



## **CARIM INDIA – DEVELOPING A KNOWLEDGE BASE FOR POLICYMAKING ON INDIA-EU MIGRATION**

Co-financed by the European Union

### ***Highly Skilled Indian migrants in Europe: Italy***

**Alberto Neidhardt**

CARIM-India Research Report 2013/37



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**CARIM-India**  
**Developing a knowledge base for policymaking on India-EU migration**

**Short Research Report**  
**Highly-Skilled Migration Series**  
**CARIM-India RR2013/37**

**Highly Skilled Indian migrants in Europe:**  
**Italy**

**Alberto Neidhardt**  
PhD Student, European University Institute

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Requests should be addressed to [India-EU.Migration@eui.eu](mailto:India-EU.Migration@eui.eu)

If cited or quoted, reference should be made as follows:

Alberto Neidhardt, *Highly Skilled Indian migrants in Europe: Italy*, CARIM-India RR 2013/130, Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole (FI): European University Institute, 2013.

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European University Institute  
Badia Fiesolana  
I – 50014 San Domenico di Fiesole (FI)  
Italy

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## **CARIM-India – Developing a knowledge base for policymaking on India-EU migration**

This project is co-financed by the European Union and carried out by the EUI in partnership with the Indian Council of Overseas Employment, (ICOE), the Indian Institute of Management Bangalore Association, (IIMB), and Maastricht University (Faculty of Law).

The proposed action is aimed at consolidating a constructive dialogue between the EU and India on migration covering all migration-related aspects. The objectives of the proposed action are aimed at:

- Assembling high-level Indian-EU expertise in major disciplines that deal with migration (demography, economics, law, sociology and politics) with a view to building up migration studies in India. This is an inherently international exercise in which experts will use standardised concepts and instruments that allow for aggregation and comparison. These experts will belong to all major disciplines that deal with migration, ranging from demography to law and from economics to sociology and political science.
- Providing the Government of India as well as the European Union, its Member States, the academia and civil society, with:
  1. Reliable, updated and comparative information on migration
  2. In-depth analyses on India-EU highly-skilled and circular migration, but also on low-skilled and irregular migration.
- Making research serve action by connecting experts with both policy-makers and the wider public through respectively policy-oriented research, training courses, and outreach programmes.

These three objectives will be pursued with a view to developing a knowledge base addressed to policy-makers and migration stakeholders in both the EU and India.

Results of the above activities are made available for public consultation through the website of the project: <http://www.india-eu-migration.eu/>

*For more information:*

CARIM-India

Robert Schuman Centre for Advanced Studies (EUI)

Convento

Via delle Fontanelle 19

50014 San Domenico di Fiesole

Italy

Tel: +39 055 46 85 817

Fax: + 39 055 46 85 770

Email: [India-EU.Migration@eui.eu](mailto:India-EU.Migration@eui.eu)

**Robert Schuman Centre for Advanced Studies**

<http://www.eui.eu/RSCAS/>

## 1. Introduction

Italian law differentiates between three categories of non-EU national workers. A different set of rules concerning entry and stay apply to each. With the Flow Decree (“Decreto Flussi”) the Italian government establishes each year specific quotas setting a cap on how many low-skilled or unskilled non-EU nationals are allowed entry for work purposes (30.000 in 2013). A second category of foreign labourers is that of high-skilled workers whose status is regulated by the Legislative Decree n. 108 of 28<sup>th</sup> of June 2012 – in force from August the 8<sup>th</sup> 2012 and now part of the Consolidated Law on Immigration – which set to implement the Blue Card directive (Council Directive 2009/50/EC) in Italian domestic law. Under this scheme, high-skilled migrants enjoy a simplified procedure for obtaining a work permit. Thirdly, specific professionals, who are listed in Article 27 of the Consolidated Law on Immigration (Legislative Decree n. 286 of 25 July 1998), are exempted from the work permit procedure altogether. Legislative Decree 108/2012 has neither removed nor altered the special and favourable rules already applicable to high-skilled migrants listed in Article 27. The Presidential Decree 349/1999 specifies what fast track procedures apply in the case of this latter category which includes managers, university professors, maritime workers, trainees, journalists and nurses (see below). Both high-skilled migrants and those exercising a specific listed profession are considered “entries outside the quotas” and no cap exists with regard to the number of work and residence permits issued for these second and third categories of foreign workers.

