

# EMN INFORM

## Changes in immigration status and purpose of stay: an overview of EU Member States' approaches

### 1. INTRODUCTION

This EMN Inform summarises the findings from the EMN Study on the Changes in immigration status and purpose of stay: an overview of EU Member States' approaches.<sup>1</sup> The Study was based on contributions from EMN National Contact Points in 24 Member States,<sup>2</sup> collected via a common template to ensure comparability. The key findings are set out below.

### 2. KEY POINTS TO NOTE

When a person wants to migrate to the EU, in most cases Member States require third-country nationals to lodge a first application from abroad. However, when a third-country national is already (legally) residing on the territory of a Member State, s/he is often allowed to apply for a **change of the existing migration status** without having to leave the country.

The Study examined the different legal frameworks, procedures and practices in place in the Member States to enable third-country nationals to change migration status, as well as the conditions associated with such changes. It also looked at existing obstacles and good practices.

All Member States have **at least some legal possibilities** to allow for changes to migration statuses. Some Member States have legal possibilities for almost all existing migration statuses while others are more restrictive. The **main drivers** of Member States to allow for such changes are primarily **economic in nature**. Most concern **macroeconomic**

reasons, such as addressing labour and skills shortages, as well as attracting and retaining talent. Some Member States also consider **microeconomic** reasons, related to increasing the cost-efficiency and flexibility of their migration systems. The main reasons for third-country nationals to apply for status change are related to the 'inevitable' expiry of the current status, the improved rights offered by other statuses and a change of their 'real' situation.

The **admission criteria** and **conditions** when applying for a change of status do not differ much from those for first time applicants in the majority of Member States. Where criteria differ, they are in most cases reduced in comparison to those for first time applicants. In some cases however they are increased, mostly concerning changes into statuses of remunerated activities.

**Changes from education reasons** into another status are those most often legally allowed in the Member States and they are also the changes which are most often made in the EU (6% of persons with this residence permit changed status in 2014). In the light of the growing need for highly qualified workers, as well as, on the other hand, the need to prevent abuse of this migration status, this type of status change has been the subject of intense debates and legislative changes in several Member States.

**Changes from remunerated activities** are the second most frequent changes made in the EU (4% of persons with a residence permit for remunerated activities changed status in 2014). Member States offer various legal possibilities for such changes, although

<sup>1</sup> Available from the [EMN website](#)

<sup>2</sup> Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia,

Lithuania, Luxembourg, the Netherlands, Poland, Slovak Republic, Slovenia, Spain, Sweden and United Kingdom

there are some indications that following the economic crisis some may have taken a more restrictive approach to protect their national labour market.

Although often legally possible, **changes from family reasons** are least frequent (annually around 1% of persons with this residence permit changed their status in 2010-2014). This could be somewhat explained by the relatively long duration of this status and rights and benefits granted, although these are highly dependent on the status of the sponsor.

Few Member States have evaluated the effectiveness or impact of national policies allowing changes of status. Studies carried out in France and Spain showed that legislative changes facilitating status change can make a **positive contribution to the economy** as well as facilitate **integration**. Similarly, a survey carried out in Germany highlighted that 55% of foreign students stayed in Germany after completion of their higher education as a result of a change of status.

Finally, Member States also highlighted some **challenges** encountered, in particular with regard to:

- ★ Absence of **research** on status changes (BG, LU);
- ★ **Misuse** and **abuse** of the change of status by either migrants themselves or their sponsors or employers (CZ, LT, LU, LV, SE and UK); and
- ★ **Lack of access to information** on status change possibilities (BE, FR).

**Good practices** have been identified in several Member States, mostly with regard to the ability to retain talent by offering status change opportunities, in particular of international students who have successfully completed their studies (BE, EE, FR, IE, LT, NL, PL and SE).

### 3. AIMS OF THE STUDY

The overall aim of the Study was to present a comparative analysis of Member States' policies and practices concerning the change of migration status for legally admitted third-country nationals.

