



## Summary of European Migration Network Ad-Hoc Query No. 2021.17

### Labour Market Test

The labour market test (LMT) is implemented and applied in most of the EU Member States. Where the LMT is applied, some categories of workers can be exempt from the application, reflecting the specific national situations and priorities. Member States apply different methodologies in undertaking LMTs. In general, a considerable responsibility is left to employers and public employment services (PES). The duration of the verification process varies among the Member States.

Starting from 1st of January 2021, the quota system for issuing work permits for employment of third-country nationals in the Republic of Croatia has been replaced by the labour market test. By conducting the LMT, Croatian Employment Service needs to establish, through the process of job placement, whether HR/EEA nationals or third-country nationals with legal residence (permitting them access to the Croatian labour market) are available and can fill job vacancies. If not, an employer may apply for a stay and work permits for foreign workers.

Total number of participating NCPs:	22
Responses for wider dissemination:	BG, HR, CY, CZ, EE, FI, FR, DE, HU, IE, IT, LV, LT, LU, NL, PL, PT, SK, SI, ES, SE.
Responses for closed dissemination:	AT

### SHORT SUMMARY

Most Member States<sup>1</sup> have LMT in place, and many of those Member States report exemptions in regards to certain categories such as in cases of shortage in labour or highly qualified workers. Only four Member States reported not implementing LMT.<sup>2</sup> However, they reported other mechanisms of controlling the labour market, which can in some cases correlate to LMT.

In most of the Member States, the employer is required to submit a job vacancy to the PES.<sup>3</sup> Many of the Member States require employers to advertise the offer, or PES advertises the offer for a disclosed amount of time. In some of the Member States PES is the authority that searches for suitable candidates in the unemployed registry and refers them to the employer.<sup>4</sup> In some of the Member States, LMT can be very straightforward, PES performs LMT and gives or denies permission without mediating between potential jobseekers and employers.<sup>5</sup>

The most important criteria resulting in restriction of employing a third-country national is in the case that a job vacancy was filled by a national, EU national, or legally staying third-country national before the end of the LMT.<sup>6</sup> Of all the Member States performing the LMT, 10 of them check for the availability of workers from the other EU Member States,<sup>7</sup> while seven of them do not.<sup>8</sup>

<sup>1</sup> BG (valid only for the Single Permit), CY, CZ, DE, EE, FI, FR, HR, HU, IE, IT, LT, LU, NL, PL, SI, and SK.

<sup>2</sup> ES, LV, PT, and SE.

<sup>3</sup> CY, CZ, EE, FR, HR, HU, IE, LT, LU, NL, PL, SI, and SK.

<sup>4</sup> CY, CZ, HR, IE, LU, PL, and SK.

<sup>5</sup> EE, HU, IT, NL, and SI.

<sup>6</sup> BG, CY, DE, FR, HR, IE, LT, LU, PL, and SI.

<sup>7</sup> BG, CY, CZ, DE, HU, IE, LT, NL, PL, and SI

<sup>8</sup> EE, FI, FR, HR, IT, LU, and SK.

## DETAILED SUMMARY

### Implementation of labour market test and labour market control

**Most Member States<sup>9</sup> have LMT in place, and many of them reported exemptions in the implementation of the LMT.** Reported exemptions are based on different social, economic or professional categories, for an example, third-country nationals whose employment derives from the implementation of international or bilateral agreements are exempt from LMT in three Member States.<sup>10</sup> Some of the reported exceptions also include educational professions,<sup>11</sup> professional performers,<sup>12</sup> sports professionals,<sup>13</sup> carers,<sup>14</sup> third-country nationals whose remuneration exceeds a certain amount,<sup>15</sup> persons of foreign interest,<sup>16</sup> highly qualified third-country nationals,<sup>17</sup> deficit professions/labour shortages.<sup>18</sup> Germany emphasized that LMT is implemented only in particular cases since the Skilled Immigration Act abolished LMT for many qualified jobs, also it was noted that the nationality of the third-country national might play an important role in the LMT applicability. The Netherlands reported that the applicability of the LMT depends on the purpose and the duration of the stay, and Finland added there are other exempted categories.



