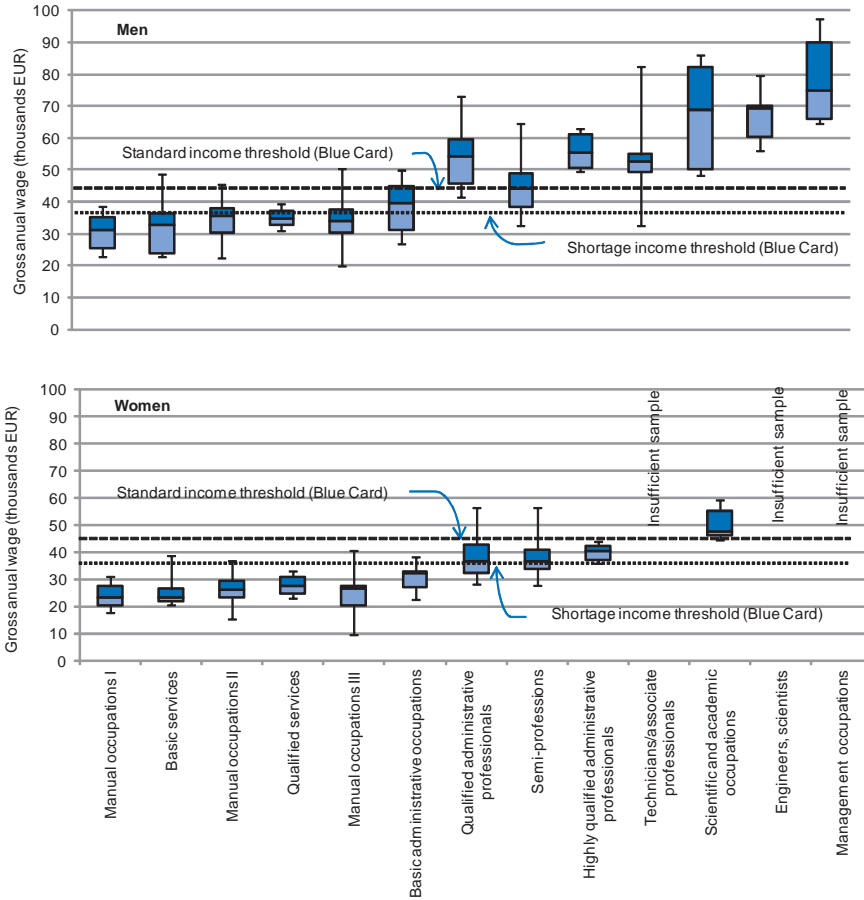
Salaries also tend to be higher in large enterprises. Overall, while the salary threshold is below the median wage for the tertiary-educated employed which was about EUR 55 000 in 2010, it is above the median wage for labour market entrants (25-34) with a tertiary degree in SMEs, which is about 38 500. That notwithstanding, the recent reforms linked with the introduction of the EU Blue Card represent a major liberalisation of work permits for qualified foreigners offered skilled employment in Germany, since a labour market test is not applied to anyone earning above the respective threshold. Spouses are even granted immediate and unrestricted labour market access. In addition, Germany also allows applicants in shortage occupations whose salary falls between the lower and standard thresholds (EUR 36 192 and 46 400) to acquire an EU Blue Card following a labour market test.

The EU Blue Card represents a much more open policy than that offered under the previous salary-threshold-based §19 permanent residence permit. As is evident in the salary distribution charts above, the pre-August 2012 threshold for the permit was above the salary for most employment in qualified jobs, especially for women, young people, and for employment in SMEs.

While the EU Blue Card does not offer immediate national permanent residence – in contrast to the previous §19 salary-based permit – holders may apply for permanent residence after 33 months, or 21 months if they have certified German-language skills at least at the B1 level of the Common European Framework. This is much shorter than the standard 60-month period for other skilled labour migrants.