More specifically, the Study aimed to:

- ★ Provide an overview of the **EU legislation and national migration systems** in relation to changes of status and identify the **main drivers** from the perspective of national legislators;
- ★ Provide an overview of the **legal possibilities in Member States** for a change of status and the rights altered due to these changes;
- ★ Identify the **national rules on changes** in purpose of stay that (can) apply to the categories of migrants covered by this Study;

- ★ Identify specific **measures in place in the Member States to facilitate** changes in statuses of migrants in the categories covered by the Study;
- ★ Examine the available evidence on the **effectiveness, impact and perception** of national change of status policies and the extent to which these policies have contributed to promoting or hindering changes of status in the Member States;
- ★ Analyse the **challenges** associated with the implementation of national policies; and
- ★ Collect **good practices and lessons learnt** in devising secure and administratively-friendly systems for implementing status changes of legally admitted third-country nationals.

## 4. BACKGROUND/CONTEXT TO THE STUDY

What is the scale of the phenomenon?

The absolute **number of status changes registered in the EU has decreased** over time. The number was highest in 2010 (over 0.7 million) and lowest in 2014 (over 0.3 million). The highest share of all changes were made from remunerated activities (40% in 2014). In 2014, the majority of changes into statuses linked to remunerated activities came from education statuses (63%).

In the period 2010-2014, **each year around 2% of all third-country nationals with a valid residence permit changed their status**. Proportionally, changes from education reasons were the most frequent ones. This has decreased however over time, from 19% in 2011 to 6% in 2014.

In 2014, the share of **status changes out of all valid residence permits ranged from less than 1% to 7% in the EU Member States**. A migration status was most often changed in **Portugal** (6.9%), **Malta** (6.6%), **Czech Republic** (4.7%), **Ireland** (3.9%), **Spain** (3.7%) and **France** (3.5%).

In **Portugal** (99% of all changes in the Member State), **Czech Republic** (69%) and **Spain** (65%), the majority of changes were made **from remunerated activities**; in **France** (40%) **from family** while in **Ireland from education** reasons (49%).

## 5. EU LEGAL FRAMEWORK AND NATIONAL MIGRATION SYSTEMS IN RELATION TO STATUS CHANGES

What is the EU legal framework and national migration systems in relation to status changes?

The **number and type of migration statuses differs** between the Member States. Several migration statuses covered by the Study are fully or in part regulated by

EU law (in the sense that Member States may have a similar national status) while others are unique national statuses and hence governed by the Member State's migration policy and system. All Member States have one or more national statuses related to employment. Some of these statuses do not exist as a 'standalone' but are often included as a category within a more general migration route.

In general, the EU legal framework does not include provisions related to a change of status, however relevant Directives do set the minimum standards for the conditions to obtain such status and the rights to be granted to third-country nationals following the granting of the status. The only exception is the recently amended **Visa Directive**, which provides a **transition period** of nine months **for students and researchers** to stay after finishing their studies or research in order to look for a job. EU Member States have two years for the transposition of these provisions.

In general, all Member States have **legal possibilities** for at least some categories of legally residing third-country nationals to change their status without having to leave the country. Some Member States have applied this possibility to the **majority of categories** (AT, BE, EE, ES, FR, HU, LT, NL, PL, SK), while others have adopted a more **restrictive position**, allowing changes only for specific categories (LU, SE) or imposing additional restrictions on the change (CZ, LV). Some Member States also legally permit status changes for those third-country nationals who do not regularly reside in the country, e.g., rejected asylum seekers (BE, FI, SE).

#### What are the main drivers/ reasons behind changes of status?

The main driver for Member States to permit for status changes relates to **economic considerations**, as this contributes to filling labour shortages, retaining talented migrants and ensuring that the skills already available on the territory are made use of. A few Member States also consider **microeconomic** reasons, related to increasing the cost efficiency and flexibility of their migration system.

