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Recruitment costs for Chinese workers in EU Member States

Case study: Chinese chefs in Germany



International Organization for Migration (IOM)
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International Labour Organization

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Sabrina Kouba

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Foreword

Globalization, urbanization, demographic shifts, conflicts, income inequalities, and climate change are causing a growing number of migrant workers and their families to look for employment and a better livelihood abroad. Especially for lower-skilled migrants, the decision to work overseas can be associated with considerable risks and costs. It is often accompanied by numerous investments, such as travel expenses, the acquisition of documents, health examinations, and – in particular – intermediary fees. High migration costs, especially those related to recruitment, can erode a large share of workers' income and leave migrants and their families indebted before they even begin their actual employment. Lack of information, limited labour market access, discrimination, and inadequate legal protection often exacerbate migrants' vulnerability and dependency. Some migrant workers even fall victim to exploitation, trafficking, and forced labour.

The increasingly mobile world population calls for more effective policies and regulations on the recruitment and employment of migrant workers. The 2030 Agenda for Sustainable Development promotes decent work for all workers, including migrant workers, and explicitly states in Sustainable Development Goals (SDG) Target 10.7 the need to: “Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies.” Reducing the costs of migration, as marked by SDG Indicator 10.7.1 (Recruitment cost), is a key strategy to enhancing the impact of migration on development. This is also featured in the on-going discussion around a new Global Compact on Safe, Orderly, and Regular Migration.

The International Labour Organization (ILO) promotes fair and effective regulation of recruitment, including monitoring and reporting mechanisms on migration costs. In 2014, the ILO launched the Fair Recruitment Initiative in order to prevent illicit trafficking, forced labour, and exploitation; protect workers' rights; and reduce the costs of labour migration. In September 2016, the ILO introduced the General Principles and Operational Guidelines for Fair Recruitment to further promote labour mobility and the fundamental rights of workers, including migrant workers and citizens alike.

Employers – not workers – should pay for costs associated with the recruitment and placement of workers. This labour standard has been well recognized internationally for at least 70 years, and it also applies to migrant workers. The application of this labour standard is vital to giving all migrant workers the chance to work themselves out of poverty, rather than pushing them into debt bondage and cycles of deprivation. The standard also helps employers factor in all costs associated with the recruitment of labour and avoid unfair competition and unwarranted downward pressure on working conditions and productivity. These

aspects as well as the preventive effect this labour standard has on trafficking of persons for labour exploitation are fundamental elements of the public interest that governments protect and promote. Recruitment mechanisms may have evolved differently over time, but the 2030 Development Agenda gives us a chance to deepen their reform.

The research presented in this report was conducted under the EU–China Dialogue on Migration and Mobility Support Project, a joint collaboration between the ILO and the International Organization for Migration (IOM), funded by the European Union (EU). It aims to identify general challenges and the scope of migration costs for Chinese workers in the EU Member States. As a country case study, the research reviewed the visa scheme for Chinese speciality cooks in Germany, as it presents one of the largest groups of Chinese migrant workers in an EU Member State. The research reviews the existing literature as well as the policies and regulations on Chinese migrant workers in the EU. It further examines the specific setting of Chinese cooks in Germany by analysing interviews and focus group discussions with relevant stakeholders, with a particular focus on the costs related to the migration process. Based on the findings, the study puts forward recommendations for improvement of this specific visa scheme as well as migration management in general to better protect migrant workers’ rights and increase their benefits from an international labour migration perspective.

I hope the research report will provide useful reference and viable recommendations to policymakers and practitioners on how to improve the recruitment and working conditions of Chinese migrant workers in the EU, and contribute to our joint efforts to promote fair recruitment and decent work for all.

Claire Courteille-Mulder

Director

ILO Country Office for China and Mongolia

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Acronyms and abbreviations

AufenthG	Residence Act (<i>Aufenthaltsgesetz</i>)
BA	Federal Employment Agency (<i>Bundesagentur fuer Arbeit</i>)
BAMF	Federal Office for Migration and Refugees (<i>Bundesamt fuer Migration und Fluechtlinge</i>)
<i>BeschV</i>	Employment Regulation (<i>Beschäftigungsverordnung</i>)
BGN	<i>Berufsgenossenschaft Nahrungsmittel und Gastgewerbe</i> (Trade Association for the Food and Catering Industry)
CHINCA	China International Contractors' Association
CNY	Chinese yuan [currency]
CSO	Civil society organization
DIHK	<i>Deutscher Industrie- und Handelskammertag</i>
DEHOGA	<i>Deutscher Hotel- und Gaststättenverband</i>
EU	European Union
EUR	European euro [currency]
OSH	occupational safety and health
SDG	Sustainable Development Goal
SEK	Swedish krona [currency]
STEM	science, technology, engineering, and mathematics

TCN	third-country national
VCGD	<i>Verein der chinesischen Gastronomie in Deutschland e.V</i>
ZAV	<i>Zentrale Auslands- und Fachvermittlung</i>

Executive summary

Recruitment/migration costs can be high, especially for low-skilled migrant workers, and are highly dependent on the specific migration corridor.¹ The large majority of workers who borrow money to finance their migration receive it from relatives at little or no interest (Abella and Martin, 2014).² Still, those that make use of money lenders often have to deal with high rates (for example, a third of all surveyed Bangladeshi labour migrants in Afar, 2009), which encourages such migrants to work excessive overtime to speed up repayment. Workers who have invested heavily in finding their job are especially vulnerable to exploitation, since they will be reluctant to report unfair working conditions for fear of their local employer taking steps to have their government-issued work permits revoked, which in many cases may lead to an automatic cancellation of their residence permit. High costs also encourage some to overstay their visas, thereby becoming irregular migrants rendering themselves vulnerable to exploitation, risking imprisonment, and generating social problems for host governments. In an effort to curb the adverse effects of high migration costs, many governments have banned or put a ceiling on recruitment fees, but worker-paid costs have remained high in certain migration corridors. Reduction of migration costs would evidently benefit migrant workers and their families by increasing their return on their investment, and benefit the economies of both the home and the host countries.

This study has been carried out under the EU-China Dialogue on Migration and Mobility Support Project, funded by the European Union (EU) and jointly implemented by the International Labour Organization (ILO) and the International Organization for Migration (IOM). The study aims to assess the migration costs borne by regular Chinese migrant workers to the EU with the ultimate goal of reducing them. The study used a variety of methods to assess the migration costs and the general challenges faced by Chinese cooks recruited under a specialty cook visa scheme to work in the German gastronomy sector. A review of existing/available literature on Chinese migrant workers in the EU, together with a legal review and presentation of the latest statistical data (both in German, English, and Chinese) served as bases for further analysis. Small focus group discussions (FGDs) were carried out to look at the issues facing this specific group in depth. The FGDs probed the issue of migration costs and allowed the researcher to put forward

¹ For instance, Pakistani labour migrants to Saudi Arabia pay the equivalent of up to 10.6 months of work.

² While these migrants may not have to worry about (high) interest rates, this way of financing oftentimes comes with social obligations that can be onerous but difficult to put a monetary value to.

recommendations to reduce the recruitment costs borne by the workers and to improve the migration management at both ends of the migration corridor – the Chinese and the German.

The hospitality sector was selected for the study as it ranks among the most significant sectors in Germany for engaging a considerable number of Chinese migrant workers.³ In 2013 there were an estimated 10,000 Chinese restaurants in Germany, ranging from simple snack bars to high-end restaurants, and Chinese gastronomy in Germany is likely to continue to grow in coming years. According to the latest data, Chinese cuisine is ranked as one of the favorite international cuisines in Germany. Thus, according to the Association of Chinese Gastronomy in Germany, additional inflow of well-trained Chinese chefs is needed to meet the demand of the German market.

This report consists of six chapters. The first chapter provides background by examining the current channels of labour migration from China to the EU. The report outlines the dimensions of international labour migration and particularly notes the need for urgency in addressing high recruitment costs and the risks that are associated with them. The ILO Private Employment Agencies Convention, 1997 (No. 181) and the General Principles and Operational Guidelines for Fair Recruitment of 2016 serve as important policy frameworks for promoting fair recruitment and reducing recruitment costs.

Chapter 2 sets the framework for the following country case study by examining the admission process of Chinese labour migrants applying for work permits in Germany. It reviews the current process of Chinese migration to Germany and the legal admission requirements for Chinese migrants to apply for a visa. The report points out that the possibilities for less-skilled workers from China to migrate to Germany are limited and strictly regulated. An increasing shortage of cooking trainees in Germany resulted in a serious lack of skilled chefs in the gastronomy sector, and migrant workers are, more than ever, a much needed labour source for the German catering industry. Legal and political restrictions, however, make it difficult to apply for a job from abroad, and in addition this occupation is not officially included in the skills shortage list. Only a few visa programmes, such as the *Spezialitaetenkoch* (specialty cooks) visa scheme, exist in order to counter the shortage of certain occupations in the gastronomy sector.

³ In 2014, 13,411 Chinese nationals held valid work permits in Germany (EUROSTAT data). On average, between 2008 and 2015 Germany issued 2,160 first work permits a year to Chinese nationals, with 2,032 being in the "other category", which includes Chinese speciality cooks. According to the statistics from the Association of Chinese Gastronomy in Germany, 935 Chinese chefs came to Germany in 2013; 1,430 in 2014; 720 in 2015.

The *Spezialitaetenkoch* visa programme, in which Chinese nationals make up the largest group of approved applicants, is examined in the third chapter. Special attention is paid to a bilateral agreement between the Federal Employment Agency of Germany (BA) and the China International Contractors Association (CHINCA). This agreement, which governs the recruitment and admission of Chinese specialty chefs to work in Germany, contains strict requirements such as a determined pay scale, an official verification of the technical qualification, and a mandatory proof that no suitable native or otherwise preferred candidates in the local labour market are available for the position. Only ten enterprises are officially qualified to carry out the recruitment in China, and the agreement does not specify an upper limit on the total fees that may be charged to the applicant. This leaves migrant workers vulnerable to excessive recruitment costs and possible exploitation, despite the agreement.

In order to understand the severity of the burden of migration costs as well as their impact on the decision to migrate, the fourth chapter compares the recruitment and average wages of cooks in China and other Asian and European countries. It takes a further look at five EU countries and their respective labour immigration statistics concerning Chinese nationals working in the gastronomy sector and, if available, their specified visa schemes for foreign cooks. The report concludes that as a result of fierce competition driven by increasing wages in Asian countries, and due to political factors such as the often prioritized integration of refugees in western labour markets (including tightened visa and work permit regulations), many Chinese restaurants in Western countries today struggle to survive. Even so, the requirements in many countries for migrant workers to obtain a visa and work in the gastronomy sector remain high.