## 2. Policy Framework on highly skilled workers: recent and current

### *Criteria of eligibility under the national policy*

Article 27-querter (1)(a) of the Consolidated Law on Immigration – as modified by Legislative Decree n. 108/2012 implementing the Blue Card directive – defines the criteria of eligibility under the facilitated scheme. To qualify for entry and residence a high-skilled third-country national must possess a university degree of three years (or higher), and the corresponding professional qualification, which must be issued by the competent authority, certified by the country of origin and recognised in Italy. The qualification must fall within level 1, 2 or 3 of ISTAT (the Italian National Institute for Statistics) classification of professions CP 2011 and modifications thereof (which introduced some changes in conformity with ISCO-08).<sup>1</sup> The high-skilled worker must be offered an employment contract for the duration of minimum one year for an occupation which requires the level of qualification specified above (Art. 27-querter (5)(a)). Further requirements must be met by the employer when applying for the work permit (see below).

### *Minimum salary requirements*

Article 27-querter (5)(c) of the Consolidated Law on Immigration specifies a minimum salary requirement for high-skilled migrants to be eligible under the facilitated scheme. The minimum stipend requirement is however not calculated on the basis of the average national salary as provided in Article 5(3) of the Blue Card directive; instead, the salary threshold is adjusted to the government-set salary cap

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<sup>1</sup> Level 1 includes legislators, entrepreneurs and top-level managers. Level 2 includes ‘intellectual’ and scientific professions and those which require a high degree of professional education; some examples are specialists in the mathematical sciences, IT, chemistry, physics and natural sciences; engineers, architects and similar professions; health sector specialists; specialists in the humanities, social sciences, and in the arts; specialists in learning sciences and research. Level 3 refers to technical professions in the scientific, engineering and productions fields, technical professions in the science of health, in the commercial and financial sector and public services. Available at <http://cp2011.istat.it> (last accessed 19/09/2013).

under which a tax-payer would be exempted from paying prescription charges to the public health-care system. Italian law demands that the gross salary of the highly skilled labourer is no less than three times this sum. In 2013 the salary cap is of €8,263 and €24,789 is therefore the minimum salary requirement under the scheme. It should be noted that no minimum salary requirement exists for those exercising a listed special profession, like in the case of nurses (see below).

#### *Age restrictions*

Even though the Consolidated Law on Immigration does not set age restrictions for high-skilled migrants, the definition itself - the prospective labourer must have completed a higher education program in order to qualify - makes it nearly impossible for anyone below the age of eighteen to successfully apply under the scheme.

#### *Labour market test*

The Consolidated Law on Immigration law does not set a market test for professions requiring high skills, whether listed in Article 27 or falling under the definition of Article 27-quarter (1)(a).

#### *Linguistic training*

The public policy towards high-skilled migrants does not encompass linguistic training. However, it does so in the case of unskilled or low-skilled foreign workers. In this latter case, with regard to pre-entry language training, Article 23 of the Consolidated Law provides for the creation of language and professional courses – educational programmes (“corsi di formazione”) – which are sponsored by the Italian government, take place in the countries of origin and can be promoted by either Italian local authorities or labour organisations and civic associations.<sup>2</sup> The training generally includes Italian language classes, courses on civic education, on safety standards and, in some cases, specific sectorial professional training. Some entry quotas established by the government in the annual Flow Decree are reserved for non-EU nationals who take part in these educational programmes.<sup>3</sup> The 2012 and 2013 Flow Decree allowed for up to 4,000 work permits granted to non-EU nationals who have completed these programmes. With regard to post-entry language skills, neither language training nor formal language requirement exist for work and residence purposes, but prospective employers of foreign workers are free to establish one both in the case of high-skilled and low-skilled foreign workers.