Figure 4.14. Gross annual wage for full-time employed by occupation groups, by gender, 2006

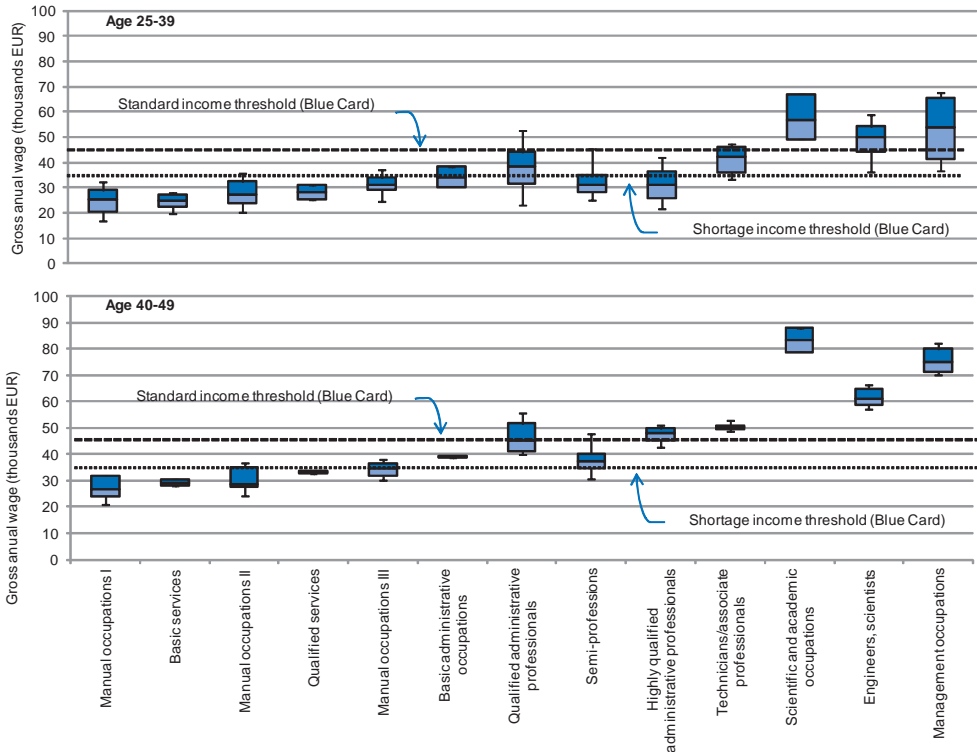
Range: median, 25<sup>th</sup> and 75<sup>th</sup> percentiles, minimum and maximum



Source: OECD Secretariat calculations based on data from the Federal Statistical Office.

Figure 4.15. Gross annual wage for full-time employed by occupation (grouped), by age, 2006

Range: median, 25<sup>th</sup> and 75<sup>th</sup> percentiles, minimum and maximum



Source: OECD Secretariat calculations based on data from the Federal Statistical Office.

### Labour market test

The labour market test in Germany is not used as the principal means of evaluating whether a job is eligible for recruitment. In a number of OECD countries, such as Sweden, and in Canada’s temporary foreign worker programme, the inability to fill a vacancy is considered sufficient justification to recruit a worker from abroad. In Germany, it is not sufficient. The additional filters on demand cushion Germany to some extent from cyclical demand shifts for workers in less skilled occupations or those where employment is less sustainable. In countries where labour market tests are the primary safeguard of the local labour market – rather than qualification or occupational criteria, as in Germany – a large share of total inflows has been of low-skilled workers who have been hard hit by the current negative

employment trends in many OECD countries. This was the case in recent years in Spain and Italy, for example. However, other countries, such as Canada, apply more rigorous labour market tests to requests for workers in occupations considered to be less skilled.

Labour market tests have gradually been eliminated from skilled migration categories in Germany, and the introduction of the EU Blue Card further exempts a large share of applicants from the labour market test (Box 4.2).

### *Nationality*

As noted, the German labour migration system does not allow recruitment of non-EEA workers with less than tertiary education or for most occupations requiring less than post-secondary vocational training, unless they are citizens of certain OECD countries and have passed a labour market test. More than half of the citizens of these countries who receive work permits receive them through the exemption for privileged nationalities.