To examine the challenges that owners and employees of Chinese restaurants in Germany face, interviews with the Association of Chinese Gastronomy in Germany and focus group discussions (FGDs) with Chinese chefs were conducted and evaluated. The findings of these interviews, summarized in the first part of chapter five, reveal several issues that the Association perceives as the major challenges faced by the Chinese gastronomy sector in Germany today. These challenges include the rejection of many visa applications with no explanation given, negligence and fraud by local government officials in China, a long and labourious application process on both sides, and strict requirements in terms of qualification and the length of employment. As a result of increasing wages in China and other possible destination countries, skilled Chinese cooks increasingly prefer to stay in China or to migrate to other countries in Asia or the Gulf region. The Association also noted a serious shortage of service staff, but recruitment in China in order to counter this shortage is nearly impossible since service personnel are regarded as low-skilled and are therefore currently not covered by visa schemes in Germany.

The second part of chapter five reviews the findings from FGDs with Chinese cooks that migrated under the *Spezialtaetenkoch* visa programme. The participants described both the recruitment process and employment conditions in Germany as fair and good overall, and would ultimately recommend the visa scheme further. However, the participants also criticized the rather poor service provided by recruitment agencies, the lack of accessible information, and the fact that there were no fixed package prices that would help them oversee the recruitment costs. Including the additional costs borne for the required verification of their skills, participants stated that they needed to work for six months to one year in order to pay back their recruitment debts. Since the payment and working environment is still better than back at home, however, none of the interviewees regretted their decision to migrate.

Chapter 6 draws conclusions and puts forward recommendations for both the origin and destination countries on how to improve the recruitment of Chinese speciality cooks for the German gastronomy sector. Particular attention is paid to the improvement of the *Spezialtaetenkoch* visa programme based on the needs of stakeholders in both China and Germany. In line with the ILO's General Principles and Operational Guidelines for Fair Recruitment, the recommendations include a more effective regulation of the recruitment agencies in China and providing migrant workers with sufficient access to essential information about the application and migration process. Furthermore, the work of the German authorities to prohibit human trafficking has to be strengthened and intensified. Chinese migrant cooks, on the other hand, should have the opportunity to choose and change their employers without the fear of deportation. By providing better access to information about employers and working conditions beforehand, it could help migrant workers develop well-informed decisions that will ultimately facilitate the employment relationship. Regular labour inspection by the German authorities that goes beyond the mere check of pay slips would also contribute to the protection of the workers' rights.

The report concludes by promoting intensified cooperation between the German and Chinese governments that can be strengthened by jointly providing translated information materials and online resources for migration. The report also recommends a monitoring and evaluation framework that includes a feedback mechanism for migrant workers in order to prevent migrants from falling into exploitation and other forms of rights violations and to maximize the benefits of migration for all stakeholders involved.

1. Background

In late-2015, 260,000 migrant workers from China were legally residing in the 28 European Union (EU) Member States with 70 per cent of them in Italy and a further 23 per cent in Germany, France, United Kingdom, Spain, and the Netherlands (Plewa and Stermsek, 2017). Yet, despite the importance of EU Member States for migrant workers of all skill levels, very few studies have investigated this issue in a rigorous manner. To partially fill the gap, this study examines the labour migration of Chinese workers to EU Member States, with a view to demonstrating how the regulation of migration for employment can reduce the vulnerability of labour migrants and increase their benefits from international labour mobility. More specifically, this study looks at the costs involved in organizing labour migration from China to EU Member States through a case study of the Chinese gastronomy sector in Germany. There are two reasons for this focus: (1) Among EU Member States, Germany was identified by a recent International Labour Organization (ILO) study (Plewa and Stermsek, 2017, p. xiv) as having “the highest potential for a sustainable labour migration programme with China” and as the country that “may be currently offering the best balance between migrant workers’ admission and labour market integration regulations”; and (2) the Chinese authorities are explicitly interested for this migration corridor to be part of a larger investigation, as they wish to strengthen their political, socio-cultural, and business ties with Germany.

Currently, there are an estimated 150 million migrant workers worldwide and their numbers are growing. While labour migration contributes significantly to the growth and development of host and origin countries, it is often attended by serious inequities and inefficiencies. For many migrants, moving across borders to find work is a costly and risky process, especially for those with few skills. Many ill- or low-informed jobseekers become victims of trafficking and forced labour. The large majority face limited labour market integration that includes discrimination, exploitation, low-quality employment, and restrictions to mobility in the labour market even for those who have legal or regular status. Inefficiencies in job-matching and barriers to recognition of their qualifications in host countries rob many migrants of the opportunity to utilize their skills and to have more gainful occupations.

Reducing such migration costs, including recruitment costs, is a key strategy to enhance the impact of migration on development. The ILO Fair Recruitment Principles and Operational Guidelines (which were approved by ILO Governing Body in September 2016) offer general principles and operational guidelines for fair recruitment to inform the current and future work of the ILO and other organizations, national legislatures, and social partners on promoting and ensuring fair recruitment. “Prohibition of charging fees and costs to workers” is one of the proposed general principles, which has a significant impact on the

protection of migrant workers' rights and their benefit from international migration. Reduction of costs also features in:

- the United Nations (UN) Secretary-General's 8-Point Agenda on Migration from the UN High Level Dialogue on Migration and Development in 2013;
- the conclusions of the ILO Tripartite Technical Meeting on Labour Migration in November 2013 and September 2016; and
- the Sustainable Development Goals (SDGs) to promote decent work for all workers, including migrant workers. This is particularly true of SDG 8.8: Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment; and SDG 10.7.1 Indicator: Recruitment Costs uses recruitment costs as a specific indicator to "facilitate orderly, safe, regular and responsible migration and mobility of people".⁴ The latter indicator is understood as recruitment cost borne by employee as a proportion of yearly income earned in the country of destination. However, there is still no global definition of the fees and costs involved in recruitment.

The ILO's strategy and actions in Asia on promoting fair recruitment focus on the following priorities:

- promotion of the Private Employment Agencies Convention, 1997 (No. 181) and putting in place national legislation to regulate recruitment that includes the development of monitoring and reporting mechanisms on migration costs and enhancing recruitment options;
- ensuring that complaints mechanisms are in place and complementary support services are accessible;
- awareness and empowerment of migrant workers and potential migrant workers; and
- promoting self-regulation among recruitment agencies.

The ILO's Fair Recruitment Initiative was launched under the Fair Migration Agenda as a multi-stakeholder exercise, and Fair Recruitment Principles and Guidelines were adopted by a Tripartite Technical Meeting in September of 2016. The Global Forum on Migration and Development in December 2016 also paid close attention to migrant recruitment and the associated costs and issues through a roundtable on lowering the costs of migration.

⁴ ILO/World Bank custodians are currently developing methodology and testing for measuring SDG 10.7.1 on recruitment costs. This issue also concerns the need for better quality data as discussed in SDG 17.

2. Chinese gastronomy in Germany and the labour market

2.1. Admission of Chinese labour migrants to Germany

All major EU destination countries except for the United Kingdom (as shown by Eurostat numbers) have initiated a reduction in the number of new work permits issued to Chinese nationals over the past couple of years, citing the global economic crisis and the resulting decline of labour demand by local employers (Plewa and Stermsek, 2017). In 2015, Germany started limiting admission of Chinese nationals. The focus now lies on the economic integration of recent refugees into the German labour market, which the Government hopes to achieve through a three-year suspension of the law requiring employers to give preference to German or EU job applicants over asylum-seekers – among other measures (Oltermann, 2016).⁵ At the same time, the number of Chinese students admitted to Europe as students and later adjusting their status to workers has been on the rise. This “adjustment approach” is promising: Chinese nationals can become a vital part of the European workforce, as they have skills in the areas of science, technology and engineering (the STEM fields) that European employers demand and which cannot be provided by local or EU nationals.⁶

The German Federal Ministry of Education and Research has highlighted the importance of Chinese STEM students in its China Strategy 2015–2020 – Strategic Framework for Cooperation with China in Research, Science and Education. The *Aufenthaltsgesetz* (*AufenthG*, or Residence Act) and *Beschäftigungsverordnung* (*BeschV*, or Employment Regulation) serve as the legal bases for the admission of third-country nationals (TCNs) (*Drittstaaten*) to Germany, particularly with regard to employment-based admissions. Chinese nationals must apply for a permit if they want to study and/or work in Germany. Since their occupations are often placed on the shortage lists, highly qualified workers – especially those working in the hard sciences academia, and engineering – as well as high-income, self-employed workers have an easier path towards securing permits than less-skilled TCNs. Nevertheless, under certain conditions, TCNs without a university degree but in possession of vocational skills may also find employment (and thus receive a work permit) in Germany. Among the few schemes that allow the admission of such workers into the German job market is the *Spezialtaetenkoch* visa. In any case, TCN migrant workers who find their

⁵ The Integration Act and Integration Ordinance came into effect on 6 August 2016. The temporary suspension of the proof of precedence is only applicable in regions with a low unemployment rate.

⁶ On the other hand, this focus on the necessary STEM skills sometimes distracts policy-makers from the market’s need for very specific niche skills, such as Chinese culinary arts.

occupation among those listed on the shortage list – which is constantly updated – must first inquire whether their training/university degree is recognized in Germany.

Recognizing industry’s need for certain workers in recent years, the German Government⁷ has made an effort to facilitate the process by creating the *Make it in Germany* and *Recognition in Germany* portals, which offer guidance in multiple languages (Chinese not among them) for both interested TCNs and Germany-based employers seeking to recruit from overseas. Prospective migrant workers with internet access and at least some language skills can thus find reliable information on the various employment-related visas, key regulations, and contact information to connect with German labour advisers. The self-guided *Migration check tool* can be used by Chinese nationals to learn which types of permits are needed in order to come to Germany as workers, students, trainees, researchers/academics, or as jobseekers.⁸ These online tools are one way to make it unnecessary for prospective migrant workers to go through recruiters/intermediaries and to partially overcome the information asymmetry that empowers recruiters and allows them to charge prospective migrant workers a premium. Further ILO research recommends that Chinese authorities may facilitate the protection of its citizens by collaborating with the authorities of countries of destination on the development of portals like those created by the German ministries (Plewa and Stermsek, 2017). These portals should have up-to-date information and guidelines in Chinese, alongside contact information for labour advisers familiar with the employment market in the prospective country of destination.

Students are an important potential source of migrant workers in Germany (as in other destination countries). During the first wave of student migration, many Chinese graduates did end up opening Chinese restaurants in Germany. Before this inflow of students-turned-culinary entrepreneurs, former seamen from Guangdong and Hong Kong, China who stayed behind in the shipping port cities of northern Germany as well as Berlin were among the first to “retrain” as restaurateurs in the late-19th and early-20th century (Leung, 2002). A smaller scale episode of recruitment of cooks for Chinese restaurants was motivated by political rather than economic interests: During the Cold War the West German Government engaged with the Taiwan Province of the People’s Republic of China in the form of a skilled worker recruitment scheme that involved 5,000 cooks. More specifically, the agreement stated that each recruited cook may set up a restaurant and recruit another five cooks to help run it. Consequently, most Chinese culinary entrepreneurs

⁷ More specifically, the Federal Ministry of Labour and Social Affairs, the Federal Ministry of Economic Affairs and Energy, and the Federal Employment Agency (BA).