*Graph 1 – Implementation of LMT in EU Member States*

**Only four Member States reported not implementing LMT.<sup>19</sup>** However, they reported other mechanisms of controlling the labour market, and it is possible to single out Portugal and Sweden whose mechanisms for labour market control do not resemble LMT procedures; if not residing in Portugal, third-country nationals must apply for a residence permit on an electronic platform and present proof of meeting the conditions. In Sweden, everyone who receives employment and fulfils the rest of the predicted requirements is entitled to a residence and work permit.

The systems applied in Spain and Latvia are not strictly defined as LMT, however, some of the steps of managing the labour market do resemble steps of an LMT reported in the other Member States. In Latvia, an employer intending to employ a third-country national needs to register a job

<sup>9</sup> BG, CY, CZ, DE, EE, FI, FR, HR, HU, IE, IT, LT, LU, NL, PL, SI, and SK.

<sup>10</sup> BG, FR, and SK.

<sup>11</sup> BG, EE, and SK.

<sup>12</sup> BG, FR and SK (under certain conditions).

<sup>13</sup> BG, and SK (under certain conditions).

<sup>14</sup> EE, and IE (under specific circumstances).

<sup>15</sup> FR, IE, and LT.

<sup>16</sup> CY, and FR.

<sup>17</sup> BG, CY, EE, FI, FR, and LT.

<sup>18</sup> EE, FR, HR, IE, and SK.

<sup>19</sup> ES, LV, PT, and SE.

vacancy with PES. In general, this procedure may be considered as a LMT, because only if the vacancy is vacant for more than 10 days, an employer may turn to the migration authority to confirm an invitation for requesting a visa or sponsorship for a residence permit for a third-country national. National authorities in Spain examine if the national employment situation (NES) allows employment of third-country nationals, therefore PES may have to issue a certificate to verify that NES is suitable for employment of third-country nationals or publish job vacancy for a minimum of 15 days. There are also other steps of the procedure that can correlate to LMT procedures, such as similarities of the procedures regarding requested documentation,<sup>20</sup> employer submitting reasons for not employing candidates nominated by PES,<sup>21</sup> exemptions of implementing labour market control procedures on the basis of qualifications, professions and deficit labour categories.<sup>22</sup>

### Procedure steps of Labour market testing

Steps of the procedure to access the LMT differ from one Member State to another. In almost all of the Member States, the **first step of the LMT takes place when the employer submits a job vacancy request to the PES.**<sup>23</sup> Similarly, in Italy, employer or foreigner legally residing must submit an application to the Single Desk for Immigration, but PES only checks beforehand that a worker present on national territory is not available with the competent Employment Centre. Since LMT is a part of the visa process in Germany, the visa agency is the one who asks approval from the PES competent for the LMT but PES mediates only if the employer shows interest. Similarly, in Finland first phase of a two-phase procedure is based on the outcome of PES's judgment on employment and subsistence.

**Advertising the position** through different channels, be it official or public newspapers, other public media, social networks, EURES, is part of the LMT in many of the Member States, and can be considered as a most common step following submittal of the job vacancy. While in some of them, employer is the one who publishes the advertisements and needs to provide proof of their publishing,<sup>24</sup> the employer may be required to register and publish the vacancy through PES,<sup>25</sup> or publishing may be a part of PES's LMT procedure.<sup>26</sup> Most Member States who require job vacancy publishing have prescribed **minimum time periods** for keeping advertisements public so that jobseekers can respond to the offers.<sup>27</sup> Many of the Member States that enforce obligations of publishing, also check their jobseeker registry, however those that do not, may require a **justification from the employer on the refusal of the candidates** that applied for the vacancy, as seen in France.

Those Member States that do not require publishing of the vacancies, commonly **utilize only PES as a relevant authority that detects national labour market saturation by checking their registries.**<sup>28</sup> Therefore, in these Member States, this can be detected as a following step of the LMT. In those Member States, a minimum time limit in order to find qualified workers is often prescribed, while the timespan for publishing or reaching jobseekers might vary from 3 to 60 days.

---

<sup>20</sup> ES, and LV.

<sup>21</sup> ES.