#### *Eligibility for permanent residence under the policy*

With regard to the limits of access to the national and Community labour market, for the first two years the Blue Card holder can only exercise his or her employment and residence rights as stipulated in the work permit (Article 27-quarter (13)). Whether the Blue Card is issued by another Member State of the EU or under the Italian Consolidated Law on Immigration, after twenty-four months the Blue Card holder can apply for permanent residence on the condition that he or she has not spent twelve uninterrupted months outside the territory of the European Union and that the total time spent outside the territory of the Union is not over eighteen months (Article 9-ter (1), (2) and (3)).

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<sup>2</sup> In January 2012 the procedures were simplified and employment agencies, centres for the education of adults, and other authorised subjects listed in the official register of intermediaries can now organise the educational programmes.

<sup>3</sup> It was not possible to gather official information from the Italian government on the success of these projects and on their viability against a background of lack of public resources. Data is only available for projects approved up until 2009. See [http://www.lavoro.gov.it/md/AreaSociale/Immigrazione/formazione\\_estero/Pages/default.aspx](http://www.lavoro.gov.it/md/AreaSociale/Immigrazione/formazione_estero/Pages/default.aspx) (last accessed 25/09/2013)

*Family reunification under the policy*

Under Article 27-quater (16) of the Consolidated Law on Immigration Blue Card holders have a right to family reunification, regardless of the duration of the work and residence permit, in conformity with conditions set by Article 29. Article 29(1) specifies that the applicant can be reunited with: (a) the current spouse (if not separated) who must be of eighteen years of age or above; (b) with minor children, also conceived by the spouse in a different relationship and/or born out of wedlock, provided that the spouse has consented to the reunification; (c) children of above eighteen years of age where affected by full disability and cannot provide for their basic needs on their own in light of their physical conditions; (d) maintained parents, where no siblings exist in the country of origin or where none of them can look after them due to serious and documented health problems. Article 29 (3)(a) stipulates that the applicant must be able to show that the family residence will satisfy the health and hygiene standards as set and guaranteed by the relevant local authority. Article 29 (3)(b) provides that the applicant's yearly income must be over the sum equivalent to the social security check for one year (€5.749.90 in 2013) and establishes that the applicant's minimum income requirement is calculated by adding to this sum a supplement which corresponds to half of this sum for each family member to be reunited. Where the joining members are two or more children under fourteen years of age (a protected category of individuals under Italian welfare law) the minimum requirement corresponds to twice the sum equivalent to the social security check. In the case of high-skilled migrants who entered the labour market through Article 27-quater – implementing the Blue Card directive – the minimum salary requirement is in any case higher than this sum.

*Access to the labour market and residence rights of spouses of highly skilled third-country nationals*

The spouses of high-skilled migrants are allowed access to the labour market and have a right to employment benefits. However, differences exist in terms of access and rights depending on the status and the specific provisions of the residence permit granted to the high-skilled migrant; in general a distinction can be made between the spouses of Blue Card holders and those of permanent residents who formerly were Blue Card holders. The residence permit granted to the spouse of a Blue Card holder gives him or her access to the health care system, national education programs and professional courses, jobseekers' lists and gives him or her full employment rights – whether the spouse is self-employed or employed by third parties (Article 30(2)), but only for the duration of the residence permit of the spouse in conformity with the Blue Card scheme (Article 30(3)). The duration will therefore depend on whether the Blue Card holder is offered a temporary contract (in which case the duration will be equivalent to that of the contract) or permanent contract (in which case the duration will be of two years) as established by Article 27-quater (11). The spouse of a permanent resident who was allowed access under the Blue Card scheme can instead apply for permanent residence him- or herself and the duration of the residence permit will be of two years by default (Article 5 (3-sexies)).

