



BusinessEurope input to discussion on the EU's legal migration directives (legal migration fitness check)

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Background

BusinessEurope has consistently stated that the migration of highly skilled third-country nationals (TCNs) is a necessary part of the EU's policy mix for achieving greater productivity and competitiveness by helping European companies to hire people with the skills profile they need. BusinessEurope also considers that there may be a longer-term need to attract people of varying skill levels.

There is evidence globally that where migration regulatory frameworks are well-designed, economic migration can play a positive role. This is particularly necessary in labour markets where there are labour shortages, but can also be helpful in countries with high levels of unemployment where available jobseekers do not always match companies' current skills needs due to mismatches.

The positive role that economic migration can play is increasingly important in view of the projected changes to Europe's demographic composition, notably the decline of the working age population. Eurostat forecasts show a significant decline in the EU population of around 60 million people by 2060 without migration. The European Centre for the Development of Vocational Training (CEDEFOP) has also forecast that around 14 out of every 15 job openings between 2016 and 2025 will be to replace workers leaving their jobs, many of whom will retire. At the same time, while the number of mobile EU citizens living and working in another member state has increased over recent years, the figures show that such movements continue to be relatively limited. Currently, in a Union of approximately 550 million people, roughly 3.7% (11.3 million) people of working age were mobile in 2016¹.

Therefore, it is timely to launch a fresh discussion on the role that the EU's legal migration framework can play in helping to respond to these challenges. In the first instance the fitness check should seek to identify areas in which the coherence, consistency and functioning of the EU's legal migration framework could be improved, particularly as concerns highly-skilled TCNs. Building on this the process should contribute to identifying ways in which the EU's future migration policy could be designed in a way that makes it more responsive to labour market needs.

To achieve a migration policy that is more responsive to labour market needs, EU policy efforts in the future should focus on three key objectives:

1. Build on existing initiatives in the fields of education and training to improve information on skills shortages across all sectors of the economy;
2. Ensure a more attractive, clear and coherent European regulatory framework for migration, taking into account national labour market realities;
3. Facilitate the labour market access of family members accompanying highly skilled TCNs. Facilitate the labour market integration of new arrivals under the family reunification directive.

¹ 2016 Annual Report on Labour Mobility, European Commission

Improving the framework for migration and enhancing the labour market integration of TCNs arriving for reasons of family reunification

Feasibility and desirability of a common migration framework

In 2001 the Commission published a proposal for a *directive on “the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities”*. The underlying approach to this proposal was that “in an increasingly global labour market and faced with shortage of skilled labour in certain sectors of the labour market the Community should reinforce its competitiveness to recruit and attract third country workers, when needed”. Simplified administration processes and access to relevant information were considered essential to achieving this. This proposal included provisions for permits for the admission of seasonal workers, ICTs, transfrontier workers and trainees.

At the time (in 2001), BusinessEurope welcomed this approach for a coherent legal framework and regretted the lack of progress that was eventually made in this respect. The core added value of such a framework was considered to be that it could have helped to address subjects that could not be regulated nationally, notably whether and under what conditions residency and labour market admission in one member state gives rise to admission in another member state.

Employers continue to report an ongoing need for highly skilled workers, including TCNs and in time this need may broaden to people of all skill levels in view of demographic change. Therefore, it could be relevant to look again at how to initiate a coherent EU legal migration framework that is more responsive to labour market needs.

Taking into account other practices worldwide, one option could be to explore the possibilities for creating a talent pool of potential candidates for (highly) skilled migration at EU level. This would function as a tool to improve matching between employers’ needs and skilled candidates. TCNs eligible for this talent pool could see in which EU country their profession is listed as a shortage occupation. Employers could then search candidates via this talent pool. However, such a talent pool should not lead to quotas and could only function alongside national systems with companies using the means that best suit their needs. This approach may be particularly helpful for countries that find it harder to recruit highly skilled TCNs. Nevertheless, such an approach would be dependent on improving real-time data about which sectors and occupations are experiencing shortages of skilled workers in the different member states.

