

Blue Card EU

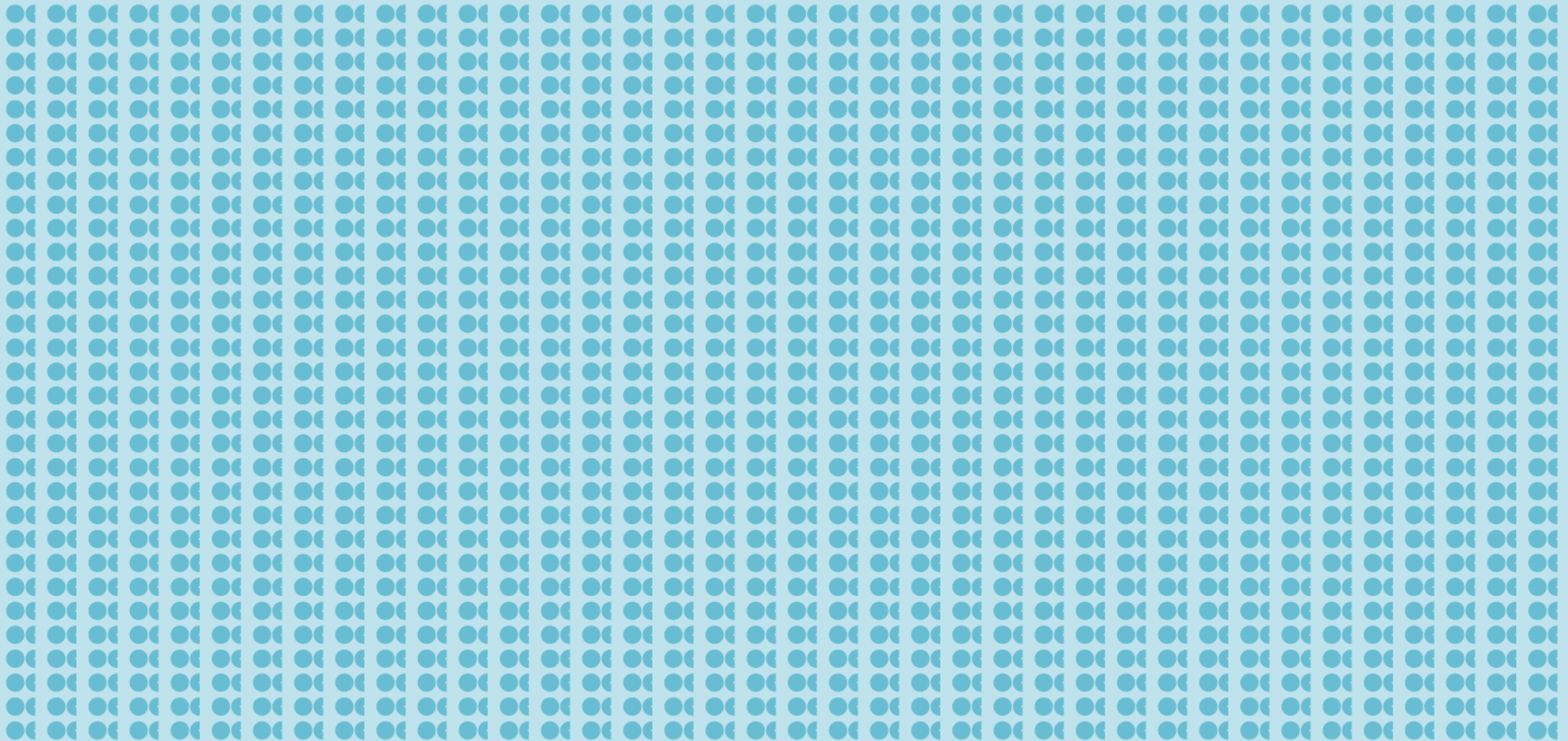


Germany

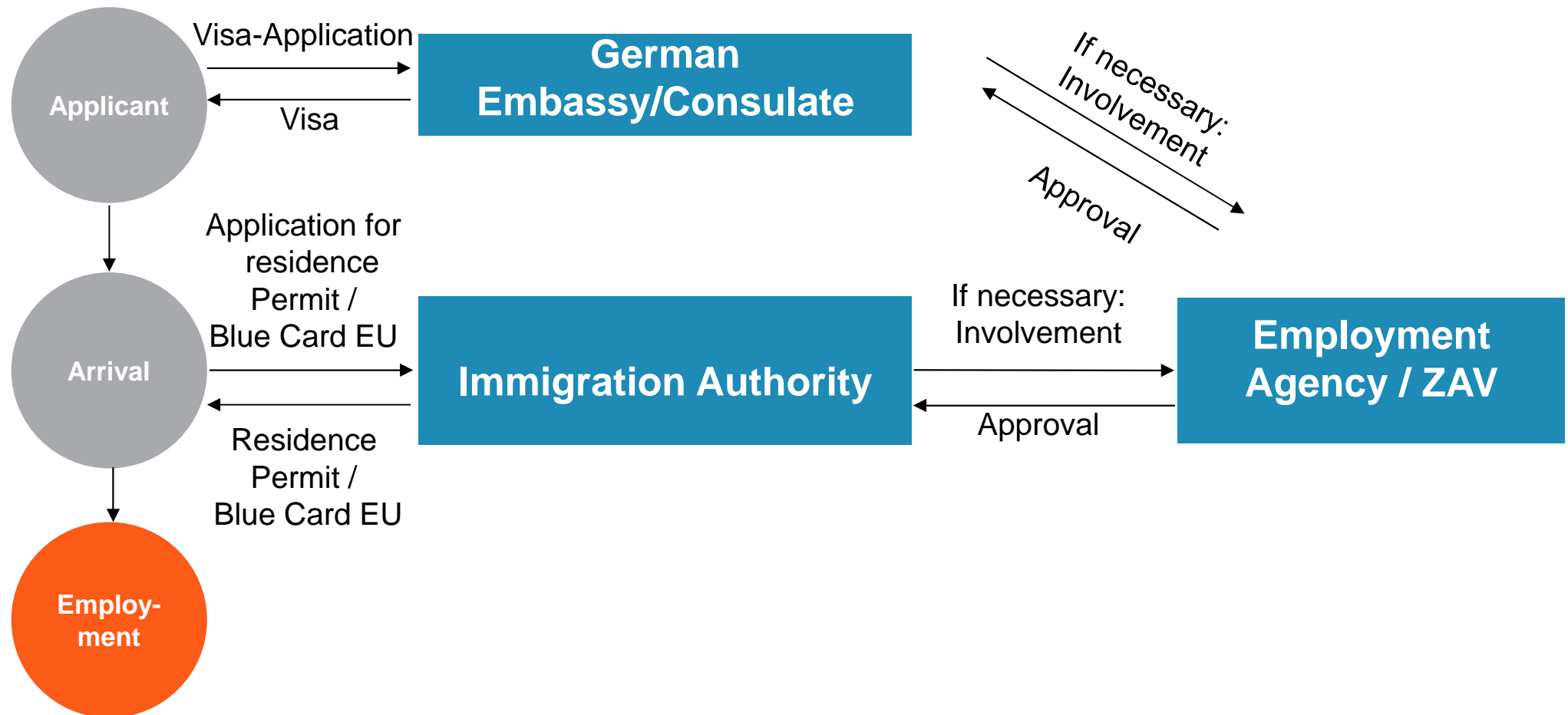


Cologne
January 2019

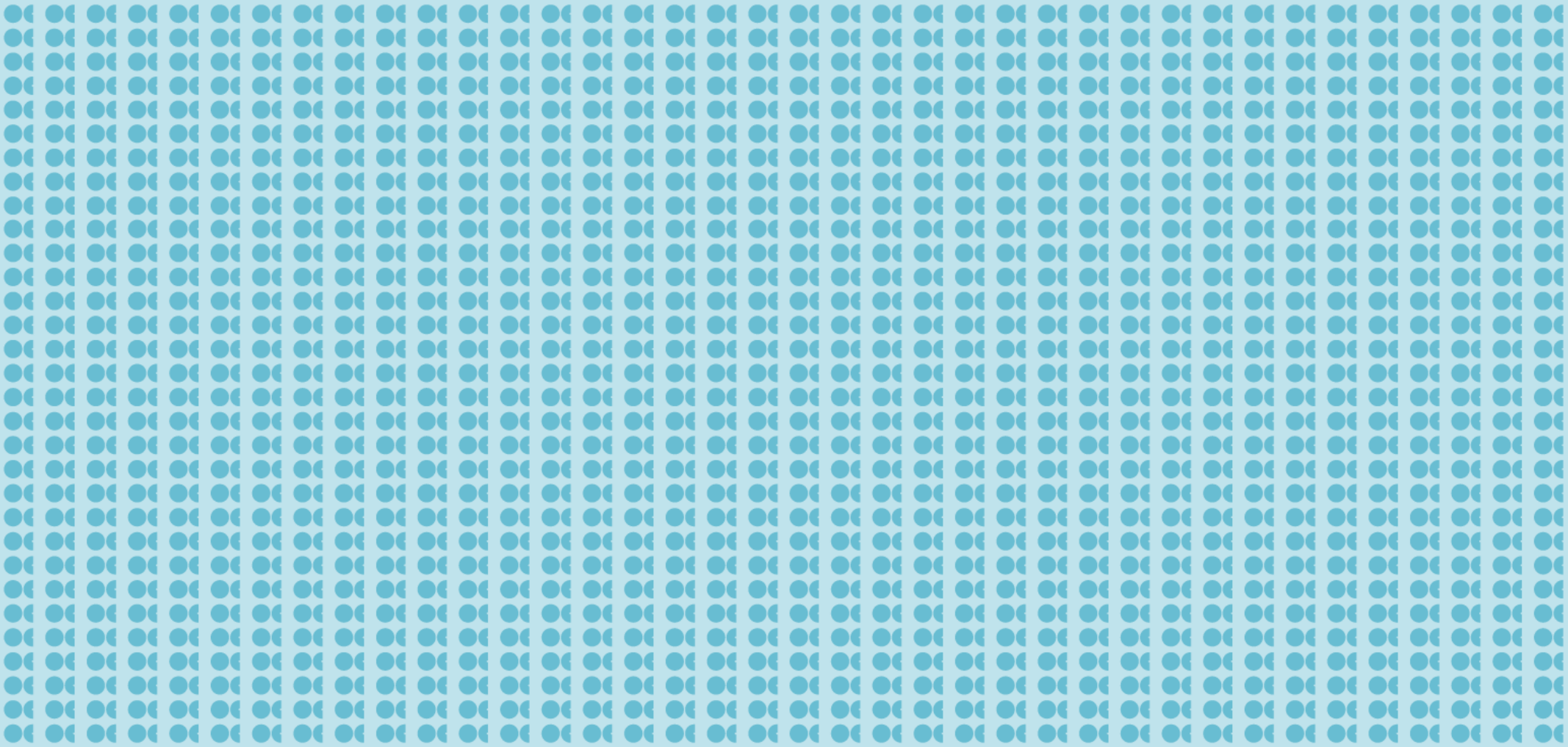
Application process



Global workforce and business immigration to Germany



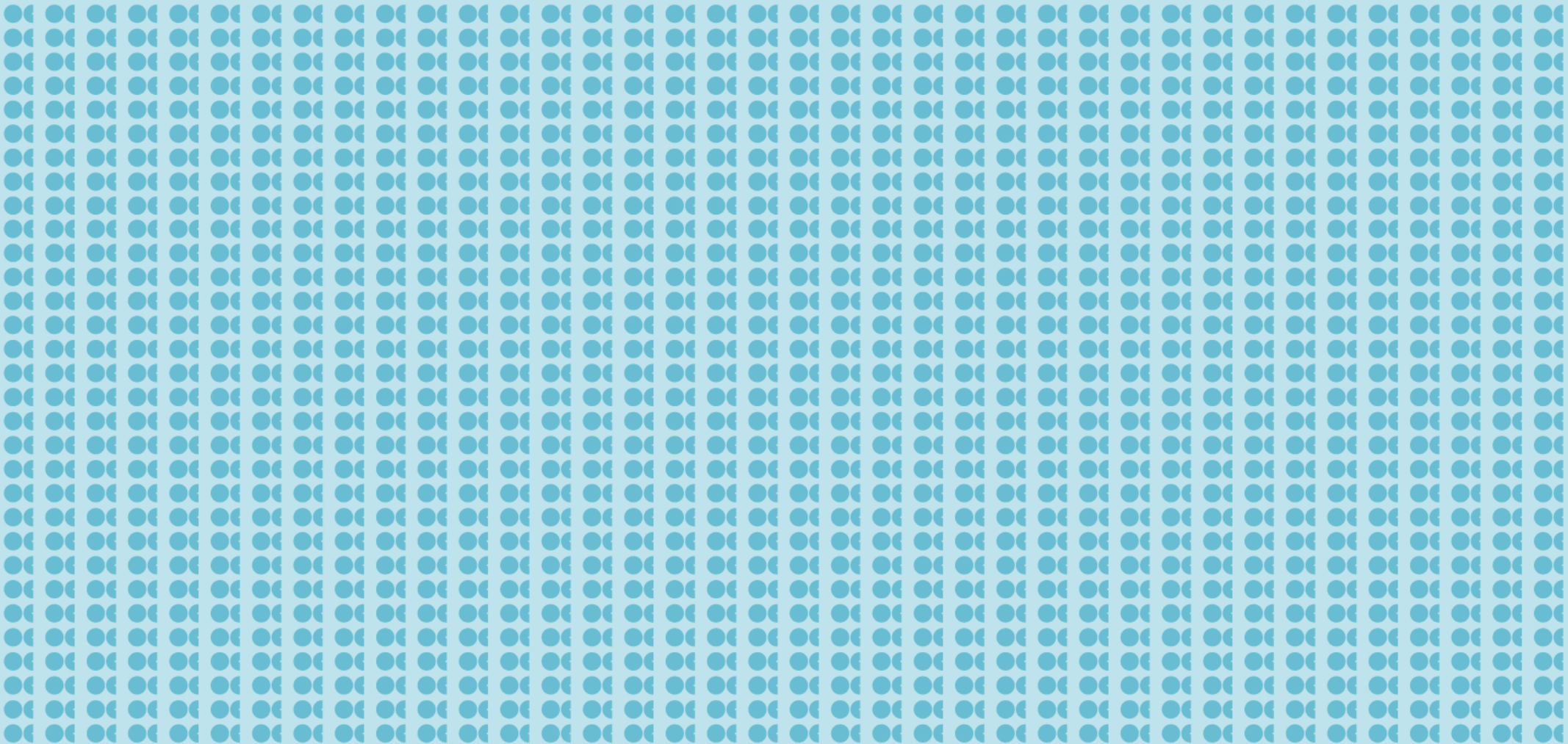