The Employment Agency authorised an average of 5 000 permits annually under this exception between 2006 and 2011, with a rejection rate of about 10%. The exception accounted for about 8% of all employment permits for labour migrants authorised by the Employment Agency. Applicants from inside Germany were about three times more likely to be rejected than those from outside Germany.

The occupational distribution of labour migrants entering under the exception for privileged nationalities ranges from the low-skilled (including guest services and cleaning jobs) to high-skill positions (Table 4.2). Between 2008 and 2010, the main occupations of the 15 000 workers admitted under the provision were clerical workers (2 500), entrepreneurs and business administrators (2 000), engineers (1 800), artists (1 300) and teachers (1 100).

The usual justification for a system which favours certain nationalities over others is that these privileges are granted in the context of a reciprocal bilateral agreement. In Germany, these arrangements are based on long-standing friendship agreements, and do not provide reciprocal access in the corresponding countries. Nonetheless, the privileges are based on the assumption that migratory pressure from these countries would be limited. As most of the occupations taken up under this privilege would presumably qualify for other grounds, the necessity of this category for labour migration is not evident. In any case, it does not appear to be used inappropriately.

Table 4.2. **Approvals by the Employment Agency under the ordinance for privileged nationalities (§34 BeschV), by occupation, 2008-10**

KldB88 code	Occupation	Approvals 2008-2010	As a % of all BA approvals 2008-2010 for the occupation
<b>I</b>	<b>Vegetable farmers, breeders, fishing occupations</b>	<b>122</b>	<b>8.7%</b>
<b>III</b>	<b>Manufacturing occupations</b>	<b>1 494</b>	<b>7.0%</b>
28	Mechanics	177	31.4%
39-40-41	Food processing and preparation, cooks	707	5.0%
<b>IV</b>	<b>Technical jobs</b>	<b>2 258</b>	<b>6.9%</b>
60	Engineers	1 821	6.3%
61-62-63	Other technical jobs	437	11.7%
<b>V</b>	<b>Service occupations</b>	<b>10 686</b>	<b>11.2%</b>
68, 69, 70, 77, 78	Clerical	2 516	10.0%
75	Entrepreneurs, organisers, accountants	2 050	23.8%
76	Deputies, key administrative positions	40	22.3%
81	Jurists, consultants	184	38.1%
82	Writers, translators, librarians	215	23.9%
83	Artists and associated professions	1 288	14.5%
84	Doctors, pharmacists	72	1.1%
85	Other health care professionals	165	12.8%
86	Social work associate professionals	359	26.4%
87	Teacher	1 134	36.6%
88	Humanities and scientific occupations, nec	825	12.2%
91	Guest services	793	18.6%
92	Domestic jobs	152	0.7%
93	Cleaning jobs	200	8.7%
<b>VI</b>	<b>Other workers/no profession</b>	<b>466</b>	<b>2.9%</b>
ZZ	Unspecified	313	0.9%
	<b>Total</b>	<b>15 340</b>	<b>7.7%</b>

Source: OECD Secretariat calculations based on data from the German Federal Employment Agency.

### *National or public interest*

Labour migrants can also be admitted when the occupation is of “public interest”. This allows for cases where other criteria are not met. However, this pathway is only open for skilled workers. Most migration systems do allow for some discretion in judging work-permit applications, often through such a public interest clause, although it is meant for exceptional cases. This also seems to be the case in Germany, as this permit category is not heavily used – about 370 cases in 2011. The clause is a means to deal with rigidity in the system. However, it also opens a margin of discretion at local Employment Agencies which carries the risk of differential treatment. Surprisingly, many of the cases of public interest involve professional occupations which should qualify under other grounds.<sup>15</sup>