⁸ A qualified expert can apply for a residence permit for job search in Germany for a maximum duration of six months according to Section 18c of the Residence Act.

in Germany at that time were either from the Taiwan Province of the People's Republic of China or from Hong Kong, China (Leung, 2002).

However, the relationship between German universities and their Chinese students has since become more professionalized, and the German Government and business leaders' have increasingly realized the value of harnessing Chinese students' talent and expertise. As a result, a new consensus developed wherein Chinese graduates from German universities should be put to more proper use in German industry, and that the vast majority of graduates should not end up in the gastronomy sector because of the lack of alternatives. Many bilingual Chinese students in Germany once held student jobs as waiters/hostesses in Chinese restaurants. This situation has been changing in the past decade due to the rapid economic development of China and development of e-commerce opportunities. According to one of the employers/restaurant owners interviewed for this study, most Chinese students nowadays are funded by their families to study in Germany. Some students fund their own studies in Germany by engaging in e-commerce on the Internet (i.e., by selling German/European products online to Chinese consumers). They can earn more money, much more easily in this way than by waiting tables in Chinese restaurants. The restaurant owners face increasing difficulty in finding qualified wait staff, as well as specialized cooks.

Skill and diploma recognition are among the key steps for any skilled/experienced worker seeking employment abroad and intermediaries oftentimes charge a premium to facilitate this recognition.⁹ According to the *Make it in Germany* guide, costs for documents, translations, notarizations, travel expenses, or language courses range from 200 euros (EUR) to 600 euros (BMBF, 2014; Federal Ministry of Labour and Social Affairs, the Federal Ministry of Economic Affairs and Energy, and the Federal Employment Agency, 2017).

While German–Chinese cooperation on education, science, and research – particularly in the areas of environmental protection, sustainability, urbanization, and life sciences – is going strong and has been recently solidified/intensified in the China Strategy 2015–2020, thereby creating opportunities for highly skilled Chinese workers. The possibilities, however, for lesser skilled Chinese workers remain scant. The same applies for EU–China cooperation more broadly. The EU's *Horizon 2020* framework programme for research and innovation envisions collaboration with Chinese research organizations in the fields of food, agriculture, and biotechnology; sustainable urbanization (including energy, environment, and transport

⁹ Skills recognition is of course easier for Chinese nationals holding professional qualifications from an EU Member State, from within the European Economic Area, or from Switzerland. These prospective migrants to Germany may contact the National Point for Professional Qualifications who will proceed in line with European Directive 2005/36/EC, which in conjunction with Directive 2006/100/EC, supervises recognition of regulated professions. In order to work in a regulated profession in Germany, workers with foreign degrees must have their skills recognized. These professions include medical doctors, lawyers, teachers, and many manual trades.

dimensions); information communication technology; peaceful use of nuclear energy; aviation engineering; and thermo-nuclear energy (European Commission, 2015). In addition, China and Germany are cooperating on vocational training for the Chinese workers needed by the increasing number of German companies operating in China. In collaboration with the *Deutsche Auslandshandelskammer* (German Chamber of Commerce in China) apprentices are prepared to enter professions such as mechanics, electronics, or mechatronics (German Chamber of Commerce in China, 2012).¹⁰ There is, therefore, a sincere demand and desire to further professionalize labour exchange between Germany and China.

With the exception of the German–Sino nurse migration visa scheme, there are no other bilateral labour agreements between Germany and China. The German Federal Employment Agency (*Bundesagentur fuer Arbeit*, or BA) is charged with approving most foreign workers’ admissions. The usual procedure is to first determine the need for foreign workers by checking whether the position can be filled with a preferential candidate: German, EU/EEA/Swiss, or legally resident foreign worker. In order to ward off replacement of such preferential workers, conditions of employment for a TCN must be equal to those of native/EU workers.

The Central Register of Foreign Nationals (*Auslaenderzentralregister*) ranks China at the top for TCNs that received residence permits for the purpose of education (25,791 Chinese nationals, or 21 per cent of all permits in 2015; up from 23,175 permits or 20.5 per cent in 2014) (BAMF, 2016a). These permits have their legal basis in §6 paragraphs 1a, 4, 5b and §17 paragraph 3 of the Residence Act (*AufenthG*), which covers, for instance, higher education entrance (§16 paragraphs 1, 6 *AufenthG*) but also permission to reside in Germany in order to prepare for entrance to university (§16 paragraph 1a *AufenthG*); post-graduation job search (§16 paragraph 4 *AufenthG*), language course or high school attendance (§16 paragraph 5 *AufenthG*); vocational training (§17 paragraph 1 *AufenthG*); and post-vocational training job search (§§16 paragraph 5b and 17 paragraph 3 *AufenthG*).¹¹ And Chinese students in Germany are very likely to enter the German workforce: Eurostat (2016a) data shows that 7,638 Chinese citizens changed their status from “education” to “work” between 2008 and 2014.

¹⁰ Germany has fostered further initiatives to promote the internationalization of its vocational training sector, most prominently “iMOVE” (International Marketing of Vocational Education). iMOVE, the German Chamber of Commerce in China in Shanghai, and its partners are also operational in China, where they provide a variety of different vocational trainings: https://www.imove-germany.de/cps/rde/xchg/imove_projekt_de/hs.xsl/praxisberichte.htm?pb-type=&content-url=/cps/rde/xchg/imove_projekt_de/hs.xsl/Weiterbildung-fuer-Fachkraefte-und-Berufsschullehrer-in-China.htm; https://www.imove-germany.de/cps/rde/xbcr/imove_projekt_de/d_eng_iMOVE_Success_Stories_China_2012_web.pdf; https://www.imove-germany.de/cps/rde/xchg/imove_projekt_de/hs.xsl/china.htm

¹¹ Permits for job search or preparation for higher education entrance are only short-term.

Many EU labour markets, Germany among them, have been grappling with shrinking working-age populations. Recognizing existing skills shortages and mismatches, the EU Commission and EU governments are relying on TCN workers to supplement the native/local labour market, particularly in the health, science, and technology sectors.

Aside from admission as students and later adjustment of residence status, (highly) skilled Chinese nationals also enter the country under the Blue Card scheme, which was designed to attract highly skilled, highly paid workers. So far, actual admission of Blue Card holders still falls below the expectations of policymakers and industry despite the guaranteed rights reserved for these workers (which include labour mobility and family reunification on top of long period of permitted stay [48 months]).¹² In 2015, China ranked third (behind India and the United States) in admission under a residence permit for work purposes or Blue Card admission with 7,294 (or 10.5 per cent of all such admissions). Numbering some 17,898 as of 31 March 2015, Chinese nationals rank second behind India among TCNs admitted for employment (BAMF, 2016a).¹³

According to Eurostat (2016b), employment-related admission into EU Member States falls into five broad categories: (1) highly skilled; (2) EU Blue Card; (3) seasonal; (4) research; and (5) other. In the case of Germany, the largest proportion of first permits are issued for employment outside the highly skilled work category (94 per cent).

The *Spezialitaetenkoch* visa scheme under investigation in this study runs parallel to these efforts. While Germany maintains and regularly updates its list of shortage occupations – the so-called Whitelist (Positivliste) pursuant to §6 paragraph 2 sentence 1 *BeschV* – specialty chefs/cooks are currently not on the list. However, the latest skilled worker shortage analysis of March 2017 shows that the hospitality, tourism, and restaurant sector has 30,800 unfilled vacancies – an increase of 5.3 per cent over the year before (BA, 2017b).

¹² Blue Card holders can, per §19a of the Residence Act change employment provided their new employment meets the relevant conditions and procedures. If their settlement permit refers to a specific employer, a specific professional position, or a minimum income, approval of the Foreigners Authority to change employment is needed. This requires the consent of the BA, where appropriate. Further, it follows from per §19 of the Residence Act on “Settlement Permits” for highly qualified workers that change of employment is possible at any time, if the new job conforms to requirements.http://ec.europa.eu/immigration/what-do-i-need-before-leaving/germany/worker/highly-qualified-worker_en#

¹³ Of these, 2,376 (8.5 per cent) were Chinese Blue Card holders.

2.2 Significance of non-EU sources to the German labour market

It is clear that Germany cannot rely on EU sources alone to make up for the growing demographic deficit. In 2014, 60 per cent of all immigration came from within the EU. According to the Centre for International and Specialized Placement (*Zentrale Auslands- und Fachvermittlung*, or ZAV) of the BA, Germany requires a lot more immigration from countries outside of the EU in the medium term. The ZAV puts forth one key strategy: managed immigration of qualified skilled workers from outside of the EU achieved through “*verstärktes Einwanderungsmarketing*” (intensified immigration marketing). Data collected by the BA found that 82 per cent of all refugees attended school, but 58 per cent did not participate in vocational training (BA, 2016a). This points to the poor integration of asylum-seekers in the German labour market. In 2015, only a small percentage of all TCN entrants (3.4 per cent) entered Germany with an employment-based visa, compared to 12.4 per cent among Chinese entrants (BA, 2016a). Immigration of (highly) skilled workers from outside of the EU is largely self-organized and likely to remain so in the future.

2.3 Growing popularity of Chinese gastronomy in Germany

Chinese gastronomy has become very popular in Germany and demand for Chinese cuisine continues to grow. There were already an estimated 10,000 Chinese restaurants in 2013, ranging from simple snack bars to high-end restaurants. Today’s new Chinese restaurants tend to be large with hundreds of chairs. Popular “all you can eat” lunch buffets draw many hundreds of customers, most of them German, on a daily basis. According to the latest data, Chinese cuisine is ranked third among the top 15 favorite international cuisines in Germany, with 53 per cent of all survey respondents stating that they like it and 9 per cent calling it their favorite international cuisine (IfD Allensbach, 2015, cited in BVLH, 2016). Eight per cent of all survey respondents stated that they “often” consume Chinese cuisine; 22 per cent “occasionally”; and 21 per cent “seldom”.¹⁴ When probed why they do not prepare international (“ethno-food”) at home more often, those surveyed mentioned a lack of experience/practice and a lack of recipes as the main barriers after “too much time and effort”. Thus, per the Association of Chinese Gastronomy in Germany (*Verein der chinesischen Gastronomie in Deutschland e.V.*, or VCGD), additional inflow of well-trained Chinese chefs is needed to meet the demand of the German market.