Expectations



What's missing? – Introduction of Blue Card EU

- Expectations on the Blue Card EU:
 - Easier entry of highly qualified professionals into the country, in particular those starting out in their career
 - Permanent employment by employers in Europe
 - Standardised access procedure to enter the European labour market?
 - One single admission procedure for the entire European Economic Area?
- The German Act on Implementation of the EU's Directive for Highly Skilled Migrants (or Blue Card Directive – *HQRLUmsG*) came into effect on 1 August 2012.
- The Blue Card EU is governed by Section 19a of the German Residence Act (Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory - *AufenthG*)

Mission completed?

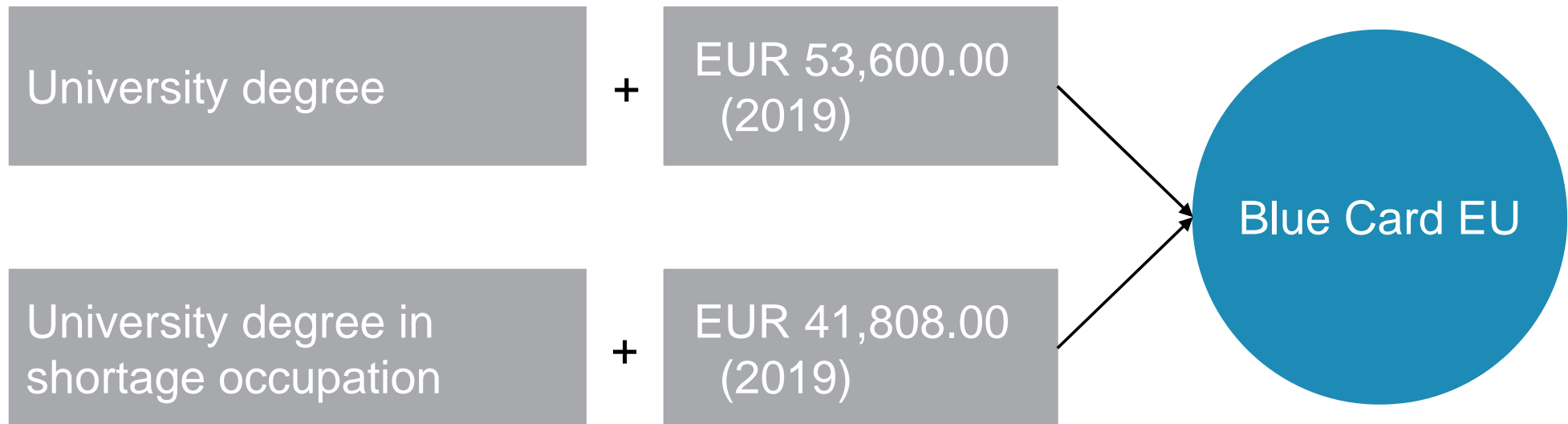


Who is eligible for the Blue Card EU?