In addition to economic drivers, a few Member States also consider that the change of status does benefit the **integration** of migrants, may contribute to **development related objectives** in the countries of origins and may prevent migrants falling into **irregular situations**.

## 6. LEGAL POSSIBILITIES FOR CHANGE OF STATUS WHILE REMAINING IN THE MEMBER STATES

### What are the legal possibilities for change of status while remaining in the Member States?

All Member States participating in the Study allow changes **from the family status**, which makes it the only migration status from which a change is possible in the entire EU. Although legally possible, **changes from family reasons** are the least often used status changes. Over the period 2010-2014, each year only 1% of persons with valid residence permits for family reasons changed the status. The small share could in part be explained by the relatively long duration of stay offered by this status and the rights and benefits granted, although these are highly dependent on the status of the sponsor.

**Education reasons** are, after family reasons, the status from which most often changes are possible in the Member States. At the same time, this change is the most often one made in the EU (6% of all third-country nationals with a valid residence permit for education reasons changed their status in 2014). In 2014, **France, Germany** and the **United Kingdom** accounted for 72% of all changes made from education reasons within the EU.

This type of status changes has, however, been the subject of intense debates and legislative changes in several Member States, with some focussing on the need to retain students who have successfully completed their studies and have qualifications relevant to labour market needs, which led to an increase in the number of status changes, while others are seeking to reduce abuse of this migration status, thus leading to a decrease in status changes (UK).

Most commonly, changes **from education reasons** are made **into remunerated activities** (66% of all changes made from education reasons in 2014). This is also the status change most often **facilitated** by the Member States. It usually is accompanied by **enhanced rights** in relation to access to employment, the duration of stay and possibilities for family reunification.

Member States have a variety of national statuses in place to cover third-country nationals staying for employment and self-employment. **Remunerated activities** is the second most frequently changed status, after education reasons. In 2014, 4% of third-country nationals with a valid residence permit for remunerated activities changed their status. The **Blue Card, highly qualified worker, researcher** and **employee** statuses are overall the most favourable statuses in terms of legal possibilities to request a change of status and the rights and benefits granted with these statuses. **Seasonal worker** is the least

favourable status in terms of legal possibilities to move to another status.

The legal possibilities for **changes into remunerated activities** have however become somewhat more limited as a result of the economic crisis, with some Member States introducing measures to protect their national labour market (e.g. Bulgaria no longer allows any changes into economic activities, while Czech Republic introduced additional requirements).

Majority of Member States also allow **changes from protection-related** situations – asylum applicants and temporary permits for victims of trafficking. Overall, more legal possibilities to change status are offered to victims of trafficking than to asylum applicants. Seven Member States (DE,<sup>3</sup> EE, ES, FI, IT, LV and SE) allow some changes from asylum seeker into some statuses for remunerated activities. Only **Sweden** provides legal possibilities for **rejected asylum applicants** to change into an employment-based status, under certain conditions. In **Germany**, it is debated whether (rejected) asylum seekers should be allowed to change into a status for employment purposes. For well-integrated young people and adolescents with a tolerated stay status as well as persons whose deportation was suspended and who became integrated lastingly into society; the opportunities to change into a legal status were facilitated by amendments to the Residence Act introduced in August 2015.

## 7. ADMISSION CRITERIA AND LEGAL BASIS

[What are the admission criteria and legal basis?](#)

In a large majority of Member States, the change of status is regulated by national laws or by combinations of articles of different national laws or acts, usually embedded in immigration laws, asylum laws, refugee laws, residence acts or aliens acts. In three Member States (FR, HR, UK) the change of status is embedded in policy, guidelines or practice. In **Sweden** and **Spain** it is a mix of both.

In the majority of the Member States, the conditions to be met for a change of status are **very similar to the procedure for first time applicants**. Thirteen Member States reported some differences in the conditions, which in most cases means a **reduction of conditions** in comparison to first time applicants. In some cases admission criteria are **increased**, mostly related to changes into statuses which concern remunerated activities (DE, ES, SE, UK).