2.4 Lagging supply of cooks trained in Chinese cuisine

While demand for Chinese cuisine is growing rapidly the *Deutscher Industrie- und Handelskammertag* (DIHK, or Association of German Chambers of Industry and Commerce) has noted a dramatic drop in

¹⁴ As expected, Italian cuisine is by far the top ranked international cuisine in Germany, with 50 per cent of those surveyed stating that they eat it “often”.

cooking trainees: in 2004 40,066 apprentices trained as cooks; 37,670 in 2009; and 21,062 in 2014 (DEHOGA Bundesverband, 2015). In 2016, there were 19,180 cooks-in-training and 8,628 new contracts with trainees were signed.¹⁵ This drop is exacerbated by the fact that 48 per cent of all cook trainees terminate their apprenticeship prematurely (DIHK-Ausbildungsstatistik DEHOGA, 2015; *Gewerkschaft Nahrung-Genuss-Gaststätten*, 2015). Further data shows that 50 per cent of all young cooks leave the sector within five years post-graduation (*Gewerkschaft Nahrung-Genuss-Gaststätten*, 2015). However, the occupation is still not professionally regulated. This means that a candidate who has obtained his cook certificate abroad does not have to undergo official recognition by the respective German authority. It can nevertheless be beneficial for a German employer, when assessing the skills of an applicant, to be presented an official statement of equivalency. As of 2015, Germany had 73,366 restaurants – down from 81,331 in 2009.¹⁶ This decrease of less than 10 per cent is less significant than the 44 per cent decrease in cooks in training over a similar period (2009 to 2014) (DIHK-Ausbildungsstatistik DEHOGA, 2015).

The lack of trainees, together with a tight labour market prompted the German Hotel and Restaurant Association (DEHOGA, or *Deutscher Hotel- und Gaststättenverband e.V.*) to register an alert to this so-called “Fachkräftemangel” (lack of skilled workers). Aside from well-trained and skilled chefs, DEHOGA points out the need for unskilled labourers to keep restaurants running. One third of all current vacancies in the sector are for unskilled workers. Among the various strategies outlined for associations and firms (restaurants, hotels, etc.) is the recruitment of workers from abroad. According to DEHOGA, 28 per cent of all employees subject to social insurance contributions in the restaurant and hospitality sector hold non-German citizenship – the highest percentage found in any industry. DEHOGA highlights that it is tradition in this sector to employ people with foreign roots and with non-German citizenship, stating that their “internationality is a win for employees, companies and the increasing number of visitors and guest from both Germany and abroad” (DEHOGA Bundesverband, 2015). Hence, the industry makes use of the option to recruit workers from overseas offered by the EU’s freedom of movement, the labour migration of TCNs, as well as the current inflow of refugees (DEHOGA Bundesverband, 2015).¹⁷

More specifically, DEHOGA calls on policymakers to secure and improve the pool/supply of skilled workers. One of the association’s official demands directed at the Committee for Tourism of the Bundestag on 4 November 2015 is to loosen the regulations concerning the employment of TCNs without a tertiary

¹⁵ According to March 2017 data supplied by DIHK.

¹⁶ This figure does not include bars, ice cream parlors, fast food, etc. but only restaurants such as those that are allowed to employ specialty cooks.

¹⁷ According to DEHOGA Bundesverband, recruitment of TCNs for this sector is “regrettably” only possible in a limited manner.

degree; as well as the economic integration of recognized asylum-seekers into the German gastronomy sector, considering that this sector offers a variety of jobs that do not require high skill levels. As of now, recruitment of skilled TCN workers for the restaurant and hospitality sector is essentially impossible due to legal and policy restrictions. Yet, given the current and predicted tight employment market, DEHOGA requests that the BA revisit its shortage list/*Positivliste*. More specifically, DEOGA has advised that the bottleneck analysis take into consideration conditions in the vocational training market as an early indicator of regional shortages.

In 2014, the European Commission gathered information of the top 20 occupations that are difficult to fill or those that remain unfilled for long periods of time in various EU Member States and grouped them into the International Standard Classification of Occupations (ISCO-08). This endeavor showed that cooks are at the top of the list.

2.5 Chinese migrant workers in Germany

The 2011 German Microcensus revealed that there were 102,000 people with a Chinese migrant background in Germany. In 2014, 13,411 Chinese nationals held valid work permits in Germany according to Eurostat. In 2015, 6 per cent of all employment-based visa approvals for TCNs went out to Chinese nationals – third largest percentage after Indian nationals (13.4 per cent) and Pakistani nationals (6.7 per cent). However, among the top ten ranked nationalities, the Chinese had by far the smallest increase in visa approvals – 6,340 in 2015, representing only a minor increase of 0.9 per cent over 2014. Albanian nationals, by comparison, had the largest increase of 326.5 percent over 2014 (BA, 2016a).

According to the BA, there are 7,049 Chinese full-time employees in the hospitality sector out of 29,758 fully employed Chinese nationals in Germany. Additionally, 5,366 Chinese nationals are marginally employed in Germany, out of which 1,948 are working in this sector. Altogether just under 9,000 Chinese nationals are currently working in the hospitality sector. While there is no official information on how many of these are employed in Chinese restaurants, informal sources tell us that, depending on the definition used for “restaurant”, there are currently between 8,000 and 10,345 Chinese restaurants in Germany.

3. Admission of *Spezialtaetenkoeche*

Up through June 2013, decisions concerning application for specialty cooks visas were made based on §26 Paragraph 2 *BeschV*; since July 2013, §11 Paragraph 2 *BeschV* serves as the legal basis. Approval decisions are based on §39 *AufenthG* in connection with §18 (4) Sentence 1 *AufenthG* for this specific category of worker. Table 1 shows how many were approved; how many specialty cooks left China according to CHINCA; and how many arrived in Germany. In 2015, approvals for Chinese nationals were 68.9 per cent of total approvals (754 approvals went out to Indian specialty cooks, 21.9 per cent; 191 Thai specialty cooks, 5.6 per cent). For 2014, 75.3 per cent of all approvals went to Chinese nationals (589 approvals went out to Indian specialty cooks, 16.4 per cent; 176 Thai specialty cooks, 4.9 per cent). This data is based on statistics of the BA.

Table 1. Specialty cooks: Record of approvals, inflows, and departures from China

	2013	2014	2015	2016	2017
Approvals by Germany ¹	n.a.	2709	2367	n.a.	n.a.
Inflows into Germany ²	935	1430	720	n.a.	n.a.
Departures from China ³	700	923	395	n.a.	n.a.

¹ *Migrationsbericht 2014 and 2015 (BAMF, 2016b and 2016c)*. Updated numbers for 2016 and 2017 will be made available by BAMF in late-2018

² Data from VCGD

³ Verbal communication CHINCA

According to data provided by the ZAV and the BA (Table 2), German agencies made the following decisions concerning *Spezialtaetenkoch* visa scheme based on the applications sent to them through German diplomatic missions in China:

Table 2. Progress of Germany–China *Spezialtaetenkoch* visa scheme

	2013	2014	2015	2016
Approvals				
First time entry	900	425	653	720
Change of employers	279	398	654	545
Rejections of visa application	218	263	176	157

Source: ZAV and BA

It will be noted that multiple decisions might have been made for any Chinese national during the reporting period. The decisions do not indicate when and how many Chinese nationals actually entered Germany to take up employment as specialty cooks. Neither Chinese Government agencies nor their German counterparts collect data on age, gender, or province of origin. On average, in 2008–2015 Germany issued 2,160 first work permits a year to Chinese nationals; 2,032 of which were issued to Chinese nationals in the "other category". One can assume that this category included Chinese specialty cooks and therefore specialty cooks would have constituted a large proportion of first work permits in any given year.

3.1 ZAV–CHINCA agreement on sending of specialty cooks

The recruitment and selection of Chinese specialty chefs is governed by an agreement between the CHINCA and the ZAV.¹⁸ The *Spezialitaetenkoch* specialty cooks visa scheme, “a unique bilateral arrangement met in this economic sector” has been in place since 1997/1998 (Leung, 2002, p. 140) and has since undergone multiple revisions. Before the agreement, recruitment happened through social networks (Leung, 2002). Representatives from the BA/ZAV and CHINCA get together on an irregular basis to discuss the visa scheme. Since 2015, ZAV is no longer responsible for the application decision (“Arbeitsmarktzulassungsverfahrens”) (BA, 2015). A new organizational unit under the supervisory control of division GR22 of the central headquarters of the BA assumed responsibility for this operational task.¹⁹

a. General provisions

Chinese specialty cooks may apply for full-time employment at a specialty restaurant in Germany for an initial period of one year with the potential to extend the visa for another three years. Before an official request for extension of a work permit can be granted, the local BA will review payroll stubs of the respective restaurant. Chinese specialty cooks may only re-enter Germany under the same visa scheme after leaving the country for (at least) three years after the expiration of the original permit. The legal basis for these rules is §11(1), (2), and (3) of the *BeschV*.

b. Definition of a specialty restaurant

To be regarded as a specialty restaurant, a restaurant must offer genuine national cuisine. A specialty restaurant must, therefore, reflect the national culinary character of the country in question and must offer

¹⁸ Similar visa schemes for specialty cooks exist for Thai and Indian chefs.

¹⁹ Since the actual agreement is not made available to the public, details of the agreement had to be obtained from two senior officials of the BA and one senior official of CHINCA in charge of CHINCA–BA/ZAV cooperation.

cuisine prepared according to recipes authentic to the country. Not considered as specialty restaurants are snack bars, catering companies, and delivery services.

c. How many specialty cooks may specialty restaurant owners employ?

Employment of specialty cooks is restricted to two per restaurant. Only in exceptional cases can an employer hire up to five cooks. In the decision on the allowable number of cooks, the consequences on the labour market must be seen to be positive (such as the opening up of apprenticeship positions or further training for local employees). In case of staff turnover, approval for a new specialty cook may only be granted if evidence can be presented that shows that the employment of the former cook has indeed ended. An overlap of a maximum of three months is only possible as an exception right before the end of the fourth year of the work permit (of the original cook) if necessary (due to the duration it takes to get approval by the representation abroad or the (local) aliens department).

d. What are the qualification requirements?

Only cooks who hold Chinese nationality shall be admitted to work in Chinese specialty restaurants. They must be qualified to prepare traditional dishes per original recipes. The technical qualification of the cook must be demonstrated by successfully completing training as cook. The minimum training period of two years is required, and applicants must provide evidence of a minimum of two years' practice as a cook in qualified restaurants.

As part of the visa application process, the following documents must be submitted to the BA: a menu, a description of the restaurant, the work contract, a CV, certificates/letters of reference, and other evidence of qualifications.²⁰ Additionally, Chinese cooks need a certificate demonstrating that they have passed a practical and theoretical cooking and hygiene test, which should be taken at a local Chinese educational institution accredited by the BA.

e. Pay scale grouping

Chinese specialty cooks are employed at positions comparable to a *chef de partie*. Benefits and conditions for *chefs de partie* are determined by a collective bargaining agreement. The agreed upon salary must be declared in the work contract as a gross salary.

²⁰ Specialty cooks, like artists and healthcare workers, have a specific team within the BA based in Cologne that manages this process.

For instance, a *chef de partie* employed by a restaurant in Hesse is – per the latest agreement dated March 2016 – entitled to 25 vacation days, a 37.25-hour working week, and a before tax monthly wage of EUR2,464 (US\$2,615) based on 169 hours/month (agreement valid through August 2017).²¹ This agreement for Hesse is also the most generous among all the German states (*Bundeslaender*) in terms of compensation.

