

IMMIGRATION OF HIGHLY-SKILLED WORKERS TO ESTONIA: CURRENT TRENDS AND LEGISLATIVE FRAMEWORK

IMIGRÁCIA KVALIFIKOVANEJ PRACOVNEJ SILY DO ESTÓNSKA: SÚČASNÉ TRENDY A PRÁVNÝ RÁMEC

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I. Introduction

Despite the level of attention allocated to the migration of highly-skilled workers, the concept of a highly-skilled migrant is very vague and ill-defined. The absence of a clear line between highly-qualified, qualified and other groups of migrant workers with specialist skill sets creates difficulties for policy makers and hinders collection of accurate statistical data⁽⁶⁾. On the European plane various definitions or no specifically worded definitions at all, are used by the Member States to address the EU migration policy objectives. Usually the definition is dependent on a number of denominators,

most common of which are the level of education, type of job and salary levels.⁽⁷⁾ EU acquis shades some light on the relevant notion of 'higher professional qualifications' but the definition of a 'highly-skilled migrant' is left to the interpretation of the Member States as fitted in their national migration policies. In fact, even the references differ across countries and one will expect to find words such as 'highly-skilled workers', 'international talents', 'high potential' and 'highly qualified'⁽⁸⁾ used interchangeably across Member

⁽⁶⁾ 'Highly Skilled Migration' 2005, 4th Coordination Meeting On International Migration, UN/POP/MIG-FCM/2005/01, 10 October 2005, UN HQ, New York.

⁽⁷⁾ Asari, EM, 'Practices for Attracting Highly Qualified and Qualified Third-Country Nationals in the EU', Centre for Migration Studies, Estonian Academy of Security Sciences.

⁽⁸⁾ 'Attracting Highly Qualified and Qualified Third-Country Nationals to France: Good Practices and Lessons Learnt', First Fo-

Abstract (EN)

Estonian immigration policies have been largely influenced by its historical development. The figures from 1989 show that the population was only 61.5 percent Estonian by origin with the remaining 38.5 percent belonging to other ethnic backgrounds. Remarkably, 26 percent of the Estonian population were foreign born.⁽¹⁾ After joining the European Union in 2004, Estonia faced a high rate of outward migration, which was connected, inter alia, to the higher average salaries of the other Member States. The rapid expansion of the Estonian economy and growth of employment coupled with the negative population growth contributed to the need of foreign skilled labour.⁽²⁾ Besides, the recent reform in the education system accounts for shortage of technical spe-

⁽¹⁾ Comparative Study of the Laws in the 27 EU Member States for Legal Immigration, 2009, International Organization for Migration, Geneva, Switzerland.

⁽²⁾ 'Satisfying Labour Demand Through Migration in Estonia', Estonian Public Service Academy, Tallinn, July 2010.

cialists in some labour areas.⁽³⁾ It is thus not surprising that Estonian government employs focused, selective and demand-based immigration strategies to fight the 'global war for talents'.^{(4),(5)} The objective of the restrictive immigration policy is to attract first and foremost highly qualified professionals in the strategic economic areas while avoiding uncontrolled immigration and increase the sustainability and competitiveness of the Estonian economy.

First part of current paper provides an overview of who falls under the classification of a 'skilled' worker and the Estonian perspective on talent attraction and retention. The second part lays down the existing legal framework, which covers the conditions and procedures of knowledge-worker's immigration to Estonia. Particularly, this includes the relatively recent amendments to the Aliens Act 2004, which came into force in 2008 and set forth a facilitated approach towards entry and residence requirements.

⁽³⁾ Conditions of Entry and Residence of Third Country High-Skilled Workers in the EU, European Migration Network, May 2007.

⁽⁴⁾ 'Newly-arrived immigrants in Estonia: Policy Options and Recommendations for a Comprehensive and Sustainable Support System', 2014, Institute of Baltic Studies, Tartu, Estonia.

⁽⁵⁾ National Policies for International Talent Attraction and retention in Estonia, 2014, Praxis Centre for Policy Studies, Tallinn, Estonia.

Keywords (EN)

skilled worker, immigration, European Union, Estonia

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States. As can be discerned from the EU *acquis communautaire*⁽⁹⁾ a highly skilled person is one employed in a Member State, is protected under national employment law, who irrespective of the nature of legal relationship exercises genuine and effective work for/upon direction of someone else, is paid, and has the necessary professional qualifications⁽¹⁰⁾.