[What are the procedural facilitations in place?](#)

In addition to reduced admission conditions, several Member States also have put in place some specific procedural facilitations. Measures normally tend to facilitate status changes into remunerated activities, namely employee (EE, FR, HU, IE), highly qualified worker (BE, UK) and Blue Card (EE, DE, FR). Most Member States offer a reduction of the **documentary requirements** (AT, BE, BG, CZ, DE, EE, ES, LT, LV, NL, SK). Some Member States reduce the **minimum income** requirements for certain statuses (AT, IE, UK) while others accept **online applications** for some status changes (DE, ES, FR, SE).

## 8. EFFECTIVENESS, IMPACT AND PERCEPTION OF NATIONAL POLICIES REGARDING CHANGES OF STATUS

[What is the effectiveness, impact and perception of national policies regarding changes of status?](#)

The effectiveness or impact of national policies allowing change of status has **not been systematically evaluated** in the Member States. Eight Member States (CZ, DE, ES, FR, LV, NL, SE and UK) reported some evidence on the effectiveness or impact of status change measures. Studies carried out in **France** and **Spain** showed that legislative changes facilitating status change can make a **positive contribution to the economy** as well as facilitate **integration**. Similarly, a survey carried out in **Germany** highlighted that 55% of foreign students stayed in Germany after completion of their higher education programme as a result of a change of status.

Different types of **obstacles** to status change were identified in studies carried out in **Latvia**, the **Netherlands** and **Spain**. In **Sweden**, an analysis of cases in which **rejected asylum seekers** requested a change to employment-related statuses concluded that the status change was perceived as an alternative possibility to stay in the country for humanitarian reasons rather than a possibility to stay employed.

Migration status changes are generally **not much publicly debated** in the EU. In some Member States the debate is initiated by the business sector. In **Germany** the Business associations have recognised the entrepreneurial spirit of third-country nationals (and asylum seekers in particular) and they are therefore strongly advocating for integration measures and more flexible migration policies. In **Latvia**, employers have initiated discussion on the change of status as a response to the growing lack of qualified workforce.

<sup>3</sup> In exceptional cases with the approval of the supreme state authority

Can change of status contribute to the prevention of irregularity?

There is no systematic or quantifiable evidence to confirm that change of status does contribute to the prevention of irregularity. However, few Member States (AT, ES, LU, LV, SE) suggested that **in the absence of change of status possibilities, more people may end up in irregular situations.**

## 9. CHALLENGES, GOOD PRACTICES AND LESSONS LEARNED IN CHANGE OF STATUS

What are the challenges encountered by national authorities and applicants?

Several Member States encountered challenges in implementation of changes of status. **Misuse and abuse** of the change of status by either migrants, their sponsors or employers were mentioned by several Member States (CZ, LT, LU, LV, SE and UK). A few Member States also highlighted the **absence of research** on status change (BG, LU) being a challenge, as well as **differences in practices** of stakeholders involved in the status change procedures (DE, FR), a **lack of dissemination of information** (BE, FR) and finally a **lack of transitional status for international students** following completion of their studies or research (ES). The latter issue however is addressed in the recently revised Visa Directive.

Do Member States identify good practices or learn from their national approaches?

Good practices have been identified in several Member States. Nine Member States (AT, DE, EE, FR, IE, LT, NL, PL, SE) have **enhanced the rights of students** so that they can extend their stay in the country after completion of their studies to look for employment. Good practice on the **dissemination of information on status change possibilities** was reported by **Luxembourg**. The **United Kingdom** reported its practice to assess whether migrants' activities had been in line with the requirements associated with the existing status before permitting a change to another status. This practice aims to **tackle and reduce non-compliance in the immigration system.**

## 10. FURTHER INFORMATION

You may obtain further details on this EMN Inform and/or on any other aspect of the EMN, from [HOME-EMN@ec.europa.eu](mailto:HOME-EMN@ec.europa.eu).

*Produced: July 2016*

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