*Intra-company employee transfers*

As to intra-company transfers of highly skilled employees, two cases and two different simplified procedures not requiring an application for a work permit can be distinguished for third-country nationals who are seconded to company offices located in Italy:

1. Article 27(1)(a) regulates the status of managers and of highly qualified staff which are either employees of companies which have their headquarters in Italy or of companies based in a Member State of the WTO or of the EU which have branches or offices of representation in Italy. Article 40(5) of the Presidential Decree 349/1999 defines these persons as having a special expertise and being able to perform a highly qualified professional activity. The employee must have worked in the same sector for at least six months before the transfer and the latter cannot exceed the duration of five years and must respond to real and substantial necessities of the company. Where the prospective employer has signed a Memorandum of

Understanding with the Ministry of the Interior or has joined an agreement already signed by an organisation of which the company is already a member, the employer shall simply communicate to the one-stop immigration office (“sportello unico per l’immigrazione della prefettura”) the terms of the proposed residence contract. Where no special agreement exists, the information provided will be examined by the police commissioner and, if approved, it will be sent to the Italian diplomatic authorities which will proceed to issue the entry visa (Article 27 (1-ter)).

2. Article 27 (1) (g) and Article 40 (11) of the Presidential Decree 349/1999 regulate the position of employees of Italian companies or organisations who have been allowed entry in Italy for a limited period of time exclusively for purpose of performing specific tasks which require a particular expertise. Also in this case two types of procedures exist depending on whether the employer has signed a Memorandum of Understanding with the Italian government or not.

### *Special clauses for academic researchers*

A different set of rules specifically apply to foreign doctoral researchers. To qualify and so have access to the speedy procedures for entry and residence, a researcher must have a university degree which gives access to PhD programmes in the country where the degree was granted (Article 27-ter (1) of the Consolidated Law provides). Article 27-ter specifies the conditions to be met by the registered hosting institution in order for it to be listed in the official register of the Ministry of University and Research. The hosting institution must be able to demonstrate, inter alia, that it possesses sufficient financial resources to fund the research project (Art. 27-ter (2)(b)). Clause 7 of Article 27-ter defines the duration of the residence permit which should last for a period equivalent to the duration of the PhD programme itself. Clause 8 establishes that family reunification is allowed and is regulated by the general terms and conditions set by Article 29 of the Consolidated Law discussed above. The duration of the residence permit for family members is equal to that of the researcher. Article 27-ter (11) establishes that researchers from Member States of the European Union can spend up to three months in Italy without residence permit in order to pursue their research project. For periods longer than three months, the researcher must have a health insurance valid for the duration of the permit and must be able to prove sufficient financial resources to carry out the investigation. Article 22(11-bis) of the Consolidated Law, as modified by the Law of 15<sup>th</sup> July 2009 n. 94 on Public Security, provides that foreigners who have obtained either a PhD or a Master’s degree in Italy can extend their residence and work permit for a period which should be no longer than twelve months.

### *Health care professionals*

Even though the law implementing the Blue Card directive covers the recruitment of health care professionals in general, the specific category of nurses is treated separately. Both specialists and technical professionals in the health-sector fall within the definition of high-skilled worker as established by Article 27-quater of Legislative Decree n. 108/2012 (levels 2 and 3 respectively of ISTAT classification of professions). However, Legislative Decree n. 108 (implementing the Blue Card directive) did not modify the pre-existing Article 27 (1)(r-bis) of the Consolidated Law which still regulates the special position of nurses whose shortage is particularly acute in Italy. Nurses are therefore also allowed entry outside the pre-established quotas. Article 40(21) of the Presidential Decree 349/1999 establishes that this special provision only applies to medical carer who possess an academic degree recognised by the Ministry of Health. Unlike other high-skilled workers, including specialists and technicians in the health sector, nurses can be offered open-ended employment contracts. Furthermore, they enjoy a fast track procedure for entry.

*Memorandum of Understanding between Italy and India concerning the recruitment of health professional*

Although a few Italian regional governments have signed agreements with some foreign countries, Italy and India have not signed a MOU on the recruitment of health professionals and Indian health carers and doctors must go through the standard, even though streamlined, entry procedures.