Estonia does not provide a defined explanation of who comes under the understanding of a highly-skilled foreigner either. However, the amended Aliens Act adds the definition of a top/senior specialist, which reads as follows: 'Senior or top specialist is a foreigner who has professional training or experience in any area of activity, whose employer is registered in Estonia and has agreed to pay the foreigner at least the latest annual average wages in Estonia published by Statistics Estonia, multiplied by the coefficient 2'. This illustrates the adherence of Estonian policy maker to providing a minimum salary requirement as an indication of a foreigner's professional qualifications. Besides, the Act has reference to certain kinds of professions, which could be classified under the ISCO-88.⁽¹¹⁾ Thus, according to the necessary skills and training required for the performance of tasks, scientists, lecturers, advisors, consultants, etc. can be classified as highly qualified persons.

1. Migration incentives

Borrowing the explanation from economics, migration flows

cussed Study 2013, EMN, July 2013.

⁽⁹⁾ Council Directive 2009/50/EC (EU Blue Card Directive), Article 2(b) defining 'highly qualified employment'.

⁽¹⁰⁾ 'Satisfying Labour Demand Through Migration', op. cit., p.9

⁽¹¹⁾ Refers to the International Standard Classification of Occupations adopted in 1987 under the auspices of the International Labour Organisation. ISCO-88 groups occupations together according to skill specialisation and skill level (the amount of formal education and formal or informal training or work experience, which is usually associated with qualified task performance). Elias, P. (1997), "Occupational Classification (ISCO-88): Concepts, Methods, Reliability, Validity and Cross-National Comparability", OECD Labour Market and Social Policy Occasional Papers, No. 20, OECD Publishing. Available at: <<http://dx.doi.org/10.1787/304441717388>>. [23 October 2015].

mostly occur from less developed to more developed areas. Or, alternatively, migration of knowledge workers takes its root in the differences in socio-economic potential of the state of origin and the state of choice.⁽¹²⁾ Thus, both outside and inside the EU, migration movements shall be directed from lower income countries to higher income countries. This is evidenced by the fact that Estonia has negative net migration levels when compared to the more prosperous 'Western European core'⁽¹³⁾ countries such as the UK and Finland. However, compared to Russia and Ukraine, which are countries of lesser economic welfare on offer, Estonia has positive net migration levels. This welfare discrepancy one of the reasons why Estonian talent attraction policies shall focus on non-EU highly-skilled workers.⁽¹⁴⁾

2. Immigration policies in the EU

The war for talent is a global phenomenon. Countries worldwide experience labour and skills shortages in various economic sectors, which fuels competition for the attraction of highly-skilled third-country nationals. They realise the need to secure a steady inflow of highly skilled labour and to this end pursue a range of migration policies. Some policies are now only an echo of the past due to their founding principles and methods. Thus, reparation for the direct loss through a 'brain drain tax' has been abandoned. Similarly, restrictive policies are not pursued anymore due to their interference with the individual rights of migrants.⁽¹⁵⁾ Besides, within the European common market where the free movement

⁽¹²⁾ Kirch, A & Mezentsev, V 2012, 'Migration of 'Knowledge Workers' in the Baltic Sea Macro-Region Countries', Baltic Journal of European Studies, vol. 2, no. 2(12), pp. 109 - 123.

⁽¹³⁾ Kahanec, M & Zimmermann, KF 2010, 'High-Skilled Immigration policy in Europe', IZA Discussion Paper Series, Discussion Paper No. 5399, December 2010, Germany.

⁽¹⁴⁾ Prudencio, LDO 2014, 'Highly-skilled migration: Estonia's attraction policy and its congruence with the determinants of 'talent mobility'', Master's Thesis, European College, University of Tartu.

⁽¹⁵⁾ Lowell, BL & Findlay, A 2001, 'Migration of highly skilled persons from developing countries: impact and policy responses', Synthesis Report, International Migration Papers No. 44, International Labour Office, Geneva.

Abstrakt (SK)

Historický vývoj v Estónsku sa vo veľkej miere prejavil aj na formulácii miestnej imigračnej politiky. Štatistické dáta z roku 1989 dokazujú, že len 61,5% populácie malo estónsky pôvod a zvyšných 38,5% malo iné etnické pozadie. Až 26% populácie Estónska sa narodilo v inej krajine⁽¹⁾. Po vstupe Estónska do Európskej únie v roku 2004, bola zaznamenaná masívna migrácia z krajiny, ktorá bola prevažne spojená s vyššími priemernými mzdami v ostatných členských štátoch. Rýchla expanzia estónskej ekonomiky a rast zamestnanosti, sprevádzané negatívnym rastom populácie, prispeli k potrebe po kvalifikovanej zahraničnej pracovnej sile⁽²⁾. Navyše, nedávna reforma systému vzdelávania sa prejavila v nedostatku technických odborníkov v niektorých oblastiach⁽³⁾.

