

Summary of an EMN AD HOC QUERY No 2021.65

Follow-up on Start-ups

1 February 2022, prepared by EMN Estonia

Responses from Austria¹, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovakia, Slovenia, Spain, Sweden (22 in Total)

1. BACKGROUND AND CONTEXT

Recent years have seen a proliferation of admission schemes for 'start-ups' and 'innovative entrepreneurs', both within the EU and globally. In 2019, EMN carried out a study on Migratory Pathways for Start-Ups and Innovative Entrepreneurs in the European Union. It found that thirteen Member States had specific admission schemes in place (mainly residence permits and/or visas) for start-up founders and innovative entrepreneurs from third countries. Apart from a small number of participating countries, most of the schemes were still in their infancy, having been introduced in the three years prior to the study. Consequently, the EMN study did not thoroughly cover the issue of monitoring start-up visa and residence permit recipients. As a follow-up to the study, the Estonian Ministry of the Interior requested information on how the success and growth of the start-ups is evaluated after being approved as a participant in the programme and what are the legal procedures and consequences if the criteria are not met.

2. QUESTIONS

1. Does your MS's legislation foresee special visa/residence permit programme to facilitate the immigration of TCN start-up founders? Yes/No
2. If you answer YES to question 1, does your Member State have any framework (e.g. regulation, circular, administrative practice) for the evaluation of the start-up's success and growth after being approved as a participant in the programme? Yes/No. Please elaborate.
3. If you answer YES to question 2, how often is the evaluation carried out in order to determine whether the start-up has been successful and growing sufficiently? (e.g. once a year, quarterly, during visa and resident permit extension procedures etc.)
4. If you answer YES to question 2, what are the criteria for the evaluation of the start-up's success and growth? (e.g. economic results such as jobs created, investment generated, annual turnover, taxes generated etc.)

¹ Responses from Austria are not for wider dissemination and not included in this summary.

5. If you answer YES to question 2, which body will evaluate the success and growth of the start-up? (e.g. government institutions, police, special committee, tax and customs board etc.)
6. If you answer YES to question 2, once the relevant body carries out the evaluation, are the results notified to the start-up before taking the final decision? Yes/No.
7. If you answer YES to question 2, in case the preliminary decision determines that the start-up's success and growth are insufficient, does the relevant body foresee a time frame in order for the start-up to improve? Yes/No. Please explain.
8. If you answer YES to question 2, what are the legal and practical consequences for the TCN founder of the start-up when the start-up is not meeting expectations? (e.g. withdrawal of the special visa/residence permit, administrative fine)
9. Can the decision foreseen in your answer to Q.8 be appealed? (please describe the procedure)
10. Has your Member State detected any form of misuse by the TCN founders participating in the start-up programme? YES/NO. If yes, please describe.
11. If your Member State does not have any framework to evaluate the start-up's success and growth after being approved as a participant in the special programme, are there any plans to develop such evaluation criteria (e.g. monitoring or surveillance measures)?

3. MAIN FINDINGS/CONCLUSIONS

12² EU MSs (Austria³, Bulgaria, Cyprus, Estonia, Finland, France, Ireland, Latvia, Lithuania, Netherlands, Poland⁴, Spain) **reported to have a special visa/residence permit programme to facilitate the immigration of TCN start-up founders** (See Figure 1). Other 10 responding countries (Belgium⁵, Croatia, Czech Republic, Germany, Hungary, Luxembourg, Malta, Slovakia, Slovenia, Sweden) do not have a special scheme in place. Innovative entrepreneurs and start-up workers can apply for work under general rules. Despite not having a special scheme, some of these countries (Slovakia and the Czech Republic) reported that they fast-track such applications and accept lower financial guarantees for such businesses.