*The 2009 Blue Card directive and Italian Law compared*

The Legislative Decree n. 108 of 28<sup>th</sup> of June 2012 is by and large in line with the Blue Card directive which defines a highly skilled migrant as a third-country national who has the required adequate and specific competence, as proven by higher professional qualifications (Article 1(b) of the Directive and Article 27-quater (1)(a) of the Consolidated Law on Immigration) and has been offered a job offer for highly qualified employment and valid work contract for at least one year (Article 5(1)(a) of the Directive and Article 27-quater (5)(a) of the Consolidated Law); sets limits to the application of the Directive with regard to specific categories of non-EU nationals (Article 3 of the Directive and Article 27-quater (3)); provides for the establishment of a minimum salary threshold which should be at least 1,5 times the average salary (€19,655 in 2013) (Article 5(3) of the Directive and Article 27-quater (5)(c)); grants the Blue Card holder progressive access to the labour market and residence and mobility rights but also establishes a time limit of two years for his or her occupational mobility (Articles 12 of the Directive and Article 27-quater (13)); calls for favourable conditions for family reunification and access to the job-market for spouses (Article 15 of the Directive and Articles 27-quater (16) and 30(2) of the Consolidated Law); takes account of the need for regional mobility across Member States' borders (Article 18 of the Directive and Article 27-quater (17)) but also accounts for circular migration and the need to sustain the relationship between the labourer and his or her country of origin by extending the period of permitted absence from the Union territory without interrupting the period of continuous residence necessary to be eligible for long-term resident status (Article 16 of the Directive and Article 9-ter (1), (2) and (3)).

*The Italian Consolidated Law on Immigration and highly skilled migrants: failure or success?*

Although the applicable law to highly skilled migrants who enter or wish to enter the Italian labour market is consistent with the Blue Card directive, it could be argued that Italian law fails to attract a wider range of skilled third-country nationals due to its favourable treatment of specific listed professions and because of the lack of implementation of the recently introduced provisions. When discussing about the recent and present aspects of the Italian labour market it should be borne in mind that there has been historically a shortage of both high-skilled and low-skilled workers, and that the Italian economy has become structurally dependent on the professional services provided by and on skills acquired by third-country nationals.<sup>4</sup> Italian law and its several reforms which were introduced in the last two decades, have sought to make it easier to address the increasing lack of competitiveness and slow economic growth of the Italian economy. These objectives are evidently transposed to the legal architecture of Italian immigration law which takes account of the need for highly qualified non-EU nationals and makes available streamlined procedures for their entry in the labour market. However, what also transpires is that whilst the procedures are flexible and relatively straightforward for some listed professional categories, those unlisted professionals who nevertheless fall within the ambit of Article 27-quater and of the Blue Card directive are comparatively disadvantaged. On the one hand it could be therefore argued that the Consolidated Law on Immigration is in conformity with the general

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<sup>4</sup> See the annual press release by the Union of Chambers of Commerce 'Sistema Informativo Excelsior' which breaks down the figure of the foreign workforce in Italy and provides an accurate picture both of its sectorial distribution and structural importance.

spirit and objectives of the Blue Card directive, and with declaration (8) in particular<sup>5</sup>, because it maintains fast-track procedures for some high-skilled professionals whose inadequate presence in Italy cannot meet the high demand in the labour market. On the other hand, the immigration law framework should perhaps at the same time be able to attract highly skilled foreign workers whose professions are not listed in Article 27. In this report the focus is on nurses and health carers who provide a good illustration both of the specific needs of the Italian labour market and of the lack of balance of Italian law towards certain professions. This imbalance may contribute to the perception of specialists and stakeholders who denounce the lack of concern, in their view, for the unsuccessful implementation of Legislative Decree 108/2012. Unfortunately, as of late 2013, there is still insufficient statistical data to confirm or dismiss the claim that the Law fails to achieve its purpose; this lack of information also concerns the presence of Indian high-skilled workers in Italy (see Section 3 below).