Kľúčové slová (SK)

kvalifikovaná pracovná sila, imigrácia, Európska únia, Estónsko

A teda nie je prekvapujúce, že estónska vláda zaviedla sústredenú, selektívnu, dopytovo zameranú imigračnú stratégiu v "globálnom boji o talent"^{(4),(5)}. Cieľom reštriktívnej imigračnej politiky je získať hlavne kvalifikovaných expertov v strategických ekonomických oblastiach, vyhnúť sa nekontrolovanej imigrácii a tiež prispieť k udržateľnosti a konkurencieschopnosti estónskej ekonomiky. Prvá časť predkladaného príspevku poskytuje prehľad o tom, na koho sa vzťahuje klasifikácia "kvalifikovanej" pracovnej sily a tiež estónsky pohľad na získavanie a udržanie talentov. Druhá časť sa orientuje na existujúcu právnu úpravu, ktorá sa zaoberá podmienkami a procesmi pre imigráciu kvalifikovanej pracovnej sily do Estónska. V tejto časti sa dôraz kladie na relatívne nedávnu novelu zákona o cudzincoch z roku 2004, ktorá vstúpila do platnosti v roku 2008 a upravuje podmienky vstupu a pobytu v krajine.

of persons is ensure such policies would be fundamentally country to the founding Treaties and the very idea on which the EU rests. Instead, countries focus of policies that aim at improving existing regulation systems and making the country image more attractive overall. Such include the following: recruitment and export policies, return of talent policies, resourcing and retention policies.⁽¹⁶⁾

It is indicated that the majority of skilled migrants choose to relocate to the US, Canada and Australia instead of the EU Member States. The EU is a destination of choice for the 87 per cent of low-skilled workers from the Maghreb⁽¹⁷⁾ countries, whereas 54 per cent of high-skilled workers from the same region find North-America and Australia more attractive.⁽¹⁸⁾ The figures from 2012 show that out of all employed in the EU third-country nationals only 26 per cent have obtained a university degree and/or a PhD.⁽¹⁹⁾ The European Union needs to step up its game in terms of creating more favourable conditions and simplified procedures for attracting talent. This is one of the objectives of the Europe 2020 Strategy, alongside innovation, education, social inclusion and climate/energy.⁽²⁰⁾

It is only recently that Europe has let go of the perception of immigration as a threat to its labour markets and welfare systems. The 'fortress Europe' realises the benefits of managed immigration, particularly of highly-skilled migrants from non-EU countries. There are several reasons for looking for qualified workforce beyond the Union frontiers instead of in the neighbour's yard. The four freedoms do not eliminate all obstacles to free movement within the European common market. Highly-skilled migrants, who are EU citizens and who are usually more dynamic and mobile, are faced with difficulties if they wish to work across borders. Such include complicated administrative procedures for transferring social-security and health insurance; differing taxation systems; necessity of recognition of professional qualifications and language barriers. All these make Europe less dynamic

in terms of talent mobility that, for example, the US.⁽²¹⁾

Therefore, in a competitive environment of recruiting talented employees the EU has taken the course to become the most competitive and dynamic knowledge-based economy.⁽²²⁾ In 2007 the European Commission adopted two proposals. The first established a Framework Directive (The EU Blue Card Directive) for admitting into the EU of third-country nationals for the purposes of highly qualified employment.⁽²³⁾ The second proposal created the Directive for the simplification of migration procedures by streamlining applications into one single procedure (The Single Permit Directive).⁽²⁴⁾ So far only the Blue Card Directive has been implemented in the national legislations of the Member States.

The EU Blue Card Directive focuses on enhancing the competitiveness of EU economy and limiting brain drain. In pursuance of the objectives set out by the Lisbon Strategy, the Directive seeks to facilitate mobility of highly qualified workers who are Union citizens and particularly those from the Member States that acceded in 2004 and 2007. It also aims at fostering admission of highly qualified third-country nationals and their families through establishing a fast track admission procedure and granting them equal social economic right as nationals of the host Member State.⁽²⁵⁾ Thus, the Directive's primary goals are to harmonise entry and residence conditions among the Member States, simplify admission procedures and improve the legal status of those already in the EU.