As of 2016, the total amount that an employer may deduct from the wage is EUR459. These deductions might include a *Sachbezugswert* (non-cash remuneration value) of up to EUR223 for accommodation (if provided by the employer) and EUR236 for subsistence. This applies to all *Bundeslaender*.

For comparison, Germany first introduced an hourly minimum wage of EUR8.50 in 2015 which was raised to EUR8.84 in January 2017. Trade associations such as DEHOGA did not welcome this act by the *Bundestag*, citing wage autonomy. In 2016, a full-time employee in Germany earned an annual income before taxes of EUR44,400 on average (EUR3,700 per month), while a full-time employee in the gastronomy sector (all occupations) had an annual income before taxes of EUR27,632 (STATISTA based on 2017 *Statistisches Bundesamt* data).²²

f. Entry regulations

As TCNs without a tertiary education, Chinese specialty chefs must undergo the so-called *Vorrangprüfung* (proof of precedence), according to § 11 paragraph 2 *BeschV*.

TCN specialty cooks need a visa and a residence permit for entry and stay, respectively, that explicitly permit employment in Germany. The visa for entry can be applied for at the responsible German overseas mission in the country of origin. The visa allows the cook to take up employment only with the specific employer in the occupation described in the visa. The residence permit must be obtained before the expiry of the visa at the responsible foreigners' authority.

²¹Similar information for all German *Bundeslaender* can be found here:

https://www3.arbeitsagentur.de/web/wcm/idc/groups/public/documents/webdatei/mdaw/mtu1/~edisp/16019022dstba_i704042.pdf

²² This explanation of compensation and benefits served as a basis for discussion with Chinese specialty cooks during the FGD.

g. Step-by-step procedure for employing foreign workers

1. A restaurant owner signs an employment contract with the foreign cook. Initial contact can be established through either the restaurant owner directly or through so-called technical cooperation agencies. According to CHINCA (and later confirmed by ZAV/BA representatives), there are now only ten enterprises (so-called International Economic-Technical Cooperation Groups) that are qualified to dispatch cooks from China. This is a massive reduction from the 25 such groups that were once able to perform this role.
2. With this employment contract and other documents, an entry visa may be applied for at a German diplomatic mission in the country of origin. Cooks from China (as well as India and Thailand) also need to provide a certificate that shows they passed the practical and theoretical cooking test, which can be taken at a ZAV-accredited local education institution.
3. The German representative abroad shall send the application documents to the BA, which shall then examine the conditions of admission.²³

h. BA's assessment

The assessment performed by the BA covers in essence:

1. the proof of precedence (*Vorrangsprüfung* – a check on whether suitable cooks are available on the local labour market. This is done at the local employment office upon the request of the team at the Cologne BA office responsible for Specialty Cooks. This is supposed to be determined within two weeks.);
2. the examination of the working conditions (*Arbeitsmarktprüfung* – a check to guarantee the employee is will not be employed at less favorable working conditions than comparable local/native workers);
3. the number of employees in the restaurant; and
4. the quality of the restaurant.

Employers who want to hire a specialty cook from China, India, or Thailand have to undergo a Proof of Precedence (*Vorrangprüfung*), as outlined in point one above. The aim of the *Vorrangprüfung* is to see whether suitable preferred employees are available in the local labour market: German nationals or TCNs with unrestricted access to the labour market. Among the latter are also recognized refugees and quota refugees (*Kontingentflüchtlinge*). In addition, persons eligible for asylum are entitled to a temporary residence permit and access to employment, apprenticeships, and internships. As specialty cooks fall under

²³ In cases where a visa application is rejected, the chef has two options: 1) remonstrations (plead with the German overseas mission), or 2) legal action (administrative court in Berlin).

the category *Besondere Personengruppen* (Special Groups of Persons), decisions lie with the BA office (*Agentur für Arbeit*) in Cologne.

After making its decision, the BA transmits this decision to the German overseas mission that received the original application. The visa should be applied for as early as possible before the intended start of employment, as the approval procedure generally takes several months to complete. Foreign specialty chefs are entitled to the same rights and obligations as German employees under the employment contract. As a matter of principle, an application for social insurance must be submitted immediately upon commencement of employment.

i. Ceiling on recruitment costs

As mentioned above, the actual CHINA–ZAV agreement is not made available to the public. However, representatives from the BA stated that the agreement does not set an upper limit on the total fees that prospective migrant workers may be charged,²⁴ although it does set a limit of 2,500 Chinese yuan (CNY) (US\$371) for the fee that may be charged for the obligatory practical cooking exam. The review and authentication of applicants' certificates cost another EUR500–700 (US\$543-760).²⁵

The compilation and translation of the required application documents through Chinese authorities/labour recruitment agencies – and paid for by the prospective migrant worker – may not cost more than CNY4,000 (US\$594). The ZAV itself – responsible for reviewing the qualifications of the applicants – does not charge any fees. The CHINCA–ZAV agreement does not state whether any of the costs associated with recruitment shall be borne by the future employer. According to information provided by Chinese restaurant owners who have recruited specialty cooks through this visa scheme, all costs, including airfare, are paid by the migrant worker.

As noted above, the only fee specified in the CHINCA–ZAV agreement is that charged by the accredited educational institutions where the cooks take their exams. That fee covers the expenses for training and language courses in China as well as placement with employers in Germany.

Assessment of approval provisions

²⁴ While the agreement does not list an upper limit, CHINCA communicated that a general ceiling of CNY25,000 that applies to all sectors/occupations and countries of destination. This limit for the visa scheme was confirmed by ZAV/BA. This fee is paid directly to the recruitment agencies to cover the cost for training, relevant paperwork and procedures, as well as follow-up services and market development in the host countries.

²⁵ Some of the cost items were communicated in EUR, some in CNY.

For the issuance of employment-related visas for TCNs, initial assessment takes place at German diplomatic missions abroad. They decide whether the occupation the prospective migrant worker wants to take up in Germany requires approval or not (per Part 8 of the Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory “Involvement of the Federal Employment Agency”). If approval is required, the BA takes over.²⁶

According to §39 Paragraph 2 of the Residence Act, the BA may grant a temporary residence permit to take up employment (pursuant to §18) or an EU Blue Card (pursuant to §19a) if:

1. The employment of foreigners does not result in any adverse consequences for the labour market; and
2. No German workers, foreigners who possess the same legal status as German workers with regard to the right to take up employment, or other foreigners who are entitled to preferential access to the labour market under the law of the European Union are available for the type of employment concerned (*Vorrangprüfung*).

Alternatively, a temporary residence permit may be issued by the BA if it has been established, via investigations of individual occupational groups or of individual industries, that filling the vacancies with foreign applicants is justifiable in terms of labour market policy and integration policy and the foreigner is not employed on terms less favourable than those which apply to comparable German workers.

German workers and foreigners of equal status shall also be deemed to be available if they can be placed with assistance from the BA. The prospective employer of a foreigner shall be required to furnish the BA with information on pay, working hours, and other terms and conditions of employment.

²⁶ In the case of bigger companies, it is usually a subsidiary company in the prospective migrant worker’s country of origin that makes the initial contact with the German diplomatic mission. In the present case of the *Spezialitaetenkoeche*, it is usually the cook who makes contact personally.

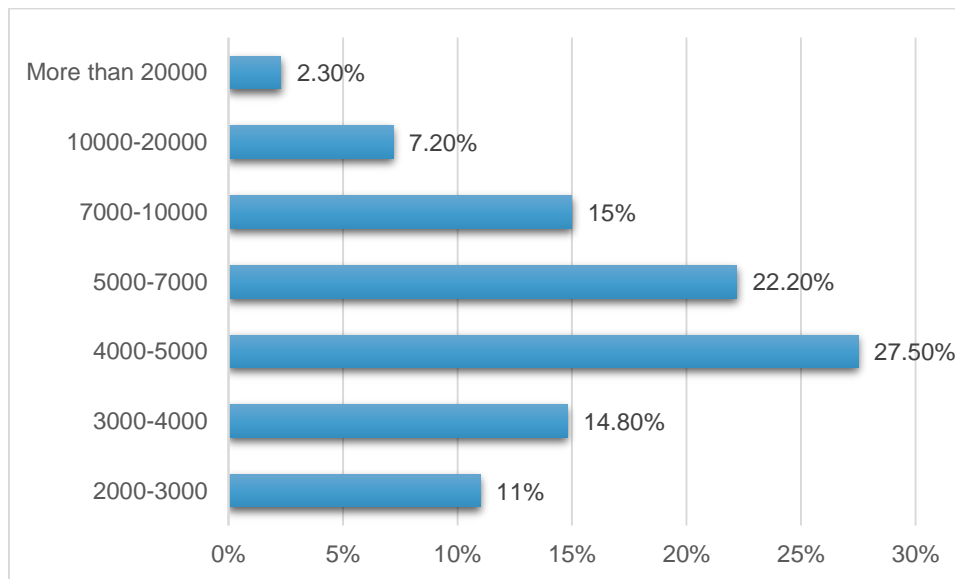
4. Employment conditions of cooks in China and in other EU countries

4.1 Employment conditions of cooks in China

The Chinese Government does not release official data on salaries for different occupations, and therefore this study has to rely on recruitment advertisements for comparative data on the salaries commanded by chefs in China. The information allows us to see, firstly, how working as a cook in China compares to working in Germany in terms of salary, and secondly, to have an idea of how long it may take a cook to save up money to pay for his migration costs.

Generally, chefs working at popular and profitable restaurants in first tier cities such as Beijing, Shanghai, and Guangzhou earn on average CNY8,500 per month. Those working in second tier cities, such as the provincial capitals, earn on average CNY5,500 per month. The salaries of chefs are generally associated with the type of restaurants they work for and where these are located. If they work for small, privately owned restaurants (such as noodle restaurants and breakfast restaurants), their salaries usually range from CNY2,000 (US\$290) to CNY3,000 (US\$435) per month. In restaurants with a star ranking they are able to command CNY10,000 or more. Cost of living, in particular accommodation, tends to be high in the first tier and major coastal cities.

Figure 1. Average salary (CNY) of Chinese chefs in 2014 (N=112,367)



Source: Website of New East Cuisine College of Jiangxi Province (<http://www.jxxdf.com/news/xynews/6912.html>)

4.2 Admission and employment of Chinese cooks in other EU countries

Due to the dearth of comparable official information on salaries, we consulted recruitment advertisements for the monthly salaries that Chinese chefs are offered in other countries:

- Singapore: CNY7,000 (US\$1,015) to CNY10,000 (US\$1,450) as a basic salary, with some restaurants offering allowances for overtime work and dividends at the end of the year;
- Thailand: CNY6,500 (US\$943) to CNY7,500 (US\$1,088);
- Qatar: at least CNY8,000 (US\$1,160);
- Saudi Arabia: at least CNY8,000 (US\$1,160) plus additional bonuses; and
- Iran: at least CNY8,270 (US\$1,200).