- Highly qualified professionals from a country outside the European Union, Switzerland or the EEA* countries
- Completed university education (graduation from German university, recognised foreign degree or degree comparable with German university degree)
- (Comparable qualification documented by at least five years of professional practice: so far there is no definite procedure to determine the comparability of respective professions)
- Specific offer of employment with minimum salary
- Valid for four years

*European Economic Area

Who is eligible for the Blue Card EU?



Minimum gross salary and shortage occupations

- **Group 1:** Section 41 a subs. 1 of German Employment Regulation = $\frac{2}{3}$ of the annual contribution assessment ceiling for the statutory pension fund = 2019 EUR 53,600.00 gross
- **Group 2:** Section 41 a subs. 2 of German Employment Regulation = 52 percent of the annual contribution assessment ceiling for the statutory pension fund = 2019 EUR 41,808.00 gross
- Shortage occupations:
 - Natural scientists
 - Mathematicians
 - Engineers
 - Physicians
 - Academic information and communication technology specialists

Is approval by Employment Agency (ZAV) needed?

Persons in Group 1:

- University degree, EUR 53,600.00 gross p. a.
- Local university degree in shortage occupations, EUR 41,808.00 gross p. a.

Blue Card EU is issued without involvement of the German Agency for Employment (ZAV)

[However, a current draft bill by the Federal Ministry of the Interior, for Building and Home Affairs stipulates that approval should be required again from 2020 in the case of occupations with shortages]

Persons in Group 2:

- Foreign university degree in shortage occupations, EUR 41,808.00 gross p. a.

Blue Card EU is issued after ZAV has approved the terms of employment. The terms of employment (including salary level) must correspond to the conditions of employment locally customary for German employees.

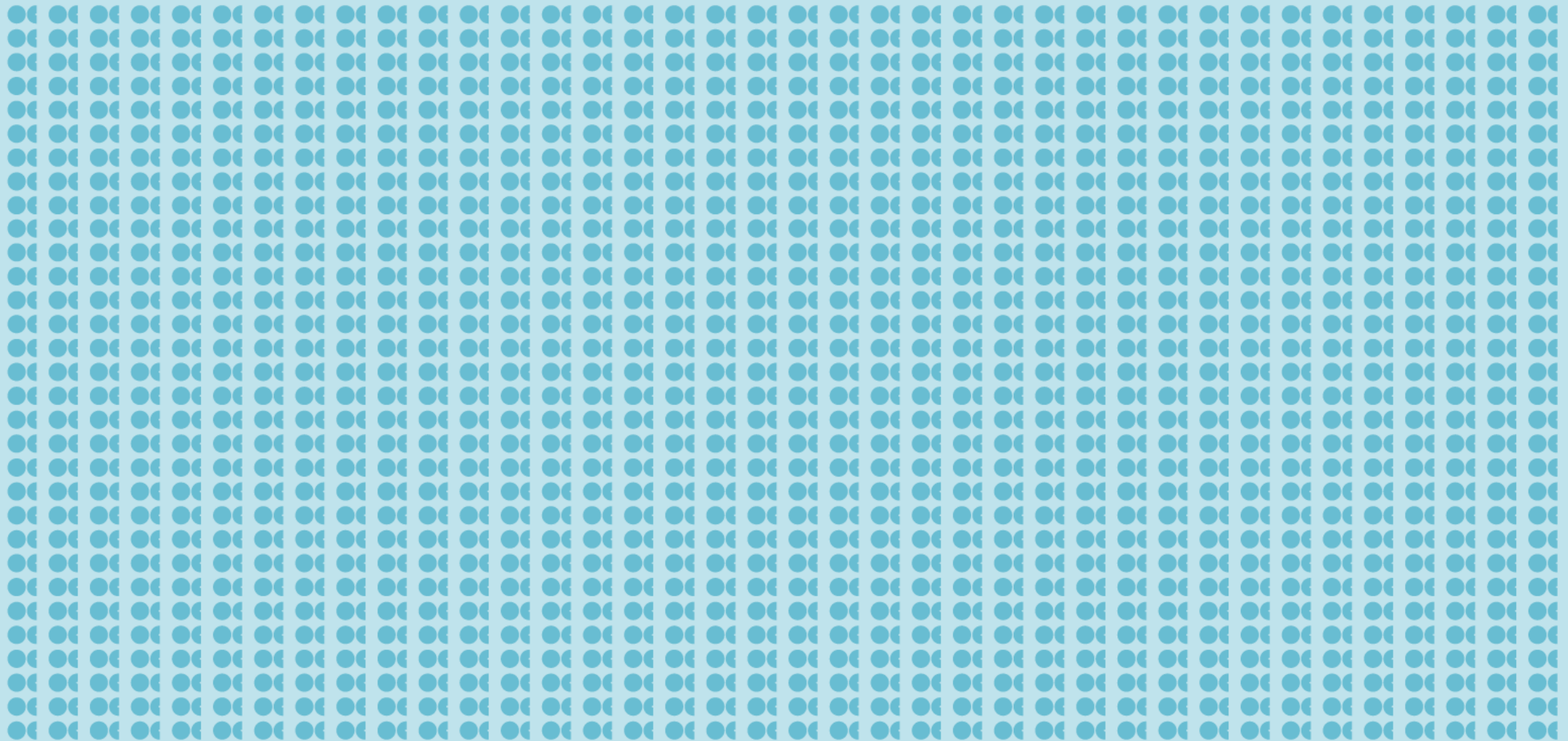
Employment conditions checked by the German Agency for Employment