Respecting national competence on the terms and volume of admission

Some member states are experiencing high unemployment, which is resulting to a large extent from ineffective and/or rigid labour market regulatory frameworks and mismatches between job seekers’ skills and available jobs. Other member states are facing labour shortages across varying skills levels. Taking this into account, the role that migration plays will also differ from country to country. Therefore, it is important that the EU’s future legal migration framework continues to respect national competences when it comes to the terms and volume of admission of TCNs. This includes the ability to retain parallel national systems, notably as concerns the admission of highly skilled TCNs under the Blue Card directive. In parallel, it is important to modernise education and training systems so that they become more responsive to labour market needs. In this way member state nationals will be better equipped to transition into work and to meet employers’ skills needs.

More coherent rules for highly skilled migration

Improving data on skills needs

While there is information available about the projected shortage of roughly 750,000 workers in the ICT sector by 2020, such data is not available in other sectors, even though employers frequently identify a lack of skilled workers as a critical factor for the future success of their companies.

To help substantiate the reported demand for skills and to better identify the sectors and occupations where this exists, data gaps need to be addressed. If found useful by member states, the EU could support the development of tools that could be used at national level to help identify particular shortages / unmet skills needs. This would contribute to an innovative EU labour market intelligence approach. In this respect there are several initiatives at EU level that aim to improve skills and labour market intelligence. One initiative is the work that CEDEFOP is developing in the area of a **real time data collection system** that aims to collect the background characteristics of jobs, companies and the type of employee wanted (skills, qualifications and other attributes) to enable future exploration and analysis of skills demand. Another is the European Commission's initiative on **sector skills blueprints**, which aims to establish sectoral cooperation on skills. These will involve partnerships in industry and services that aim to identify skills needs and support agreements on the recognition of sectoral qualifications and certifications.

These initiatives are in their early stages of development and it remains to be seen what the results may be. It also needs to be noted that data gathering is currently underdeveloped in some countries and is a challenging task to do. The way forward could be to build on existing well-functioning approaches at local and regional level, as this is where skills needs can best be identified and where labour market intelligence is most credible. We also have doubts about the feasibility and reliability of an approach that is based on aggregating national data at the EU level.

Highly skilled third country nationals and the labour market integration of their family members

In the context of highly skilled, temporary, migration, such as the Blue Card and ICT directives the ability for family members to accompany their partner or spouse and to access the host country's labour market is a key part of making the EU an attractive destination for highly skilled TCNs and a crucial instrument of a modern labour migration policy.

There are two aspects to this, which are receiving a residence permit and accessing work. As concerns the residence permit, a positive development concerns the provision in the 2016 proposal for revising the Blue Card directive whereby family members² of Blue Card holders would be entitled to receive their residence permit immediately when the Blue Card is issued instead of within a 6 month timeframe, as is the current practice. This would mean that they can join the Blue Card holder without delay, which could simultaneously help to speed up their labour market integration and make the EU a more attractive destination to highly skilled TCNs.

As concerns labour market access of family members accompanying highly-skilled TCNs, there are currently slightly different provisions in the Blue Card and ICT directives:.

- In the 2009 Blue Card directive family members can access employment or self-employed activity in the Member State concerned, as per the directive on family reunification. The directive allows for Member States to decide the conditions under

² As defined under Directive 2003/86/EC "On the right to family reunification" as the spouse of the third- country national applying to reside in an EU Member State and the children of the applicant and/or the spouse that are under the legal age of adulthood in the Member State concerned and which are not married.

which family members can undertake such work, according to national law. However, there is a derogation from the family reunification directive in that Member States cannot set a time limit of 12 months before granting family members labour market access.

- At the same time, it can be noted that the 2016 Blue Card proposal includes the provision for Member States to check whether a vacancy could not be filled by a country national or EU worker or a third country national already legally resident.
- An additional provision in the 2016 proposal, which goes beyond the family reunification directive, is that all third-country national family members of EU citizens are to be given access to the Blue Card in order to enable them to engage in highly skilled employment and perform business trips in different Member States regardless of whether or not the EU citizen accompanies them. This proposal aims to reflect the fact that under the 2016 proposal the Blue Card would become the sole means for admitting highly skilled TCNs.
- The situation is more straightforward in the ICT directive whereby family members of ICTs can simply access employment or self-employed activity in the country that has issued the residence permit and without there being provision for the host country to decide the conditions under which family members can undertake work.