Countries with a longer tradition of Chinese cuisine and a larger presence of Chinese nationals, such as the United States, are also struggling to keep Chinese-run restaurants alive due to a lack of qualified chefs (Rong, 2008). The reasons are similar to what Germany is currently experiencing:

- Children from restaurant-running families have more options these days than their parents did and are increasingly choosing other careers;
- The economic boom in many Asian countries and Chinese coastal cities allows top chefs to demand higher salaries, which means that leaving for Western countries is no longer an economic necessity. This is particularly true if living expenses in these Asian cities is comparatively lower to what they may find in the West;
- The tightening of visa and working requirements (and the low chances of securing permanent residency) in many Western countries make it harder lure the right culinary talents.

To counter this trend, many restaurant owners have increased the salaries of the top talent to retain them. Just like their German-Chinese counterparts, American-Chinese restaurants are entertaining the idea of training unskilled new immigrants, in particular those granted refugee status. Moreover, while Chinese chefs might have been the pioneers of introducing Asian cuisine in many Western countries, their restaurants now face increasing competition from those offering other styles of Asian food that people in the United States and Europe are discovering.

Migration of Chinese workers to Europe to work in the fast-growing restaurant industry started in the 1960s and 1970s, which Li (1999, p. 41) describes as the “golden time for Chinese restaurants in Europe”. In the 1980s, Chinese immigrants could easily obtain a work permit as long as they could prove that they were a

certified chef (Li, 1999).²⁷ Since the late-1980s, however, immigration policies in many EU Member States have undergone changes, partially due to the enlargement and deepening of the European Union, and partially due to the slowing down of their economies and rises in unemployment among natives. More recently the massive inflow of asylum-seekers has led European governments to also rethink their policies towards labour immigration.

Below are some details about Chinese restaurant workers/chefs in a number of EU Member States other than Germany. It should be noted that since only a few EU Member States report their labour immigration statistics differentiated by occupation, researchers and policy-makers often do not have proper data to base their studies and policies on.

Admission of Chinese restaurant workers in Spain

In the case of Spain, the latest data available is from 2013: 1,895 work authorizations were granted in that year to Chinese nationals wanting to work in “restaurant services”, representing 13.7 percent of the 13,817 work authorizations granted to all foreigners for this sector. Across all occupations a total of 6,733 work authorizations were given out to Chinese nationals in 2013, meaning that 28.1 per cent of all permits granted to Chinese nationals went to those working in the gastronomy sector (MTAS, n.d.).

Admission of Chinese restaurant workers in the Netherlands

The UWV (the Employee Insurance Agency holding administrative data on work permits in the Netherlands) reports the following data for the inflows of Chinese workers by relevant sector of employment for 2014: hotel and catering industry – 1,706; and food preparations: 1,479. Further, 1,137 cooks were granted new work permits in 2014 both under the regular rules and under a new visa scheme for the “Asian Catering Industry” that came into force in October 2014. In 2015, 1,423 such permits were issued to cooks, and 1,359 more were issued in 2016.

The recent adjustment of the Dutch Foreign Nationals Employment Act (WAV) restricts the entrance of foreign employees (among them Chinese cooks). According to a Dutch government official, between 2017 and 2020 about 2,000 cooks will be allowed to enter the Netherlands yearly to work at the approximately 2,500 restaurants offering a variety of Asian cuisines including both traditional and less orthodox culinary styles. The visa scheme is available for chefs at job levels 4 to 6 (specialized cook, sous chef/all-round

²⁷ Li recounts the organization efforts of Chinese restaurateurs in the 1960s in the Netherlands. While those efforts ultimately failed, these engaged restaurateurs managed to influence policies: a good number of qualified Chinese cooks were given permits to enter the Netherlands to work as special employees of these restaurants. This, according to Li, further improved the culinary quality of those establishments.

cook, or chef) who want to find employment in restaurants within the Asian Catering Industry.²⁸ The agreement was concluded between three Dutch-Asian employer organizations and *Koninklijke Horeca Nederland*, the sector association for the Dutch hospitality industry.

The ultimate goal of the visa scheme for cooks, according to the Dutch Government, is to combat illegal employment in order to prevent labour exploitation and human trafficking as well as unfair competition in the labour market (Hiah and Staring, 2016). Restaurant owners have to provide evidence that they could not find adequate cooks in the Dutch labour market. The official application costs amount to EUR897, which is to be paid by the applicant (as confirmed by *Koninklijke Horeca Nederland*). The prospective employer assists with filling out the forms necessary to obtain a combined work and residence/stay permit (known as a Single Permit). In addition, the employer is responsible for housing and insurance. Cooks are able to receive an extension of their combined permit so long as long as the employer has once again fulfilled its obligations in terms of training and seeking local/EU staff over a three-month period. Workers can also receive a new Single Permit if they switch employers and the new employer abides by these same training and recruitment obligations. This means that Chinese restaurant workers do not need to return home before starting a new contract/extending work so long as the employer provides evidence that he looked for EU staff – a search that can happen while the Chinese worker is still employed at the restaurant.

Admission of Chinese workers in Italy

The ANPAL – *Agenzia Nazionale per le Politiche Attive del Lavoro* (National Agency for Active Labour Market Policies), which is associated with the Ministry of Labour and Social Policies – provides the following administrative data on the number of employment contracts issued: 22,582 contracts were issued to Chinese nationals in 2016 for work in the “accommodation and food service” sector.²⁹ In total, 109,225 new employment relationships involving Chinese nationals were established in 2016, out of which 10,543 (9.7 per cent) involved cooks. As far as entrepreneurship is concerned, Chinese migrants are the second largest cohort among TCN entrepreneurs in Italy. In 2015, 6,065 Chinese entrepreneurs were operating restaurants, a 10 per cent increase over the 5,504 recorded in 2014.

²⁸ No distinction is made between different Asian cuisines, which include Chinese, Indian, Indonesian, Japanese, Korean, Malaysian, Thai, and Vietnamese restaurants.

²⁹ As far as visas are concerned, there is no specific Italian policy for cooks. Cook working in a restaurant would be considered an “economically dependent employed”, and therefore their entry into the country would simply be part of the national quota for TCN workers (stopped at the moment).

Admission of Chinese workers in the United Kingdom

The latest UK Census from 2011 informs that 17,135 Chinese-born individuals were working in the “food and beverage service” sector in England and Wales, and another 492 were employed in the “accommodation and food service” sector in the Northern Ireland.³⁰

4.2.1 Previous research on migration of Chinese cooks to EU Member States

There is little applied research on migration costs for Chinese migrant workers in EU Member States that could be consulted for this study. Most of the research that investigates Chinese migration into the EU and the costs involved looks at the more vulnerable irregular migrant workers in a variety of sectors, including gastronomy (such as Axelsson et al., 2013).

Research for an earlier phase of this project presented some estimates of what Chinese restaurant workers paid to migrate for work in Sweden (Axelsson et al., 2013). Costs included approximately 2,000 Swedish krona (SEK) (US\$222) for a new work permit application, and SEK1,000 (US\$111) for an extension of the same work permit (as of 2012). It should be noted that Axelsson et al. (2013) looked at chefs who came to Sweden through a variety of pathways, including family reunification, and not through a highly regulated schemes like Germany’s *Spezialtaetenkoch*.³¹ For instance, Chinese cooks recruited through family networks are usually not trained as chefs nor do they have work experience as cooks prior to taking up employment in Sweden. Unlike the German visa scheme, applicants for Swedish work permits do not have to provide a certificate stating that they are a professional chef. The Axelsson et al. (2013) study also found that aspiring migrants may easily purchase such a certificate from vocational training centres in China should they need one. The Swedish Migration Agency grants a work permit based on (among other things) the work contract: if the indicated wage is too low, the application will be rejected.³² It is important to note, however, that no official agency follows up to check how much the migrant actually earns once they are working.

³⁰ These figures are total numbers independent of year of arrival. Among those Chinese nationals who arrived in the United Kingdom in 2010 and 2011, 1,273 worked in the sector.

³¹ As a point of difference, Chinese skilled chefs interviewed in Sweden who were recruited through family and social networks stated that they usually did not have to pay a recruitment fee.

³² In the restaurant industry, the current collective agreement between the Visita, the sector’s employer organization, and Hotel and Restaurant Union states that monthly earnings before taxes should be no less than SEK18,000–20,000 depending on the specific job.

Other research produced under the Capacity Building for Migration Management project³³ shows that labour migration in China has undergone a rapid transformation in recent years. Recruitment, for instance, has shifted from the State and institutionalized agencies to private recruitment agencies. In the absence of a particular visa scheme regulating the recruitment of specialty cooks, Chinese private recruitment agencies were found to be taking action to directly market their services to Chinese restaurant owners in Sweden (Axelsson et al., 2013). Restaurant owners who lacked good ties to their country of origin might be more inclined to seek out such services. Head chefs/chef de cuisine, according Axelsson et al. (2013), were primarily recruited directly from China because of their skills.

According to Axelsson et al. (2013) private recruitment agencies in China have advertised for male workers between 20 and 40 years of age with at least two years of work experience in the gastronomy sector, and were offering a wide range of wages: between SEK8,500 (US\$942) and SEK20,000 (US\$2,217). The study also cites anecdotal information that cooks were paying anywhere between CNY30,000 (US\$4,358) and CNY50,000 (US\$7,264) directly to private recruitment agencies in 2009 and 2010 to cover recruitment costs.

5. Issues facing Chinese workers in Germany

5.1 Interview with *Verein der chinesischen Gastronomie in Deutschland e.V.* (VCGD) – Association of Chinese Gastronomy in Germany

The researcher met twice with the head and various board members of the VCGD (as well as the editor-in-chief of the *Chinese Trade Paper*) in August 2016 and January 2017 to discuss the issues facing Chinese restaurant owners in Germany in terms of recruitment. The VCGD, first established in 2010, is a registered association that represents the interests of Chinese restaurant owners. More specifically, the VCGD views itself as the link between its members, on the one hand, and partners (such as breweries and grocery suppliers), industry, and the authorities, on the other hand. It consolidates/pools contacts; structures procurement alliances; creates profitable win–win situations; and utilizes synergy effects. Approximately 1,000 restaurants are currently fee-paying members. Membership serves as a seal of high quality standards, diversity, originality, a good working atmosphere, and fair payment (VCGD, n.d.). The following are among the main activities of the VCGD:

³³ An initiative funded by the EU and jointly implemented by the ILO and the IOM from 2007 to 2013 under two phases.

- Assist members with job specifications and in obtaining work permits for specialty cooks;
- Help obtain legal services for Chinese restaurants in Germany; and
- Establish guidelines for Chinese cuisine in Germany.