Due to its intruding nature with the national perspectives on regulating labour market access and immigration procedures and conditions, the Blue Card Directive took many years of negotiations before the Member States came to a consensus. The Austrian government referred to the Directive's objectives as 'a centralisation too far'. Eventually some states made a decision to opt out of the Directive (Denmark, Ireland and the UK) and retain jurisdiction about their immigration policies.⁽²⁶⁾ The Directive has been implemented in the Estonian immigration legislation⁽²⁷⁾ and will be discussed in more detail below.

⁽¹⁶⁾ Ibid., pp. 18-19. Recruitment policies aim at bringing in foreign workers and increasing a country's human capital. Export policies aim at education workers to work in international markets so as to export their skills. Return of talent policies provide incentives for expatriates to return home. Resourcing policies create expatriate networks that return knowledge to the home country. Retention policies aim at creating the necessary conditions for accommodating highly skilled migrants for extended residence.

⁽¹⁷⁾ From Arabic: 'where and when the sun sets'. The Maghreb region enjoys a special relationship with Europe due to its geographic location, colonial background and economic ties, and includes Algeria, Libya, Morocco and Tunisia. (From Layachi, a 2011, 'Have Algeria and Morocco Avoided North Africa's Unrest?', Council on Foreign Relations. Available at: < <https://www.foreignaffairs.com/articles/north-africa/2011-03-31/meanwhile-maghreb> >. [21 October 2015].)

⁽¹⁸⁾ Asari, EM op.cit.

⁽¹⁹⁾ Ibid.

⁽²⁰⁾ Communication from the Commission 'EUROPE 2020: A strategy for smart, sustainable and inclusive growth', COM (2010) 2020 final. Available at: < <http://www.elgpn.eu/elgpn/bview/33> >. [21 October 2015].

⁽²¹⁾ Kahanec, M & Zimmermann, KF 2010 op.cit. pp. 6-7.

⁽²²⁾ Comparative Immigration Study 2013-2014, Deloitte, October 2013, Belgium. Available at: < <http://www2.deloitte.com/content/dam/Deloitte/be/Documents/tax/TaxStudiesAndSurveys/Comparative%20Immigration%20study%202013-2014.pdf> >. [21 October 2015].

⁽²³⁾ Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. OJ L 155 of 18.6.2009.

⁽²⁴⁾ Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State. OJ L 343, 23.12.2011, pp. 1-9.

⁽²⁵⁾ EU Blue Card Directive Preamble (6), (7).

⁽²⁶⁾ Cerna, L 2010, 'Policies and practices of highly skilled migration in times of the economic crisis', International Migration Papers No. 99, International Labour Office, Geneva, Switzerland.

⁽²⁷⁾ Estonian Aliens Act 09.12.2009 RT I 2010, 3, 4, entry into force 01.10.2010, amended. § 190 (1) - (13).

II. The Estonian experience

1. Historical background and demographic layout

According to the Estonian Statistics Office the population of Estonia in 2015 was estimated to be 1.313.271 persons. This makes Estonia the fourth smallest country in the EU after Malta, Luxembourg and Cyprus and amounts to 0.26 of the EU population. The presented population estimate was 0.2 per cent lower than in January of last year. Comparing the data to the figures from the year 2000 (1.340 million people) one may notice the steady and significant decline in population. The main reason for it is the ageing society and the low birth rate. Another frequently mentioned reason is the negative net migration. The latter, however, is seen to be declining and having a lesser effect on population fluctuations. Compared to 2011–2013, external migration decreased by 13 per cent, whereas immigration numbers remained the same. Thus, by 2015 estimates, the population decreased by 733 persons due to emigration and by 1.933 persons due to the negative natural increase. The last time negative natural increase prevailed over emigration was in 2003.⁽²⁸⁾

Estonia is a multinational society with a long history of both emigration and immigration. If before the World War II the Estonian population was relatively homogenous with a over 88 per cent of Estonians, the figures from 2010 show that only 68 per cent were Estonians and the rest was made up by persons of other ethnic backgrounds. Thus, 25 per cent were Russian, 2 per cent Ukrainian, and the rest shared among Belarusians, Finns, Jews, Tatars, Germans, Latvians, Poles and Lithuanians.⁽²⁹⁾ The devastating effect on the composition of the Estonian population was historically due to the events of the World War II, a Soviet occupation of 1940–1941, a German occupation of 1941–1944 and another Soviet occupation 1944–1991. During the last period of occupation immigration was encouraged into Estonia from different Soviet Union countries in order to offset the decrease in population. These historical preconditions explain the restrictive approach of the Estonian government toward immigration. Interestingly, it is only recently that the attention has been turned towards immigration from third countries. A while ago the major focus was integrating the migrants who have already lived in Estonia for a long period of time and managing their applications for permanent residence or naturalisation.⁽³⁰⁾