### *Criteria missing in Germany*

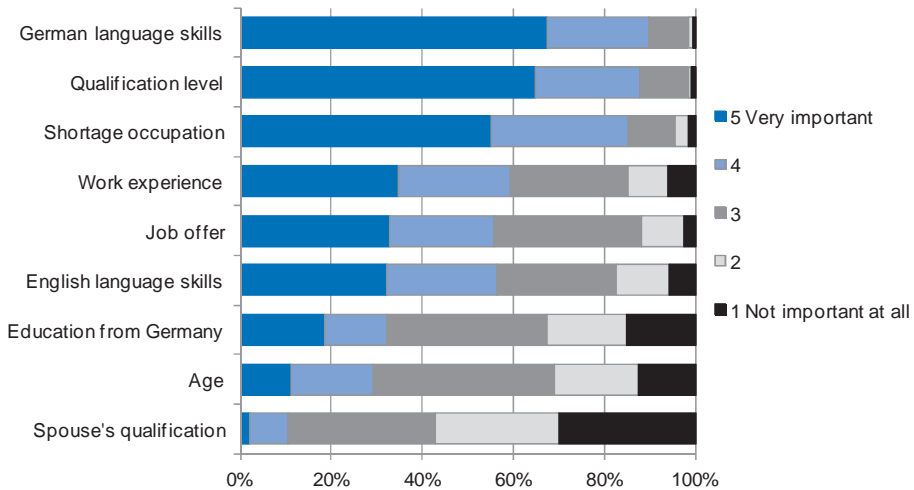
Most labour migration regimes are based not only on the objective of meeting immediate needs, but also of ensuring sustainability in employability and a positive fiscal contribution. While qualifications are an important determinant of these further objectives, they are clearly not the only factors to be considered.

*Language* is a clear criterion for sustainability of employment, including in lower-skilled jobs, although it seems to be particularly important for access to highly skilled employment and in small- and medium-sized enterprises (see OECD, 2008). The employers participating in the OECD/DIHK survey ranked German-language knowledge as the primary selection criteria for labour migrants, closely followed by education level. Almost two-thirds stated that German-language skills are “very important” (Figure 4.16).

However, incentives to favour acquisition of German-language skills, or to privilege the admission of German speakers, are limited in the current policy. The provision for issuance of permits to graduates of German secondary schools abroad goes in this direction, although the number of schools is limited and uptake of the permit is minimal (30-40 applications annually). The preference given to graduates of German universities is also implicitly intended to favour labour migration by German speakers, although degree programmes in English may undermine this goal (see next chapter). German-language skills also allow EU Blue Card holders to transit more rapidly to permanent residence permits. Although German-language skills are a prerequisite for a permanent residence permit, immigrants can also remain in Germany on renewed temporary permits. Indeed, there is no basic requirement that labour migrants demonstrate German-language skills – in contrast, for example, to the requirements imposed on most family migrants.

*Age* at immigration is a key determinant of the net lifetime fiscal contribution to the host country and also has important implications for the demographic structure. In Germany, however, it is not a factor in evaluating applications. In contrast, as was noted in the discussion of salary thresholds, younger workers are in practice, although not formally, penalised by the EU Blue Card selection process since they will often not meet the salary thresholds in contrast to workers with longer work experience.<sup>16</sup> At the same time, looming shortages in enterprises are often in the starting-level positions for junior staff.

Figure 4.16. Employers' rating of criteria for the selection of labour migrants



Note: Number of employers who gave valid responses = 1008. The ranking is done by the mean value of the rating across all valid answers.

Source: OECD/DIHK Employer Survey.

Finally, as seen above, Germany has large *regional* disparities in shortages and labour force characteristics, yet regional aspects do not figure in the migration system, except insofar as foreigners offices and the Employment Agency treat requests in regions with shortages with more flexibility.

These three parameters – language skills, age, and region of employment – are built into selection systems in Australia and Canada, for example, to favour recruitment of younger systems people who have language skills, and to give regions a chance to intervene to meet pressing demand either by accelerating processing or approving profiles which would not otherwise correspond to admission criteria. Shortage lists in a number of countries, such as Canada, Finland, Spain and the United Kingdom, are also drawn up on a regional basis, as another means for reflecting regional differences.