<sup>22</sup> ES, and LV.

<sup>23</sup> CY, CZ, EE, FR, HR, HU, IE, LT, LU, NL, PL, SI, and SK.

<sup>24</sup> BG, CY, IE, and NL.

<sup>25</sup> FR, IE, LT, NL, and SK.

<sup>26</sup> CZ, HR, and NL.

<sup>27</sup> CY, FR, IE, LT, NL, PL, and SK.

<sup>28</sup> EE, HU, IT, LU, PL, and SI.

In many of the Member States **PES is the authority that searches for suitable candidates in the unemployed registry and refers them to the employer.**<sup>29</sup> This step of the procedure makes the LMT more complex as the procedure is expanded by the mediation of the PES with jobseekers and employers, also taking into account their feedback that affects the results of the LMT. In Germany, if the permission was denied, PES can refer jobseekers to the employers if they show interest. It is interesting to note that in Croatia suitable jobseekers who refuse the job vacancy without justified reason are removed from the PES register.

In some of the Member States **LMT can be very straightforward**, it involves the employer submitting the proper documentation, and PES performs LMT and gives or denies permission to the application without mediating between potential jobseekers and employers.<sup>30</sup> Similarly, in Finland LMT is a two-phase procedure as PES firstly assesses employment and subsistence of the offer and afterwards issues residence permit if suitable.

### Criteria on the employment and residence of third-country nationals

Some of the decisive criteria might be implemented during various phases of the LMT, and may include several requirements from the employer, and less often from potential employees. For example, the process of LMT and decision-making in Hungary includes examining contracts, qualifications, and preliminary fulfilment of law regulations. Evaluation of the documentation and data provided is explicitly or implicitly stated as a precondition either for accessing LMT, positive decision of LMT, or is foreseen as a part of impending residence permit obtainment. Additionally, some of them reported that PES can be the competent authority evaluating the validity of some of the data regarding the job offer, terms and conditions and their alignment with the regulation in force or if the qualifications of the chosen third-country national respond to those from the job offer or contract.<sup>31</sup> It is possible to distinguish those Member States who also require an **employer to justify refusing to hire** a national of another Member State, EEA, Swiss Confederation, who meets the position requirements and assess their reasons of rejection that has an effect on the results of the LMT.<sup>32</sup> Additionally, in the Netherlands employer needs to prove that sufficient efforts were made in finding employees for whom no work permit is required.

In describing the LMT criteria on restricting the employment of third-country nationals, Member States were given options of **statements that relate to the most common possible reasons for restricting the employment of third-country nationals within LMT procedure.**

As visible from the table below, most of the Member States<sup>33</sup> have stated that in case that a **job vacancy was filled by a national, EU national, or legally staying third-country national before the end of the LMT** there is no need for employment of third-country national. In cases where **PES refers workers willing to accept the job to the employer**, LMT will be restrictive towards employment of third-country nationals as there are willing workers in the registry.<sup>34</sup> Also, if the **rejection of a qualified jobseeker by an employer is considered unjustified**, it may result in restriction of employment in

<sup>29</sup> CY, CZ, HR, LU, PL, and SK.

<sup>30</sup> EE, HU, IT, NL, and SI.

<sup>31</sup> HR, FI, HU, LT, and SK.

<sup>32</sup> BG, CY, FR, and HR.

<sup>33</sup> BG, CY, DE, FR, HR, IE, LT, LU, PL, and SI.

<sup>34</sup> HR, LU, and PL.

some of the Member States.<sup>35</sup> France is the only Member State that reported that LMT can be restrictive in case **the job description is too specific** and will limit the possibility to be filled by a jobseeker.