At present the course is set by the government to manage immigration so that the focus lies with highly skilled migrants and overall unregulated immigration is avoided. With this in mind, the Government Action Plan 2011–2015 aims

at attracting top specialists and international students to Estonia from both outside the EU as well as the Member States.

2. Policies for talent attraction and retention

Estonia has experienced gradual shrinking and ageing of the population, which will bring about significant labour shortages in the next decades. According to the Labour Demand Forecast by the year 2019 Estonia will need approximately 27.400 top specialists, which amounts to 3.400 specialists each year.⁽³¹⁾ The EURES report from 2014 indicates that the most wanted among the highly skilled job vacancies are engineers and those involved in sales and marketing occupations.⁽³²⁾ The Government takes the course to employ cautious and targeted migration policies, which would allow access to highly-skilled migrants from non-EU Member States but limit uncontrolled migration. The inflow of knowledge workers is strategically necessary especially in certain economic sectors, which are expected to be losing qualified specialists in the upcoming years due to the current structure and fulfilment of university programs.

It is important to note, however, that attraction and retention of third-country highly-skilled workers as a means to improve the sustainability of the Estonian economy, combat the demographic changes and ageing workforce has not been the single strategy of the government. Several other policies are pursued, such as increasing the pension age, recalling highly-qualified Estonians from abroad and retraining and maximum engagement of the existing labour force. The amendments to the pension age were approved in 2010. The pension age will be increased gradually or by three months each year and by the year 2026 it will be 65 years for both men and women. The 'Talent Back Home!' Government project aims at bringing back highly-qualified Estonian citizens currently residing abroad. The project targets Estonian students who went to study abroad, do an internship or took up employment in a foreign country as well as those who gained significant work experience abroad. To this aim the returnees are provided with information about the possibilities of work, internship programs and other self-realisation opportunities that await them at home through a specifically created at the initiative of the Estonian chamber of Commerce and Industry web portal.⁽³³⁾

The above mentioned measures have so far dominated the approach of the Estonian policy maker over facilitating immigration flows. It is only recently that Estonia starts setting goals for its talent policy. To date, Estonia has been the giver rather than the taker in the Global Talent rally.⁽³⁴⁾ Although no specific separate measures for talent attraction and retention as well as specific policies for targeting the highly skilled workers have been developed. The attraction and retention

⁽²⁸⁾ Statistics Estonia, News Release no 48, 5 May 2015. Available at: < <https://www.stat.ee/90643> >. [23 October 2015].

⁽²⁹⁾ Composition of the population, Estonia. Available at: < http://www.estonica.org/en/Society/Population/Composition_of_the_population/ >. [23 October 2015]. Comparative Study of the Laws for Legal Immigration, op.cit, pp. 228-229.

⁽³⁰⁾ Comparative Study of the Laws for Legal Immigration, op.cit, pp. 228-229.

⁽³¹⁾ Asari, EM op.cit.

⁽³²⁾ 'Estonia in need of engineers and skilled manual workers'. Available at: < <http://news.err.ee/v/economy/e62f0a24-8824-4e73-93eb-68c3fef06526> >. [23 October 2015].

⁽³³⁾ 'Satisfying Labour Demand Through Migration', op.cit, p. 15.

⁽³⁴⁾ 'Newly-arrived immigrants in Estonia' op.cit, p. 3.

of highly qualified migrants to Estonia is carried out within the framework of the general immigration policy and is governed by the provisions of the Alien Act.