Persons in Group 2: Shortage occupation and EUR 41,808.00 gross p. a.

- Employment conditions (including salary level) must correspond to locally customary conditions of employment for Germany employees.
- There will be no priority check to examine possibilities for filling the vacancy with prioritised employees.

In derogation from the general principle of having to obtain the approval of the Federal Agency for Employment, such approval is no longer required if the employee holds a degree from a German university (Section 3 a of the German Employment Regulation).

Mobility within and outside the EU



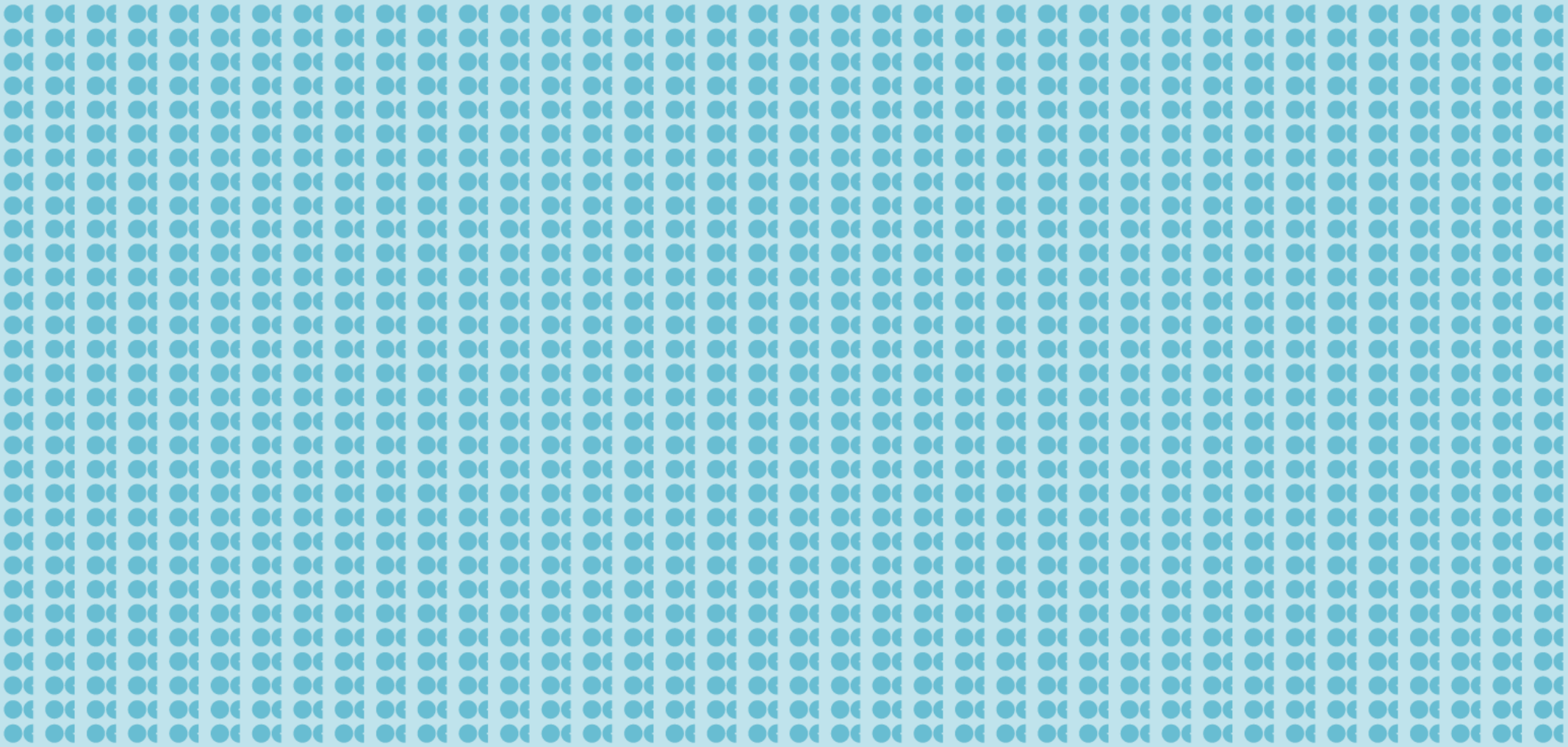
Mobility for holders of Blue Card EU

- Stay of up to twelve successive months in non-EU countries is permitted (Section 51 subs. 10 in conjunction with Section 41 subs. 1 No. 7 German Residence Act)
- Applies also to family members of Blue Card holders
- Problem with Section 51 subs. 1 No. 6 German Residence Act:
 - Immediate forfeiture of residence permit in the event of leaving the country for other than temporary reason
- After 18 months: right to settle in another EU member country and separate application for issuance of Blue Card EU in second member country
 - Direct application in the second member country does not require prior issue of a visa
- Does not apply to Great Britain, Ireland and Denmark

Integration measures