*Table 1 - Possible reasons for restricting the employment of third-country nationals within LMT procedure*

<b><i>The job description is too specific that will limit the possibility to be filled by a jobseeker</i></b>	FR
<b><i>The job vacancy has been filled by a national, EU citizen or a legally staying third country national before the period of the LMT expires</i></b>	BG, HR, CY, FR, DE, IE, LT, LU, NL, PL, SI
<b><i>A worker referred to employer by the PES is willing to accept the job</i></b>	HR, LU, PL
<b><i>The rejection of the employer of a jobseeker who fulfils all the requirements is unjustified</i></b>	HR, CY, FR, LU
<b><i>The PES has referred a sufficient number of qualified jobseekers to the employer (regardless of the result of such referral)</i></b>	CY, LU
<b><i>PES will issue a negative decision, without referring jobseekers to the employer, if according to the data there are enough jobseekers who can fulfil the job vacancy</i></b>	EE, NL
<b><i>Other</i></b>	CZ, FI, HU, IE, IT, LT, NL, SK

If there is a **sufficient number of jobseekers** in Cyprus and Luxembourg, regardless of the result of the referral, it is conclusive that there are jobseekers available on the national labour market. It should also be noted that Germany reported in their contribution that if the LMT shows that there are jobseekers available, they will reject the application. Estonia and the Netherlands only check if there are available jobseekers, and issue a decision according to the available data, but **do not mediate and refer jobseekers to the employer**. However, taking into account the data provided, three other Member States could potentially be added to this group, as previously concluded.<sup>36</sup> Some of the Member States have additionally reported other criteria.

As noted earlier, most of the Member States compel employers to fulfil certain requirements **before, simultaneously or after LMT**. The **background of the employer** and its business activities are often inspected in order to check for certain unlawful activities especially in relation to labour, health, safety, and migration laws.<sup>37</sup> However, a number of Member States inspect other aspects of the employer activities such as debt in taxes,<sup>38</sup> debt in social security contributions,<sup>39</sup> bankruptcy,<sup>40</sup> registry in relevant business registers,<sup>41</sup> business activity,<sup>42</sup> if the contract and/or remuneration are in line with labour legislation or collective agreements,<sup>43</sup> if the employer has proper liability insurance,<sup>44</sup>

<sup>35</sup> CY, FR, HR, and LU.

<sup>36</sup> HU, IT, and SI.

<sup>37</sup> CY, HR, FR, IT, NL, and SK.

<sup>38</sup> CY, HR, and SI.

<sup>39</sup> CY, FR, and HR.

<sup>40</sup> FR, and SI.

<sup>41</sup> HR, and SI.

<sup>42</sup> SI.

<sup>43</sup> EE, FR, HR, NL, and PL.

<sup>44</sup> CY.

if the employer unjustifiably fired personnel lately,<sup>45</sup> or if the employer is subjected to administrative actions and respecting obligations.<sup>46</sup> Some of the requirements are implemented to manage and control labour market and to protect the rights of the Member State's nationals, EU, EEA, and Swiss nationals. Hence, Member States may request a percentage of employees to be of those nationalities, as well as employed for a certain period.<sup>47</sup> It is worth noting that in Croatia after the positive decision on LMT, an opinion of PES needs to be issued which contains many of the criteria mentioned above.

The second most common additional criterion that falls on the employer, as well as the potential employee, is an obligation to meet the qualifications and requirements stated by the employer for LMT.<sup>48</sup> Also, some of the Member States reported that their main criteria rely mainly on third-country national fulfilling the general conditions for visa or residence permit and submitting the documentation,<sup>49</sup> fulfilling contract obligations,<sup>50</sup> while Ireland reported that applications for employment permit permissions are dealt with separately from applications for immigration and residence permissions. Where an employment permit permission is granted, it may support the application for the subsequent immigration or residence permission. Hungary states that if conditions in the preliminary agreement and in accordance with relevant legislation are met, after conducting the LMT there are no more criteria. Although Germany has not specified individual criteria, it was reported that third-country nationals may not be employed under less favourable terms than people already employed in equivalent positions. Most of the other Member States have also reported the same conclusion, or have throughout its contribution implied it. Italy is the only Member State that reported having **both LMT and quota system**, therefore to successfully be issued *nulla osta*,<sup>51</sup> application has to be aligned with the quota limitations. When discussing additional criteria on residence permit and hiring process after LMT, Bulgaria and Czechia are the only Member States that reported no additional criteria in relation to the outcome of the LMT conducted for issuing the residence permit.