In the course of creating a unified talent policy, a number of suggestions were made regarding the improvement of retention and support systems for foreign talent.⁽³⁵⁾ These include the following: creating an institutional cooperation platform to bring together the stakeholders, who offer targeted services to foreign talents (business sector and entrepreneurship, academic sector, state sector, and third sector services). The cooperation platform should be linked to an information portal to provide access to the provided services. Furthermore, the number of services provided online shall be increased (e.g. online residence permit applications and application tracking). Similarly, a greater accessibility of state and local government resources that are necessary for adaptation and integration of foreigners shall be ensured, both in Estonian and English languages. Additionally, Estonian language training shall be provided free of charge all over the country, which will promote and increase the attractiveness and accessibility of the language. Moreover, international students as well as spouses of foreign workers shall be offered free career counselling. Taking the following into account will shift the costly and complex burden to recruit and retain highly skilled foreigners from the employer to the system.⁽³⁶⁾

As the global war for brains fosters competition in the international talent market, a country wishing to attract and retain highly-skilled workers needs to not only amend its regulative framework but also make sure that the country image is attractive and well-recognised. Thus, marketing and branding measures shall be used to actively attract talent by presenting a country as a favourable destination for studying, living and pursuing employment.⁽³⁷⁾ To date, Estonia has succeeded somewhat in promoting itself mainly as a tourist destination as well as a good place for business and studying. In terms of attraction of foreign investment Estonia does indeed stand out as opposed to the neighbouring Lithuania and Latvia in terms of the conditions and costs of starting a business. Thus, the costs of establishing a company in Estonia takes only five days and the initial investments are relatively low: 16.000 EUR in case of a sole proprietor and 65.000 EUR in case of a share company.⁽³⁸⁾ This attracts larger numbers of migrants from Eastern Europe, who wish to reside in the Baltic States without initial particular preference.

Additionally, the relatively successful has been the campaign to attract international students to Estonia as part of the Estonian higher education strategy and the strategy of internationalisation of higher education for the years 2006–2015 and the 'Study in Estonia' platform. Estonia seeks to attract gifted and driven international students and facilitate their placement in university programs particularly in the

areas, which are important to the advancement of Estonian economy.⁽³⁹⁾ Hence, coupled with the creation of attractive retainment conditions for graduates, Estonia essentially prepares highly competitive specialists to fill in the gaps in the labour market. This is especially so because so many Estonian students choose to study abroad and in many cases not return back. International students are an important source of potential highly qualified migrants. Due to the familiarity with the culture and language, the appropriate for the national labour market qualifications and local work experience, students are an attractive talent source. For example, in OECD countries about 25 per cent of international students go on to take up employment or get married and remain in the host State. Besides, students are mobile and dynamic and many choose to study in a country other than the country of their origin for various reasons: better education standards, cultural exchange, language proficiency, etc. This is evidence by the percentage of foreign students enrolled in universities around the world, which increased by 77 per cent between 2000 and 2009.⁽⁴⁰⁾

In the year 2013/14 Estonian universities offered 128 degree programs offered to international students entirely in English. On the financial side, education at a university is free of charge for those studying in Estonian, whereas universities reserve a right to charge students who wish to study in English. Overall, according to International Student Barometer, 90 per cent of international students were highly satisfied with the study conditions and overall academic experience in Estonia as of 2011. In 2010 Estonia has been voted the most attractive country to study in, based on the Erasmus Student Network Survey.⁽⁴¹⁾

There are several web portals, which provide information about the working and living conditions in Estonia, conditions and application for residence permits, registration, job application and studying, which are passive marketing tools and do not focus on talent attraction directly.⁽⁴²⁾

3. The regulative framework

Following the lead of the EU policymakers most European countries have accelerated the immigration process that focuses on highly skilled workers by composing parallel national policies and amending national legislation. Only Sweden, Malta, Hungary, Latvia, Lithuania, Poland and Slovakia are falling behind.⁽⁴³⁾ Estonia has not created a separate migration policy that would target highly-skilled non-EU migrants. Instead, the relevant provisions are part of the wider migration policies.

The primary legislative instrument that regulates the conditions of entry, stay and working in Estonia of third-country nationals is the Aliens Act. Other legal instruments that shall be accounted for in immigration cases are the Identity

⁽³⁵⁾ Ibid., p. 5.

⁽³⁶⁾ Ibid., p. 4.

⁽³⁷⁾ 'National Policies for International Talent Attraction', op.cit, p. 81.

⁽³⁸⁾ As compared to Latvia, where minimum capital investments are 35.000 EUR and 150.000 EUR respectively as well more stringent tax requirements (40.000 EUR tax return/financial year for a sole proprietor).

⁽³⁹⁾ Ibid., p. 89.

⁽⁴⁰⁾ Ibid., p. 30.

⁽⁴¹⁾ Ibid., p. 91.

⁽⁴²⁾ These include, inter alia, the EURES network of which Estonia is a member, the EURAXESS.ee, and StudyinEstonia.ee, the latter directed primarily at international students.