Greater coherence between these two directives on these issues would be beneficial. In the first instance, consideration should be given to applying the provision for the immediate issuing of the residence permit for family members of Blue Card holders and ICTs. Secondly, these people should be able to access the labour market of the host member state without restriction.

Intra-EU mobility of highly skilled third country nationals

BusinessEurope is a strong advocate of worker mobility between EU Member States and considers that this should be extended to highly skilled TCNs. In the 2016 proposal to revise the Blue Card directive there is the possibility for facilitated intra-EU mobility of Blue Card holders whereby a Blue Card holder could stay in other member states (applying the Schengen acquis) for the purpose of a business activity for up to 90 days in any 180 day period on the basis of the Blue Card issued by the first member state. Additionally, there is the provision that with the Blue Card issued by the first member state a person can go to another member state to look for work, even though a new Blue Card would be required to take up work in a second Member State and based on an offer of employment.

These ideas are a welcome step in the right direction. Such an approach could simultaneously raise the attractiveness of the EU as a destination for highly skilled TCNs and help to provide employers with the skilled labour that they require. This could equally be envisaged for ICTs.

It is appropriate to explore measures that could facilitate the mobility of highly skilled TCNs within the EU, but without giving the automatic right to mobility, which is enjoyed by EU citizens. A pre-requisite for the full mobility of third country nationals within the EU would be that the EU has sole responsibility for all aspects of EU migration policy. This is not, and should not be, the case.

Clarity in admission procedures is important, but no harmonization is needed

While there are now multiple directives that have understandably different admission criteria, according to the nature of the TCN that the directive is aimed at, it is vital that admission procedures are transparent, understandable, timely and facilitate admission. The importance

of this for attracting skilled TCNs to the EU should not be under-estimated. To reach the objective of a Europe that attracts and integrates highly skilled people from outside the EU, the existing directives (ICT, EU Blue Card) need to be better promoted and explained to third country nationals as well as to companies in and outside the EU. This could involve pooling relevant information and making it easily available and understandable online.

Reciprocity of arrangements for intra-corporate transferees (ICTs) and broadening the scope of the directive

It is BusinessEurope's view that the possibility for ICTs to temporarily move from an EU headquartered company to a third country subsidiary would significantly enhance a company's competitiveness through enabling it to maximise the use of its human resources. However, currently European companies can only send ICTs, through trade agreements, such as the CETA agreement between the EU and Canada. Under this agreement there is the possibility for the temporary employment of ICTs and investors in each other's territory.

This raises the prospect of a need for such arrangements when there are not trade deals in place and this is something that could also be looked at as part of the fitness check. The International Organisation for Migration might be able to provide advice and support in this respect.

At the same time, the ICT directive offers companies the best possibilities for the movement of personnel and any future arrangement towards reciprocity should ideally be closely assimilated with the provisions of this directive.

Consideration could also be given to enlarging the scope of the ICT directive so as to enhance its usefulness for companies, while maintaining existing national approaches to migration. This could be done in several ways.

- Including medium-skilled personnel in the scope of the directive, which could help to respond to the EU's demographic challenge and employers' skills needs. This could be attested according to a secondary level diploma, certificate or other formal qualification issued by a competent authority;
- Including the possibility for the movement of skilled personnel between an EU Member State and a third country and vice-versa in instances when companies have built up a stable business relationship over a set number of years. This could include cases of long-term contractual relationships - joint ventures - consolidated business or commercial exchanges.

Improving the labour market integration of family reunification migrants

The family reunification directive is the main legislative framework for the arrival of TCNs in the EU and above work-related schemes. Data from 2014 shows that just 53% of TCNs arriving for reasons of family reunification were in employment, while 36% were inactive. There are growing labour shortages in a significant number of member states in the short-term and TCNs may have a role to play in supplementing the workforce in view of long-term demographic trends. In this context, labour market integration could be a more prominent feature, depending on the national context, and greater consideration could be given to the possible labour market contribution that potential new arrivals could make and how this could be facilitated once they arrive in the EU, taking into account their prior qualifications, skills and work experience.

In parallel it is important to promote the active labour market participation of those family members already resident in the EU so as to tap into the existing potential that is already here.