## Checking the availability of workers from other Member States

Out of all the Member States performing the LMT, 10 of them check for the availability of workers in other Member States,<sup>52</sup> while seven of them do not.<sup>53</sup> Member States most commonly check the availability of workers in their national registry and if there are other EU, EEA, Swiss Confederation, or other third-country nationals legally residing registered in the base, they are treated equally as nationals of the Member State in question.<sup>54</sup> Similarly, even though Luxembourg stated that they do not check the availability of workers from the other EU Member States, other Member State nationals might be included in their registry as they check the base of PES that includes border workers.

---

<sup>45</sup> CY.

<sup>46</sup> FR.

<sup>47</sup> CY, HR, IE, and SK.

<sup>48</sup> BG, CY, EE, HR, HU, IE, and SI.

<sup>49</sup> FI, IT, LT, LU, NL, PL, and SK.

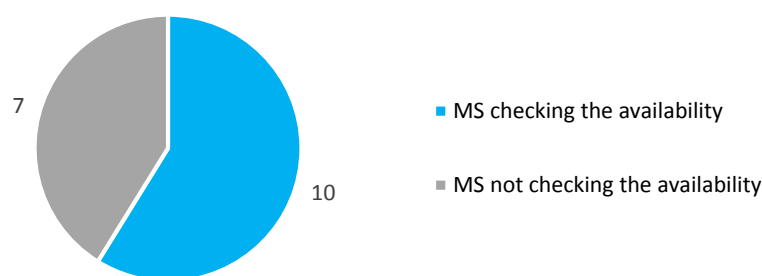
<sup>50</sup> PL.

<sup>51</sup> Italian Republic, Ministry of the Interior, <https://www.interno.gov.it/it/temi/immigrazione-e-asilo/modalita-dingresso/visto-e-permesso-soggiorno>

<sup>52</sup> BG, CY, CZ, DE, HU, IE, LT, NL, PL, and SI.

<sup>53</sup> EE, FI, FR, HR, IT, LU, and SK.

<sup>54</sup> BG, CZ, DE, FR, HR, HU, IE, SI, and PL.



Graph 2 – Comparison of the Member States checking the availability of other EU workers

EURES is used as a tool for checking availability in four Member States.<sup>55</sup> In the Netherlands, employers must register on EURES or choose to find candidates in other ways, and as mentioned also prove their efforts while PES simultaneously checks available registers.

### Data on the labour market test decisions

In 10 Member States data on the percentage of positive and negative decisions of the LMT conducted in 2019 and 2020 was available. Data from Croatia was not comparable because it represented only the first quarter of 2021 in which it was estimated that 90% of the decisions were positive. Data from Poland consisted only from negative decisions in number which amounted to 4 900 in 2019 and 9 687 in 2020, therefore it was not comparable with the rest of the data.

Table 2 – Percentage of positive and negative LMT decisions of some of the Member States in 2019 and 2020

	2019		2020	
	positive	negative	positive	negative
<b>BG</b>	100%	0%	100%	0%
<b>CY</b>	75%	25%	74%	26%
<b>EE</b>	98,8%	1,2%	98,3%	1,7%
<b>FI</b>	70%	30%	80%	20%
<b>LT</b>	100%	0%	100%	0%
<b>LU</b>	91,26%	8,74%	83,32%	16,68%
<b>NL<sup>56</sup></b>	47%	41%	53%	44%
<b>SK</b>	84%	16%	82%	18%

From the data available, it is visible that positive decisions of LMT prevail, and the highest percentage of negative decisions is present in the Netherlands as they amount to more than 40% of the total. In Finland and the Slovak Republic, the negative percentage exceeds 10%, while in Estonia it is under 2% during both of the years. Bulgaria and Lithuania report that there were no negative decisions in both 2019 and 2020. Luxembourg noted that negative decisions almost doubled in 2020, which is the biggest recorded change of the data available. More than half of the Member States whose data is available reported a relatively slight rise in negative decisions in 2020.<sup>57</sup>

<sup>55</sup> CY, IE, LT, and NL.

<sup>56</sup> Note that these percentages do not add to 100% because of a small percentage of applications that expired or were withdrawn after submission.

<sup>57</sup> CY, EE, LU, NL, and SK.