⁽⁴³⁾ Deloitte Comparative Immigration Study 2013-2014, op.cit, p. 4.

Documents Act 2000, the Citizenship Act 1995, the Obligation to leave and Prohibition of Entry Act 1998, as well as the Constitution and the case law of the Supreme Court. For the purposes of the paper the regulation of the conditions of and the residence permit for employment are important. The Aliens Act lays down the categories of persons who can be granted the residence permit, as well as those who are subject to favourable conditions (e.g. those who need not meet the salary criterion or obtain consent from the Estonian Unemployment Insurance Fund). The Act also outlines the bases for taking up employment as well as the bases of its termination, refusal or declaration of invalidity. Additionally, the Act provides for the respective rights and obligations of the employer and alien employee. On the part of the employer such include the requirement to ensure the consent, where necessary, of the Estonian Unemployment Insurance Fund and to pay to the alien a specified minimum salary. Derogation from these requirements or employing an alien without a legal basis is subject to a fine. The Aliens Act has been recently amended in order to incorporate changes brought about by the EU legislation, inter alia, in the part of issuing residence permits for family members of highly-qualified workers and facilitating the residence permit for employment procedure for both employers and foreign employees. The major institutions that are concerned with employment of aliens in Estonia are the Police and Border Guard Board of the Ministry of the Interior and the Unemployment Insurance Fund of the Ministry of Social Affairs.

The amendments to the Aliens Act, which entered into force in 2013 reinforce the objectives of the Government immigration policies, which focus on facilitating the arrival and residence in Estonia of those who contribute to the development of the Estonian society. The main beneficiaries of the amendments are educational and research institutions and employers, who wish to hire foreign students.

In order to settle and live in Estonia a third-country national shall acquire a residence permit. A residence permit can be issued to an alien to settle with a spouse or a close relative, for employment, business, study, on the basis of a treaty and in case of substantial public interest.⁽⁴⁴⁾ Issuance of residence permits is limited by the immigration quota for aliens, which shall not exceed 0.1 per cent of Estonian permanent population in one year. However, if an alien is applying for a residence permit for the purposes of research or study or is a citizen of Japan or the US, they need not be subject to the quota requirement. The quota essentially limits the number of work places that can be filled with alien workforce. Thus, if according to the Ministry of Economic Affairs and Communications, a yearly demand of the labour market is 11.500 placements, only a tenth of that can be satisfying by employing aliens.⁽⁴⁵⁾

The application for a residence permit for employment by a third-country national used to be a fairly complicated process, some parts of which have now been simplified following the amendments to the Aliens Act. In order to apply for a residence permit for employment the alien's employer

must be registered in Estonia and in case of scientific and research work – the institution must be entered into the register of science and development institutions. The process of employing a foreign national is employer-led and subject to the consent of the Estonian Unemployment Insurance Fund. This means that a burden for obtaining the consent lies with the potential employer who has to show that they failed to find a qualified Estonian national to fill the vacancy. For this purpose, an advertisement must be put up announcing an opening of the position and if after a period of three weeks the position has not been filled, the employer shall apply for the permission to employ a foreigner. Within the period of seven days and after assessing the academic credentials and work experience of an alien, the Estonian Unemployment Insurance Fund decides to either grant or refuse the permission. Apart from the permission, another mandatory requirement is that an employer is obliged to pay an alien a salary, which at least equals the average salary in Estonia as released by the Statistical Office multiplied by 1.24.

However, the conditions of obtaining the consent of the Estonian Unemployment Insurance Fund and meeting the salary criterion can be waived in certain circumstances. Such include, inter alia, the completing of a Bachelor, Master or Doctoral degree in Estonia and being employed as top specialist.⁽⁴⁶⁾ Provided the above mentioned conditions are satisfied, the residence permit is issued for the period of employment but for no longer than two years. It can be subsequently extended for up to five years at a time, tied to the period of validity of the employment contract. In practice, however, first time applicants are issued a permit for a period of one year.

The pre-2013 regime envisioned the necessity for application of a new residence permit for employment in case of a promotion. So in case an employer wished to promote the foreign worker, they would need to obtain an updated residence permit. This was inevitably cost- and time-ineffective for both employees and employers and made promotion of foreign workers less desirable. According to the amended Aliens Act provisions, such a requirement is now abolished. In case of a promotion or change of faculty in a research institution the employer and the alien need only to report the change of status to the Police and Border Guard Board.