- According to Section 44 German Residence Act, holders of a Blue Card EU are not entitled to take part in integration course
- According to Section 44 subs. 1 No. 1 b German Residence Act, family members are entitled / obliged to take part in integration course
- However, the application for a permanent residence permit calls for proof of proficiency in the German language
- If language proficiency at level B 1 is demonstrated, permanent residence permit is issued after 21 months of highly qualified employment

Further statutory innovations



Residence permit for search of employment

Search of employment in Germany (Section 8 c German Residence Act)

Requirements:

- Completed university education
- Livelihood is secured independently for the duration of the stay in Germany
- Duration of six months maximum, no possibility to extend
- Does not entitle to commence gainful employment



Promotion of university students and trainees

Access to the labour market for foreign students studying at German universities:

- Extension from 90 to 120 days p.a. for employment of students in Germany not subject to permission (Section 16 subs. 3 German Residence Act)
- Graduates: Extension of period for seeking employment from 12 to 18 months and no restrictions on gainful employment during that time (Section 18 c Residence Act)

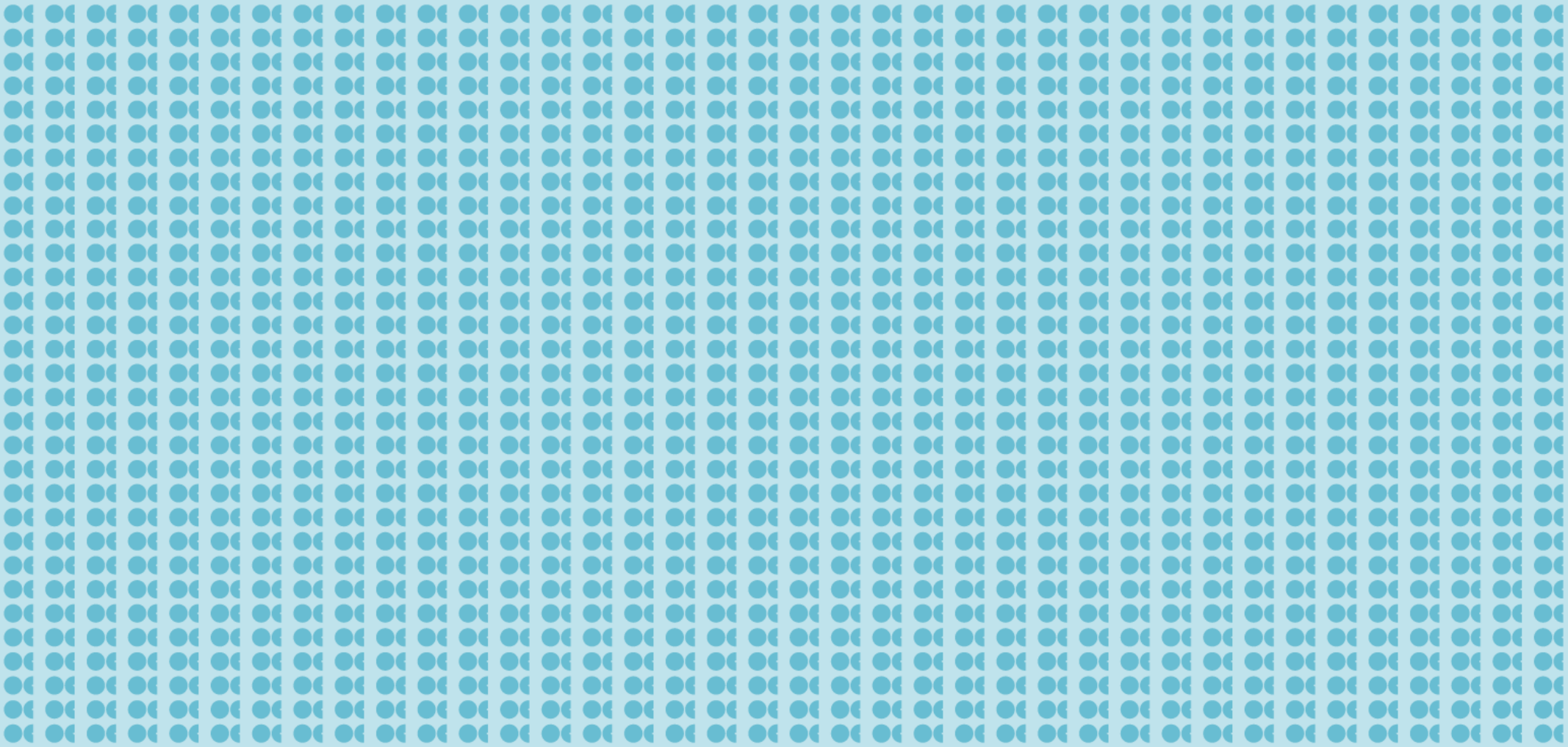
Trainees:

- Introduction of a one-year search phase for graduates of German professional training programmes with restricted gainful occupation (no restriction for commencement of secondary employment during that time (Section 17 subs. 3 Residence Act)
- Alien employees having completed in-plant vocational training in Germany may stay in Germany for the purpose of taking up qualified employment (Section 27 subs. 1 No. 4 German Employment Regulation)

Self-employed persons

- So far a residence permit for self-employed persons was issued pursuant to Section 21 German Residence Act on the assumption of „superordinated“ economic interest and a „particular“ regional need
- The requirement under Section 21 Residence Act was deemed to be satisfied if a sum of at least EUR 250,000 was invested and five jobs were created
- The terms „superordinated“ and „particular“ were deleted as well as the minimum investment sum and the minimum number of jobs to be created

Evaluation



What's missing?

- Blue Card „plus“ (example: Finland and the Netherlands): one single assessment process and access to both labour markets
- Competition between EU member states: more advantageous national regulations?
- Proposal for EU Directive: assignment of third-country nationals across countries in multivariate enterprises within the EU (Intra-company Directive)
- Permission of postings to Germany also for employees not classified as executives or experts

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Dr. Viktoria Winstel is a member of the employment law team of Osborne Clarke. She advises national and international companies on matters of individual and collective employment law. She also represents her clients in court proceedings. She advises in particular on questions regarding dismissal protection, contract drafting and high-qualified employee recruitment as well as cross-border employee relocation. Moreover she is specialised in drafting and implementing social media guidelines, involving the co-determination committees of companies. After studying in Trier, Viktoria completed her legal clerkship at the Higher Regional Court of Frankfurt. She worked in New York for a global financial services company. Viktoria already focused on employment law during her legal clerkship. Viktoria was

admitted to the bar in 2012 and worked for Osborne Clarke in Cologne since 2013.



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Dr. Timo Karsten is a partner in the employment team of Osborne Clarke in Germany with a clear focus on the digital business sector.

Timo advises national and international companies on collective and individual labour law. He is focused on the reorganization and restructuring of companies and transactional M&A work. That includes the representation of the company's interests in negotiations with works councils and the setting up of collective agreements.

He has assisted various Indian companies in major outsourcing and 2nd generation outsourcing projects, supports them in their business transactions in Germany and in connection with post transaction integration. He regularly advises his Indian clients on visa, social security

and employment law.

Germany's legal magazine Juve has listed him as recommended lawyer for business immigration and outsourcing.

Timo was admitted to the bar in 2000 and has already worked at several renowned law firms, including a leading Finish law firm before he joined Osborne Clarke in 2005.