### **3. Policy Impact on the Recruitment of both Highly Skilled Labour in general and Indian highly skilled workers in particular**

Extensive data focussing on the highly skilled foreign workforce in Italy does not exist. The data provided below was gathered from primary sources like the Excelsior Project of the Union of the Chambers of Commerce<sup>6</sup> and from secondary sources like general reports which are compiled either by international organisations (like the Organisation for the Economic Co-operation and Development) or national ones (like ISTAT, the Italian National Statistical Institute, which analyses data provided by the Ministry of Interior Affairs). In the case of both primary and secondary sources, the available information is partial and insufficiently detailed to be able to account for gender- and citizenship-disaggregated data. It should be noted that various high-profile research projects have specifically lamented the shortage of statistical data on high-skilled migration (from and to Italy) and the resulting lack of attention concerning the phenomenon and the policy impact on it.<sup>7</sup>

#### *Statistical data on the main nationalities recruited under the policy*

Data on the main nationalities recruited so far under the policy could not be retrieved. What is known is that in 2012 about 60,000 non-EU nationals practiced a profession which falls within the definition of high-skilled worker (levels 1, 2 and 3 of the ISTAT classification of professions CP 2011) accounting for 3,7% of the total non-communitarian population employed in a sector requiring a professional specialisation (levels 1-9 of CP 2011<sup>8</sup>) against 36% of the total Italian workforce employed in a sector requiring highly professional skills and 10,5% of EU nationals from the same group. Out of these 60,000, about 6,300 individuals practice a profession which falls within level 1 (legislators, top-level managers and entrepreneurs); about 17,200 one which falls within level 2 (intellectual and scientific professions); and about 35,000 non-EU nationals practiced some type of

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<sup>5</sup> Declaration (8) of the Council Directive 2009/50/EC states that the Directive shall not prejudice the competence of Member States to maintain or to introduce new national residence permits for any purpose of employment.

<sup>6</sup> See footnote 4 above.

<sup>7</sup> See for instance the page summary on the project 'Mobilità e Migrazioni Altamente Qualificate' headed by Carolina Brandi from the Research Institute on Population and Social Policies at <http://www.irpps.cnr.it/attivita-di-ricerca/risorse-umane-e-societa-della-conoscenza/mobilita-e-migrazioni-altamente-qualifi> (last accessed 25/09/2013)

<sup>8</sup> Level 4 includes office workers; level 4 skilled professionals in the service sector and in the commercial sector; level 5 artisans, skilled manual labourers and farmers; level 7 industrial machinery operators; level 8 'general professions' ("professioni non qualificate"); level 9 those who have working experiences in the armed forces.

technical profession (level 3).<sup>9</sup> It is also known that in 2011 non-EU national highly skilled workers and researchers were granted about 2000 work permits, with US nationals being the main recipients.<sup>10</sup>

*Statistical data on highly skilled Indian citizens recruited under the policy*

With regard to unskilled and low-skilled foreign labourers, the 2013 International Migration Outlook reports that in 2011 Indian citizens constituted the second highest number of recipients of work permits issued by the Italian government (about 11.000).<sup>11</sup> With regard to high-skilled Indian migrants, the only statistical data which could be retrieved does not match the professional categorisation utilised by ISTAT. As the following professions do not necessarily fall within level 1, 2 and 3 of CP 2011, the data can only serve as a very weak indication of sectorial distribution: in 2012 the number of Indian citizens employed in the transport, communication and financial sectors was circa 4,000. Around 1,700 were employed in the public, education and health sectors.<sup>12</sup>

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<sup>9</sup> Direzione Generale dell'Immigrazione e delle Politiche di Integrazione, *III Rapporto annuale. Gli immigrati nel mercato del lavoro in Italia* (2013), p. 57.

<sup>10</sup> OECD, *International Migration Outlook 2013* (2013) p. 264.

<sup>11</sup> OECD, *International Migration Outlook 2013* (2013) p. 264.

<sup>12</sup> *Ibid*, p. 55.