Another novelty introduced by 2013 amendments is the abolition of a separate work permit for students. Previously, international students enrolled in Estonian universities had to be in possession of both a temporary residence permit for study and a work permit. A work permit would be acquired by separate application after a student secured a work placement, through a contract with an employer or an employment proposal. Under the new regime a separate entry is made on a student's residence permit card, which eliminates a considerable amount of administrative formalities and makes it more attractive for Estonian employers to hire alien students. In addition, another recent amendment makes Estonia more welcoming for international students.

⁽⁴⁴⁾ § 118 Aliens Act.

⁽⁴⁵⁾ 'Satisfying Labour Demand Through Migration', op.cit, p. 16.

⁽⁴⁶⁾ § 181 Aliens Act.

Now students are allowed to extend their residence permits for a period of half a year after their nominal study period at no additional cost and no extra formalities. This makes sure that Bachelor or Master's graduates are not obliged to depart from the country immediately after graduation if they fail to find a job and secure their legal stay by a residence permit for employment.⁽⁴⁷⁾

By virtue of § 190(1) of the Aliens Act holders of a EU Blue Card are considered holders of a valid residence permit for employment and can undertake a job in Estonia that requires higher qualification. Higher qualification means that an alien has completed at least three years of relevant higher education or has at least five years of relevant working experience. A precondition for an application for the Blue Card is a consent of the Estonian Unemployment Insurance Fund and a contract entered into between an employer and an alien with at least one year validity period, or an employment proposal. During the period of validity of the contract an employer is obliged to pay an alien a salary of no less than 1.5 times the Estonian average gross monthly salary.⁽⁴⁸⁾

Besides, the immigration decisions of the highly-skilled workers, who consider to reside and work in Estonia, are facilitated by the fact that they can bring their family along with them immediately. As opposed to the provisions the Blue Card Directive, which set a six-months period of application for knowledge workers' family members, Estonian legislation allows them to apply for a residence permit directly after the highly-skilled worker has obtained their residence permit for employment.⁽⁴⁹⁾

III. Concluding Remarks: Future Prospects

Globalisation, thriving information and communications technology and revival of the world economy are accountable for the migration of highly skilled workers.⁽⁵⁰⁾ Relocation of brains is an international reality, which benefits some countries by bringing in highly-qualified workforce and leaves others robbed of it. A lot of developed countries recognise the demands of the rapidly progressing labour markets for skilled personnel in order to advance economically. To this end, amendments are made in the national policies so as to liberalise admission procedures of highly skilled migrants. This is not always the case, however, and some countries choose to employ more stringent policies in times of economic crises.

While wealthier countries get more attractive for qualified professionals, developing countries struggle to prevent 'brain drain'. On the one hand, this adversely affects economic growth and development. On the other, it is outlined that

⁽⁴⁷⁾ §170(3) Aliens Act.

⁽⁴⁸⁾ With regard to certain positions (top specialist or supervisor; top specialist in natural or technical science; top specialist in health service; specialist in pedagogics, business or administration, information or communication, legal, cultural or social sphere) the coefficient is 1.24. § 190 (7) Aliens Act.

⁽⁴⁹⁾ Article 15(4) EU Blue Card Directive.

⁽⁵⁰⁾ Lowell, BL & Findlay, A 2001, op.cit.

outward migration benefits developing countries in the long run. Particularly the following reasons shall be taken into account when assessing potential losses due to emigration: return migrants bring back knowledge and foreign work experience, especially valuable are those who undertook education or were employed in a more advanced economy. Besides, those staying abroad contribute money via worker remittances as well as acquired knowledge and technologies.⁽⁵¹⁾

Estonian experience demonstrates that simplifying the conditions of entry and stay of foreign knowledge workers is not always the most obvious solution to the decreasing working population in order to satisfy the labour market demands. Other means can be sought, such as retraining the unemployed and facilitating the return of expatriates. Estonia has been rather the provider of highly qualified workforce to the EU than a receiver, with the moderate migration flows coming mainly from outside EU. Currently Estonia employs restrictive and targeted immigration policy, focusing primarily on highly skilled workers and international students. Even though there is no separate talent attraction policy, the steps are being made to improve the conditions of entry and residence for incoming foreign workers as well as form an attractive and welcoming country image. The statistics show that the effects of emigration ceased to be as acute as they were right after the accession to the EU and the demographic situation overall stabilises. It is left to wait and see if the adopted immigration strategy attains its objectives and how the fourth smallest European country with great IT and technology potential utilises the incoming foreign brains.

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