Through a structured approach and established working relationships, the VCGD aims to expedite processes and create better conditions. The association signed a Letter of Intent on 8 July 2016 with the *Berufsgenossenschaft Nahrungsmittel und Gastgewerbe* (BGN, or Trade Association for the Food and Catering Industry) to improve occupational safety and health (OSH) protection of workers in Chinese restaurants. Furthermore, the VCGD plans to cooperate with the China Cuisine Association in establishing culinary training and professional development centres throughout the federal territory, as well as one “showcase” kitchen. In those centres, the two partners aim to train culinary entrepreneurs, employees, and jobseekers of all nationalities. Aside from imparting culinary expertise, the centres plan to also teach OSH and sanitary protection supported through instructors sent by BGN (BGN, 2016). According to the president of the VCGD, the association is currently in talks with authorities in North Rhine-Westphalia to offer traineeships for recognized refugees in the region. The association trains Eastern European chefs and plans on training asylum-seekers to take over at least some tasks in the kitchens of Chinese restaurants in Germany to help ease the shortage of qualified cooks³⁴. For the purpose of this study, a focus will be on one of the key activities of the VCGD: the facilitation of recruitment of qualified cooks to Germany. During the two interview sessions the participants/interview partners introduced the most pressing issues facing employers and employees in the Chinese restaurant business. Due to the lack of relevant literature as well as minimal media reporting on this issue,³⁵ notes from these interview sessions served as the basis for conceptualizing the issues for the focus group discussions (FGDs).

With regard to the recruitment of qualified cooks to Germany, the VCGD’s primary concerns with the current *Spezialitaetenkoch* visa scheme are:

³⁴ Persons eligible for asylum are entitled to a (temporary) residence permit and access to employment, apprenticeship, and internship markets. Asylum-seekers (that is those who are still in the midst of the procedure for being granted the right of asylum) need a permit from the local immigration authorities. These efforts are based on the cooperation model developed by BA and the *Bundesamt fuer Migration und Fluechtlinge* (BAMF, or Federal Office for Migration and Refugees).

³⁵ Relevant media include a 2009 article in *Der Spiegel* – one of Germany’s leading weeklies – as well as a few newspaper articles that reported on a human trafficking case involving Chinese restaurants, as referenced in the next chapter.

- 1) The rejection of a very large number of visa applications between 2014 and 2015 – The applicants were not given an official reason for the rejection nor were they reimbursed for the costs incurred during the application process;
- 2) Instances of negligence and fraud committed by local government officials in China – Instead of properly assessing the documents, some local officials put an official stamp on them and collect the CNY1,500 (US\$220) for each certification;
- 3) Long processing times of four to six months – This is due in part to the large number of official documents required (26 forms required by Chinese authorities; nine forms required by German authorities);
- 4) Reduction in official recruitment agencies allowed to recruit chefs under this visa scheme – Originally, 25 recruitment agencies were officially allowed to recruit under the supervision of CHINCA. In 2008, the number was decreased to ten, with another three testing centres in China where chefs can take the mandatory practical test;
- 5) Strict requirements in terms of qualifications – Chefs have to be highly trained, with a minimum of two years of training as cook and then a minimum of two years’ experience in a specialized restaurant in China;³⁶
- 6) Length of employment – The initial work permit is for just one year, and may be extended for another three years provided the employer passes the labour inspection test, in particular with respect to the wage paid to workers. Another extension can only happen after a three-year break during which the cook has to return to China; and
- 7) Recent changes concerning the switching of employers/transfer of work permits – This has led chefs to leave their employers without any notice and to a rise in clandestine employment.

According to the VCGD these bureaucratic and related hurdles have led very skilled Chinese chefs to either stay in China or to migrate to countries in Asia or the Middle East where procedures are less bureaucratic and salaries can compete with the pay offered by employers in Germany. The consequence is a mismatch of supply and demand in Germany. It is not unusual for chefs to go through a multi-stage migration process

³⁶ According to the VCGD, while chefs have to possess the right kitchen skills, Chinese restaurants in Germany often offer less sophisticated dishes that cater to Western tastes. For instance, a large number of these Chinese restaurants in Germany are still making most of their money from “all you can eat” buffets. Employers often have to train cooks

involving work in several countries³⁷, especially because of the practical work experience requirement and the substantial upfront cost applicants have to pay. In addition, recent policy changes concerning the switching of employers have caused friction between employers and cooks. The VCGD noted that the association does not object to chefs transferring from one employer to another, but they still advocate for cooks to adhere to the provisions of their contracts. The frequent change of employer by the cooks before the expiration of their contracts makes employers even less willing to cover the recruitment fees and other costs related to migration.

Another issue raised in the interview with the VCGD and its members (restaurant owners) is that Chinese restaurants in Germany are in dire need of service personnel like wait staff. Due to economic development in China and the popularization of e-commerce opportunities, Chinese students in Germany, who used to be an important source of workers, are no longer as interested as before in working in the gastronomy sector. Many either rely on their family or sell international products online to fund their studies in Germany. While restaurant owners are interested in recruiting service personnel directly from China, there is little support from the Chinese or the German authorities due to the categorization of this type of workers as “low-skilled”. The four-year residence limit in Germany and the mandatory three-year break after the chefs have returned to China poses further challenges to the restaurant owners, as it adds to the difficulties they face in finding qualified staff and maintaining a stable workforce.

5.2 Findings from focus group discussions

For this study, five Chinese specialty cooks working in Germany were interviewed as part of focus group discussions (FGDs). The number of FGD participants was rather small, as participants had to be recruited through the VCGD’s network of employers in the Rhine Main region. Any migration-related research encouraging actual migrants to take part can prove challenging due to the sensitivity of the matter. Therefore, going through formal networks and establishing trust from the beginning is essential, but also exacting and time-consuming. In addition, only cooks who entered Germany under the specialty cooks visa scheme (*Spezialitaetenkoch*) within the past four years (the maximum residency period) were eligible to participate.

a. Profile of interviewees

The interviewed cooks were between 35 and 49 years old, and all were male. Four out of five were married; all were either vocational school or middle school graduates. With regard to length of employment in

³⁷ Migrant workers will go through a migration process across multiple countries, often working their way up north from the Chinese provinces to a big city, then to an Asian city outside China, then to the West.

Germany, the participants ranged from a few days to three years. All originated from rural areas of China, with four of them coming from Jiangsu Province and one from Shandong. Their work experience as cooks ranged from between ten to 20 years. Only one of the interviewed cooks had worked abroad before (two years in Singapore). Within their family/household, they were the only migrant workers and their income supports between five and seven family members (this includes parents, wife, and children).

b. Experience with recruitment agency

All of the FGD participants were first introduced to the *Spezialitaetenkoch* visa scheme through friends and acquaintances who had worked in Germany before.

All of the participants stated that they were disappointed with the services they received from the local agency they dealt with in China. Only one managed to get a discount because he received a referral from a friend. The other cooks paid more than they were initially quoted. Further, they emphasized their frustration with the lack of an official standard price list that would have allowed them to track and question the cost of the different items and services. The cooks paid a lump sum to the local Chinese agency and were informed about their potential income in Germany, which was all the information they received. They did not get to choose which part of Germany they would go to or what type of restaurant they work for. Although it should be noted that they also did they care about these details, as their main interest was in securing a monthly salary that was three to four times the amount they were earning in China working in a similar position.

c. Testing for qualification

For experienced cooks like the FGD participants, the required theoretical and practical exams were not challenging. One cook reported paying CNY1,650 (US\$240) for the practice exams and another reported an additional CNY500–600 (US\$73–88) for travel and accommodation paid on top of the CNY1,650 fee³⁸. The final step was an interview at the German consulate, which was not difficult since all the papers have already been gathered and certified, but they felt the pressure not to fail in front of the consulate official.

d. Cost of recruitment

The participants spent between CNY60,000 and CNY80,000 (US\$8,700–11,600) in total on recruitment, including travel costs. One cook managed to pay back loans from his family and the bank within his first six months in Germany by living very frugally; one other cook needed seven to eight months; and one other

³⁸ The agreement between ZAV and CHINCA states that the exams may not cost more than CNY2,500

cook needed a full year, but he also reported only earning EUR900 a month until he received a pay raise. Agency costs made up the bulk of the expenses incurred. Smaller recruitment agencies in the Chinese countryside bundled their applications and then forwarded them to the ten big recruitment agencies in the cities that are recognized by CHINCA to officially recruit workers. All participants discussed the option to work abroad with their families and they made the decision together.³⁹ One cook did research to compare the *Spezialtaetenkoch* visa scheme with other options to work overseas. Once the decision was made, it took them between five to six months to get their visas. They kept their old jobs during that period. However, when the cooks had to travel to the city to take the exams and handle other visa-related business, they had to take time off and find a replacement at work.

e. Remittances

FGD recipients reported putting aside approximately EUR1,000 per month, which they remitted back home every 3–4 months. These remittances went towards paying for housing their family and the education of their children, who remained in China.

f. Assessment of the work environment and the *Spezialtaetenkoch* visa scheme

The one cook with two years' previous overseas work experience compared working in Germany to working in Singapore, commenting that so far the employment conditions in Germany were better (although he had only been in Germany for 1.5 months at that time). Concerning their specific work environment all participants reported working in restaurants with about 20 others, including kitchen and service staff from China but also from other places like the Netherlands and Romania. Overall the atmosphere at work was described as being good and collegial. Life outside of work is similar to what other migrants with temporary work permits and without their families present as a typical experience. One participant pointed out that in Japan family reunification is easier for cooks in their position: after six months of employment, the family can join them in Japan. He wished Germany would reconsider its law on family reunification. All in all, the participants would recommend the *Spezialtaetenkoch* visa scheme to interested friends and family members, despite the long time it takes to secure the visa and the dominance of the recruiters throughout the process.

³⁹ The only chef with prior work experience abroad also happened to be the only unmarried participant.

6. Conclusions and recommendations

A “fair, safe, and orderly migration system” aspires to treat migrant workers equally as nationals while significantly boosting their earning capacity thus enhancing the standard of living of their family left behind (ILO, 2016c). Employers, on the other hand, will have access to workers with the right skills and aptitudes, thus increasing their productivity. In the case of specialty cooks, no preferential worker will be displaced due to the proof of precedence.

As the report has shown, the German hospitality sector at large is adversely affected by recruitment problems: both in attracting new trainees (who finish their apprenticeships and then stay in the profession/sector) and in attracting new skilled chefs and restaurant workers. In addition, restaurant owners report a mismatch between the skills required by a Chinese specialty restaurant and the skills local chefs have. Having recognized this, the German and the Chinese governments established the *Spezialtaetenkoch* visa scheme in 1997. Yet, as outlined in this report, the scheme has some fundamental flaws that require immediate and deliberate action. In order to improve and fine tune the *Spezialtaetenkoch* visa scheme as well as other relevant policies and regulations, direct consultation with the stakeholders involved in both China and Germany should be encouraged. The principal objective of a revised visa scheme and improved policies should be to secure a triple win for specialty cooks, restaurant owners, and the two countries concerned.