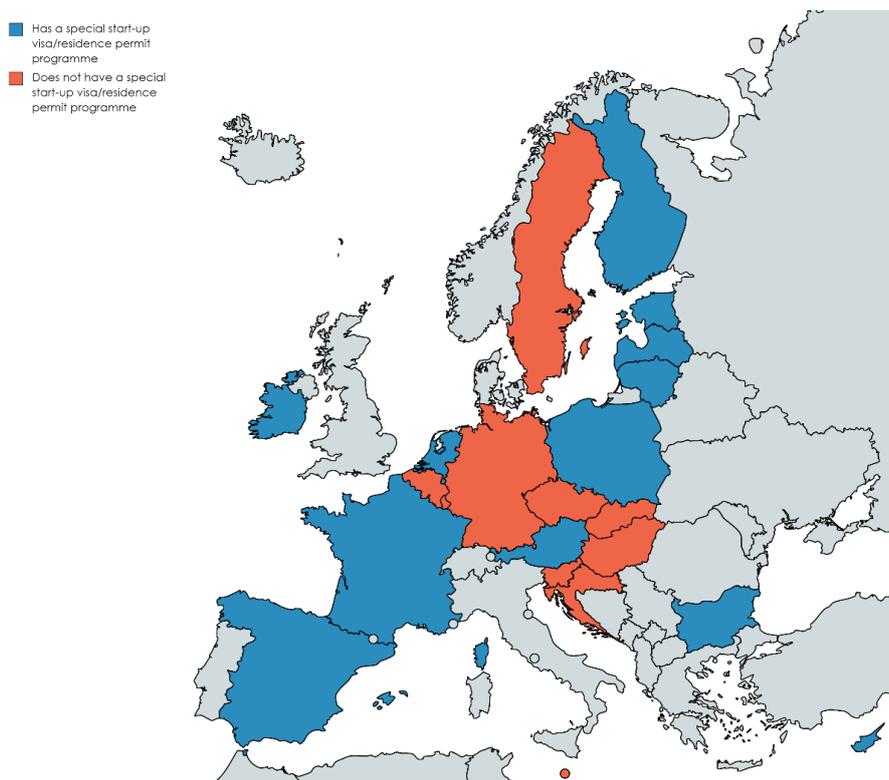


Figure 1. Responding countries based on start-up visa/residence permit programme status

² Please note that this does not include countries that did not participate in the ad-hoc query, but have a start-up scheme (e.g. Italy and Portugal). EMN Study in 2019 included also these countries and the UK. Since the study, Poland and Bulgaria have introduced new schemes.

³ This information was provided for and stems from the EMN study in 2019.

⁴ The Polish 'Business Harbour' scheme is open only to the citizens of Armenia, Belarus, Georgia, Moldova, Russian Federation and Ukraine. It is not a general start-up scheme, but a targeted programme.

⁵ There is no specific visa/residence scheme in place for third-country national start-up founders in Belgium, but a new decree relating to obtaining a professional card will be introduced in Flanders (Flemish Region) to make it easier to attract start-ups and innovative entrepreneurial talent. More information about this can be found in the AHQ compilation, but due to its regional nature it is not included in this summary.

As was already established by the EMN study in 2019, the design and admission conditions of start-up schemes differ significantly between EU MSs. The same is the case with the evaluation of start-up success and growth after being approved as a participant in the programme. **The exact nature of the evaluation process is closely linked to the overall structure of start-up schemes in countries** For example, whether MSs give out visas/residence permits for just start-up founders or also to start-up employees, in the case of the latter, separate evaluations for both company and individual may be carried out, while with the former these may be combined.

Out of the responding countries with special start-up schemes in place, **9 MSs** (Cyprus, Estonia, Finland, France, Ireland, Latvia, Lithuania, Netherlands, and Spain) reported that **evaluations generally take place at the time of extending, renewing or transitioning between visas/residence permits** (e.g., from a visa to a residence permit in Spain or from a start-up programme to self-employment scheme in the Netherlands), when the eligibility of both individuals and companies to qualify for start-up schemes is being reassessed. In Poland, the start-up scheme requires TCNs to participate in an accelerator program and the evaluation is carried out at the exit from the program and again after the post-acceleration phase.

Cyprus and Ireland reported that they are in the process of reviewing different elements of startup schemes, which might also impact the criteria for evaluations. Estonia is looking to develop a new evaluation scheme. Bulgaria reported that the public discussions on the ordinance that would establish the procedure for issuing, extending and revoking the certificate for high-tech and/or innovative companies making them eligible for benefitting from the start-up scheme is still undergoing. Yet all efforts at national level focus primarily on attracting and stimulating the start-ups, and not on evaluating their economic results.

Being generally linked to renewals and extensions, **the frequency of evaluations can vary significantly** due to different durations of start-up visas and residence permits in different countries. In Estonia, for example, temporary residence permit can be issued for up to 5 years and extended up to 10 years. In Ireland, immigration permission is issued initially for 2 years and then may be renewed for a further 3 years. In the Netherlands, however, permit is issued for a year and the TCN is expected to transition then to a self-employment scheme.

As start-up visas and residence permits are issued for TCNs to grow a business in the MS, then economic considerations and reviewing **business progress towards achieving the outlined goals is to some degree part of all countries' evaluations**. Yet the way in which countries assess this, how much importance they assign to different elements and what the requirements are varies between all countries. For example:

- In **Lithuania**, for example, startup progress report and annual plan needs to be submitted once a year to obtain the approval of authorised institution required for the extension of the temporary residence permit. These documents are reviewed by a commission that consists of the representatives of the authorised institution, the Agency for Science, Innovation and Technology, as well as venture capital funds and business accelerators. After the temporary residence permit has been extended twice, it can be extended for 2 more years if the applicant is able to submit a document confirming that the company founded by the third-country national has attracted an investment of at least EUR 30,000.
- **France** requests upon renewal among other documentation for the applicant to justify the reality and the seriousness of their work (state of progress, work accomplished, actions remaining to be carried out, etc.) justifying the extension of the project beyond the planned duration and to provide a letter from the public organization that recognized the initial project and attesting to the reality and seriousness of the project and its prospects for achievement.
- As part of regular migration surveillance, the Police and Border Guard Board in **Estonia** cooperates with the Estonian Tax and Customs Board to evaluate the overall purposefulness of the basis of stay and start-up's progress (e.g. taxes paid, turnover and number of employees, and requests additional data if needed), as well as reviews information from the Estonian Business Register (name and date of registration of the start-up, registration number, check-ups on liquidation, bankruptcy or tax arrears). Estonia also reviews the list of start-ups eligible for hiring TCN workers using the start-up special regulation based on four criteria on a quarterly basis: active registration in the Estonian Business Register; no liquidation or bankruptcy proceeding have been initiated; the business has not been operating for more than 10 years; and actual economic activity during the last two years.

- In **Ireland**, at the renewal stage, the business accounts for each year are examined and the following noted: (1) annual profit; (2) number of staff recruited; and (3) whether any investment was made into the business. A narrative with supporting documentation is also requested from the applicant providing details of the growth of the business. The applicant must also provide evidence of tax compliance in the State.
- After one year in the country, start-up residence permit recipients in **the Netherlands** are expected to meet the conditions normally associated with the self-employment scheme, which is based on a scoring point system consisting of three parts: personal experience (education, entrepreneurship, work experience), business plan (market analysis, product/service, price, organization, financing) and added value for the Netherlands (innovation, employment creation, investments). In addition, the recipient must be in possession of a statement from the facilitator, showing that they completed the supervisory trajectory in a minimum of 3 months and with positive results. Thus, the start-up entrepreneur substantiates that they have developed enough personal experience and have a sufficiently viable company.

Member States usually involve external partners or governmental agencies traditionally not participating in migration surveillance to carry out business growth related evaluations. In 7 responding countries, the success and growth of the start-up is evaluated by business and enterprise agencies, external evaluators or special appointed committees (Cyprus, Finland, Ireland, Latvia, Lithuania, the Netherlands, Poland). The responsible body for evaluations in France is the Ministry of Economy and in Spain is the Ministry for Industry, Trade and Tourism. Only Estonia reported that responsible bodies for business-related evaluations are governmental bodies generally responsible for migration-related activities (the Police and Border Guard Board and the Ministry of the Interior), who collect the needed information from different e-registries.

Once the relevant bodies carry out the evaluations, four countries (Estonia, France, Ireland and Spain) notify the start-up of evaluation results before taking the final decision. Six countries (Cyprus, Finland, Latvia, Lithuania, the Netherlands and Poland) communicate the results with the final decision.

In case the preliminary decision determines that the start-up's success and growth are insufficient, most countries do not foresee a time frame in order for the start-up to improve. Exceptions here are Latvia and Ireland. Latvia, for instance, allows for the possibility to prolong the issuing of decision of residence permit registration for four months to allow the start-up founder to improve the growth of the company. Ireland also foresees the possibility to renew permission in 12 monthly increments (rather than 3 years) to observe the future progress in cases where start-up is progressing slower than expected.

If economic expectations are not met, all responding countries with start-up schemes see the possibility to revoke the visa/residence permit. In Estonia, as the start-up special regulation allows already existing Estonian start-ups to use it to hire foreign employees, the inability to fulfil the requirements entails the possibility of removing the start-up from the list of eligible start-ups and hence restricts the possibility to benefit from the start-up scheme. Acknowledging the high rate of failures of start-up ventures, Ireland allows the person, whose venture failed to take off to submit a new application under the scheme or to submit an application for a different immigration permission.

Although all countries allow decisions regarding the residence permit to be appealed, the evaluations of business plans and projects cannot be appealed on their own (for instance, in Finland and Spain). Ireland does not have a formal appeal process, however, ongoing engagement and communication between the responsible authority and the applicant is encouraged so that the the applicant can be assisted within the confines of the scheme.

Out of the responding countries with special start-up schemes in place, **4 countries (Estonia, Finland, Latvia and Spain) reported that misuse or a suspicion of misuse by the TCN founders participating in the programme has been detected.** Different misuse cases reported in countries include: using the visa program in order to access the Schengen area; business plans being written by another person, business plans being submitted solely for the purposes of acquiring residence permissions; founders not taking steps to progress the business and start to work elsewhere; starting the so called shelf-companies that were never meant to actually operate (i.e. no active business or existing obligations and no progress). Ireland also noted that there have been instances, where start-up applicants have obtained full-time jobs as the stamp endorsed in their passport states they can work in Ireland without a work permit, yet scheme guidelines do not allow a person to enter the general workforce.