### *Immediate permanent residence vs. temporary-to-permanent stay*

In contrast to the OECD countries that have been settled by migration (Australia, Canada, New Zealand and, to a lesser degree, the United States), immediate and unlimited permanent residence for labour migrants is a rarity in Europe. Only Germany offers it to a select few, although its salary-based category was eliminated in 2012. Yet, permanent residence upon entry does

not necessarily appear to be decisive in attracting migrants, and most skilled labour migrants in European OECD countries can generally expect to obtain permanent residence after a few years as well. Even in the OECD settlement countries, permanent economic streams rely heavily on student and temporary migration channels, rather than on first arrivals from abroad. Canada's policy, for example, has shifted towards rewarding temporary workers and students through the "Canada Experience Class". Similarly, Australia's temporary work programme is the single most important channel for permanent migration into the country. In the United States, more than 90% of the permanent economic migrants (*i.e.* those receiving an employment-based "Green Card") are already in the country on another visa, usually a temporary employment visa. Immediate permanent residence was a minor phenomenon in Germany, but two-step migration from temporary to permanent states does not appear to penalise destination countries when the pathway to permanent residence is clear from the beginning.

In summary, Germany applies a wide range of criteria in evaluating applicants, many of which overlap, but which allow, in principle, most highly qualified jobs to be filled by applicants with recognised tertiary qualifications. While an employer or applicant should be able to determine eligibility based on these criteria, applicants do not indicate the grounds under which they believe they are eligible. The complexity of the system may have hampered its access for smaller employers with no experience and no support. The widespread misconception about the system – notably treating the salary threshold as a general threshold for work permits – does not reflect its actual openness for highly skilled workers and those who have studied in Germany. It does, however, reflect insufficient public information about the policy. It may also reflect an apparent lack of transparency, and the limited and selective channels for medium- and low-skilled occupations.

## Notes

1. The main data related to the application is also forwarded electronically at the same time.
2. The ZAV may modify the permit grounds under which the foreigners office proposed to issue the permit. For example, it may note that the applicant qualifies for other categories of permits not subject to approval by the Federal Employment Agency.
3. In addition, a number of recent procedural changes have been implemented in August 2012 which speed up the procedure (see below).
4. As will be seen below, in response to the report, a number of changes have been made which should considerably shorten processing time.
5. During the visa application process, the consulates first consult ANABIN. If the database does not contain information on the degree in question, the applicant is asked to undergo a formal recognition process in Germany – through the Central Agency for Foreign Education – before further handling of the visa application.
6. The reply may, however, consist of a declaration that additional information is needed. In any case, employment agencies are supposed to carry out the labour market tests within 48 hours after receiving the ZAV's request.
7. As already mentioned, this is gradually changing as the implementation of the EU Blue Card in August 2012 exempted a significant part of labour migration from approval by the Federal Employment Agency.
8. However, as will be seen below, the Employment Service has recently expanded its activity in other EU countries.
9. Issuance of these permits has since become more restrictive, with numbers declining from 3 000 in 2010 to 1 500 in 2011 and a projected 900 in 2012. A reform of the criteria is currently under consideration.
10. Sweden, while it does not have a job-search visa, does offer in-country status change to foreigners who come to meet potential employers and are offered a job on a shortage list. Use of this possibility has been very limited, with only a handful of in-country status changes.
11. The job search visa grants no facilitations in itself, beyond in-country status change, and job seekers must qualify for one of the existing employment categories (EU Blue Card, recognised foreign degree, privileged nationality,

etc.), with approval by the Federal Employment Agency and a labour market test where applicable.

12. Because of the general recruitment ban, this would also require creating additional exceptions in the Employment Ordinance (BeschV).
13. Disaggregated data by specialisation is not available. Observed overqualification may also reflect a specific difficulty in distinguishing between medium- and high-skilled jobs in the German labour market. Overqualification measured using the International Standard Classification of Occupations (ISCO) might not adequately capture the actual skill requirements of occupations in the German context and indeed, a translation of the national classification system into the ISCO is not always possible.
14. Germany was among the later countries to transpose the EU Blue Card into its legislation – missing the deadline for transposition – although it was not the last country to do so.
15. In 2010, the most recent year for which occupation data are available, the largest occupational groups were nonetheless professional: 64 of 411 approvals were for physicians, 46 for data entry and programmers, 33 for engineers, and 28 for accountants.
16. As the relevant EC directive does not mention age, there was no impetus in transposition to consider age-related measures. The directive, however, does not prevent Germany from establishing such measures in the framework of national provisions.

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