This study has identified the main challenges of the present system for the recruitment and employment of Chinese cooks in Germany. It confirms the relevance of the principles and approaches concerning fair recruitment promoted by the ILO (ILO, 2016a and 2016b), which include:

- Cost of recruitment should not be charged to the workers;
- Guarantee migrant workers equal treatment in employment and working conditions;
- Bilateral agreements are necessary for the effective governance of migration;
- Enhance the efficiency of job-matching by providing jobseekers and employers ample information to make sound decisions;
- Facilitate more direct recruitment;
- Make and enforce rules on transparency in transactions;
- Minimize regulations and red tape, including through the use of online/e-governance processes; and
- Enforce stiff penalties against selling visas.

The principles contained in ILO's General Principles and Operational Guidelines for Fair Recruitment can be further elaborated to include:

- Origin and host governments should cooperate to enhance efficiency, transparency and protection for workers in the recruitment process;
- Host governments should strengthen the capacity of their labour inspectorate to check the working conditions of migrants;
- Origin governments should standardize their systems for the registration and licensing of recruiters and their agents, as well as their systems for certification of worker qualifications;
- Origin governments should prepare migrant workers by conducting pre-departure training; and
- Both host country and origin country governments should share information for greater effectiveness in the enforcement of regulations.

It is clear that effective and fair recruitment requires action on a broad front. China and Germany already have an agreement on the recruitment of specialty cooks, and China has set a national standard for the comprehensive service package to be provided by the certified recruitment agencies as well as a maximum fee of CNY25,000. Even so, it should be noted that exploitation and the charging of additional fees still take place through the actions of rural intermediaries as well as local officials. The ILO (2016b) supports the promotion of self-regulation (in line with Operational Guideline 20) by private employment agencies through the implementation of an ethical code of conduct. For instance, in Viet Nam, the ILO has supported the development of a monitoring mechanism that ranks agencies according to their compliance with the code of conduct of the Viet Nam Association of Manpower Supply (VAMAS).

Improving recruitment and working conditions for specialty cooks coming to Germany requires a wide range of interventions that target recruitment practices and labour migration management. Some can be initiated and implemented by the Chinese Government and its various departments/agencies charged with labour migration, while others require cooperation with other stakeholders, such as their German counterparts.

Recommendations for the Chinese Government

1. **Selection and more effective regulation of recruitment agencies** – Currently, ten big recruitment agencies are responsible for recruitment and placement of Chinese specialty chefs heading to Germany. As the research has shown, these 10 agencies rely on smaller agencies located in the provinces to find local workers and send them their way. Reliance on sub-agents poses many challenges to national authorities in regulating their activities to prevent exploitation since

“licensing would be impractical and monitoring is nearly always beyond the capability of national ministries” (ILO, 2016c, p. 12). The Chinese authorities should consider ways of regulating their activities, such as by making licensed recruiters equally culpable for abuses committed by their sub-agents (ILO, 2016c, p. 12).

To more effectively regulate recruitment agencies and recruitment practices in general, the ILO (2016b and 2017) has further recommended:

- Establishing effective licensing and oversight/monitoring of recruitment and placement agencies at source and destination;
 - Investing in credible and effective enforcement against abusive recruitment;
 - Putting in place effective complaints mechanisms and support services, and strengthening the role of trade unions, migrant associations, and civil society organizations (CSOs) in providing support services to migrant workers;
 - Supplementing statutory regulation by both industry self-regulation and monitoring by trade unions, CSOs, and the media; and
 - Establishing rating systems and incentives for recruitment agencies, including for instance, creating online forums for migrant workers to rate their recruitment experience.
2. Adequate information on application procedure – Many of the abuses suffered by migrants can be traced to lack of information or to misinformation. Authorities in China should look into the adequacy of current information programmes and how prospective migrants can be more effectively reached and informed on job opportunities, recruitment processes, conditions of work abroad, the officially sanctioned application procedure, and the official costs (in line with ILO General Principle 10).⁴⁰ This can, for instance, be done through Migrant Worker Resource Centres that offer information, advice, and services to (prospective) migrant workers.
3. **Need to monitor local-level governance** –The various problems that have been brought out in the FGD clearly point to the need for greater monitoring of how regulations are administered at local levels in China.

⁴⁰ This dovetails with ILO’s Principles on Fair Recruitment: “Workers should have access to free, comprehensive and accurate information regarding their rights and the conditions of their recruitment and employment” (ILO, 2016b).

Recommendations for the German Government

1. **Regulation of trafficking and other forms of illegal organization of Chinese workers to work abroad** – Despite the existence of safeguards against it, the smuggling of Chinese workers into Germany has continued. Large-scale and coordinated raids of 180 Chinese restaurants in 2009, resulted in the arrest and trial of three restaurant owners who were accused of bringing Chinese workers into Germany and exploiting them. Workers were found to have paid between EUR6,000 and 12,000 in exchange for a work permit/visa and a work contract as cooks. Once in Germany the accused restaurant owners substituted the contract with another one, confiscated the cooks' passports, and then distributed the cooks to cities throughout Germany. In Germany, it is the customs authority that is in charge of investigating clandestine employment, while the local aliens' office is the first agency that has to respond to suspected exploitation of workers. Mechanisms for information sharing and coordination of enforcement will need to be reviewed to assess their effectiveness and to determine if complementary support services are needed.⁴¹
2. **Mobility in the labour market and free choice of employers** – The policy of tying a worker to one employer creates a state of dependency prejudicial for the worker.⁴² From the FGDs we learned that the recent reforms giving workers the freedom to switch to another employer have led to an increase of transfers. Those FDG participants who had been in Germany for three years had previously changed employers due to either to abusive treatment, long working hours, or low pay. The interviewed employers, not surprisingly, regarded these employee transfers as problematic for their business. When cooks were tied to one employer and were laid off, the ZAV had to determine if they lost their job through their own fault or through the fault of the employer. Where the worker is determined to be at fault the work permit becomes invalid and a new permit cannot be issued. The cook has to leave the country immediately. Where the employer is at fault, the cook could be placed with another employer. An aggrieved worker has to make a formal written request with the local employment office and provide evidence that the employer violated the contract, in which case the employer will be barred from participating in the visa scheme. Nevertheless, a worker who changes employer is not allowed to stay in Germany beyond the three-year limit.

⁴¹ Singapore is cited as a good example in Asia and the Pacific, as it provides an illustration of enforcement and penalties in a major country of destination. Fines are imposed on unlicensed agencies (and on employers using them), as well as for providing false information or overcharging.

⁴² The ILO (2016a, p. 5) Principles on Fair Recruitment states that “migrant workers should not require the employer’s or recruiter’s permission to change employer”.

Under these existing rules, changing employers is difficult and time consuming. Between 2013 and late-2016, 1,876 requests to change employer within Germany were approved (as shown in table 2 above). If a specialty cook wants to switch employers, the first step is to contact the local foreigner's office. Since the cook's residence permit is tied to the employer who initially recruited the worker to Germany, the worker has to file for/request a new residence permit per §81 paragraph 4 *AufenthG*. The local foreigners' office then consults the BA concerning the request to switch employers. The same criteria and guidelines for evaluating requests are followed as in the first permit procedure. Importantly, termination of the first employment contract is not a reason to reject the request for a new residence permit based on a new employment contract, see §40 paragraph 2 sentence 2 *AufenthG* (*Wichtige Gründe in der Person des Ausländers – important reasons/causes inherent in the person of the foreigner*). If the worker is found to have broken the contract, the legal consequences are decided on by the Labour Court. The official in charge has discretionary power when making a decision concerning the request (while adhering to the principle of proportionality). §40 paragraph 2 sentence 2 *AufenthG* further elaborates that if there are indications of an improper change of personal data by the foreign worker, the request will be denied.

The workers should have access to the information necessary to make well-informed decisions about their employer and be aware of working conditions in advance, which would reduce discrepancies between expectations and reality, and lead to less frequent switching of employers. This would also contribute to increased willingness on the part of the employer to cover migration related costs for the workers.

3. **Language a formidable barrier to accessing assistance** – While Germany has a well-functioning labour complaints handling mechanism, lack of German or English language skills often make it very difficult for migrants to lodge a formal complaint or seek legal advice. Means have to be developed to provide interpreter services to Chinese workers with legitimate concerns over violation of their rights.⁴³
4. **Insuring working conditions meet standards** – Before granting an extension of the work permit after the initial year, the local BA checks the worker's pay stubs to see if the Chinese cook is getting paid less than local workers. Requiring a transparent "paper trail" of payment transactions is one – albeit not foolproof – way of protecting the interest of workers (ILO, 2016c; 2016b). Therefore, an

⁴³ Per the ILO (2016b, p. 5): "Workers, irrespective of their presence or legal status in a State, should have access to free or affordable grievance and other dispute resolution mechanisms in cases of alleged abuse of their rights in the recruitment process, and effective and appropriate remedies should be provided where abuse has occurred."

increased role for local authorities with regard to labour inspection is recommended. Such inspections should go beyond merely checking of wage levels, to ensuring that contracts have not been substituted and that migrant workers' rights are being duly protected.

5. **Shortening the break between deployments** – There is a need to review the current policy requiring a break of three years between the first employment and the next re-deployment. Both the employers and the cooks complained about the limited period of the work permit and the requisite break of three years between deployments as specialty cooks in Germany. Significantly shortening the mandatory break will benefit both the employers and the cooks. Research has shown that migrant workers with social networks and previous experience working abroad pay fewer costs than first-time migrant workers (ILO, 2016c, p. 6).
6. **Revision of the *Positivliste* (White List) as demanded by DEHOGA** – Including cooks, especially those with special culinary skills, on the *Positivliste* would make recruitment from China less burdensome. Recruitment of Chinese chefs addresses a long-term, and therefore sustainable, demand in the German employment market.

Recommendations for cooperation between Chinese Government and the German Government

1. **Low awareness of what constitutes labour exploitation** – This is an omnipresent issue among Chinese cooks, who may already feel fortunate because they earn more than at home. Chinese authorities may assist in the protection of their citizens by collaborating with the German authorities on the translation and adaptation of the *Make it in Germany/Recognition in Germany* portal, and by ensuring that prospective and current migrant workers are well informed about all aspects of labour migration to Germany. This recommendation dovetails with the ILO's recommendation to increase the level of labour market information and the scope of direct recruitment. Stakeholders must assist in building capacity among migrant workers so they can protect their own rights, both during the recruitment process and while working overseas. Moreover, the ILO suggests minimizing regulations and red tape, including through greater use of online and e-governance processes (Wickramasekara and Baruah, 2017)
2. **Establishment of a monitoring and evaluation framework and feedback mechanism** – As acknowledged by government officials, applicants never learn the reason why their visa/residency application has been rejected nor is the data recorded/collected by the Chinese or German authorities. It is recommended that applicants be informed why their application was denied for the sake of transparency and fairness. On the other hand, failing to obtain a work visa through the

regular channel, some workers might choose to take the risk of irregular migration, which make them more vulnerable to exploitation, abuse, and in the worst cases, illicit trafficking and forced labour.

3. **Joint liability in both countries of origin and destination** – Both Germany and China need to take an active hand in regulating the recruitment process and protecting the rights and interests of migrant workers.

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