

Legal migration fitness check - Public Consultation on the existing EU legislation on legal migration

ETF CONTRIBUTION NOTE

By its mandate, ETF works with the third countries, particularly in the European neighbourhood region, the enlargement region and Central Asia. These are among the countries which the EU legal migration directives were targeted for. Therefore, ETF as an agency of the EU provides its contribution to this public consultation process, mainly focusing on the following three directives due to our mandate in VET and employment:

- **EU Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly-qualified employment ('Blue Card' Directive):** both the original directive and change proposals made in 2016 for foreign workers with higher professional qualifications and job offers with higher than average salary.
- **EU Directive 2014/36/EU on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers:** the directive for foreign workers with who moves to live temporarily in the EU to carry out an activity dependent on the passing of the seasons.
- **EU Directive 2016/801 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing:** the recast directive for school pupils of secondary education equivalent to ISCED level 2 or 3; trainees who are higher education students or graduates, researchers, voluntary workers and au pairs.

It should be noted that all the ETF comments and suggestions below stem from its daily work and experience in working with the administrations of third countries, in particular in the fields of education, VET and employment issues. Although not always seen as directly relevant for the 'migration' policies, the education, VET and employment systems of third countries are crucial aspects for the management and success of labour migration.

General comments

- Legal fitness check of the EU legal migration Directives is very timely and useful, which may lead to new revisions for their better functioning, given the adoption and application of many new EU strategies and tools such as the 'European skills agenda', 'validation of skills' and 'recognition of qualifications', European programmes which foster student mobility between the EU and third countries, increasing mobility of workers, trainees and apprentices such as the EU Riga Council Conclusions 2015, European Alliance for Apprenticeships, ErasmusPlus and ErasmusPro, increasing migration and refugee inflows and the wider greater integration of economies and opening of societies.
- In all three directives, an explicit reference could be included on achieving coordination and cooperation between migration services, employment services and education systems of EU destination countries and third countries, in order to better identify Member States' needs, and match workers' skills and qualifications more efficiently to the labour market. Involving more the existing instruments of the EU such as ENIC/NARIC network, EURES, as well as with the PES network of the EU Member States, including the recognition of professional qualifications directives, can support these objectives and should be covered in the Directives. Directives could also encourage member states for a structured cooperation between the countries of destination and origin to facilitate and accelerate the implementation of these directives. Another EU initiative, EUROPASS which aims to increase the transparency of qualifications and

the mobility of citizens in Europe can be referred and used in the Directives. As this consists of five documents (European CV, Language Passport, Europass Mobility, Certificate Supplement and Diploma Supplement) that fully and clearly describe a person's skills and qualifications, they can help increase transparency and recognition of qualifications and competences for prospective migrants.

- In the third countries ETF is working with, there is a very limited awareness and knowledge on the existing EU legislation on legal migration, if any (e.g. see the individual experiences of migrant workers before, during and after migration in the ETF reports referred at the end of this note, where hardly any migrant was aware of and used any legal migration scheme or migrant support measures provided). This is a fact both for the staff of state administrations as well as for the broader public (citizens of third countries). There seem to be a disconnection between rules and real life experience of migrants. Especially given the generally low level of skills, it is highly improbable that migrants would respond to the survey or would be aware of different directives. A better publicity of such legal opportunities in the third countries is strongly needed. A special attention could be given to the countries who signed a Mobility Partnership with the EU, whose bilateral and multilateral platforms could be used for better publicity of such directives.
- Directives are maybe not the best instrument to grant homogeneity among the EU member states: it is a matter of fact that transposition opens for different types of implementing rules. This, in turn, creates fragmentation and lack of transparency for migrants (i.e. different rules for each destination country). The differences of national implementation practices between different member states significantly reduce the value of EU directives as “single entry point/ counterpart” for migrants. As migrants are granted rights that are limited to only one member state, and not getting the right of freedom of movements between different member states, this again significantly reduces the value of EU directives.

Specific comments

- The Directive on seasonal workers targets only third country residents which is understandable for the aim of creating circular legal migration. However, given the large amount of migrants and refugees already residing on the EU territory, it seems unlikely that many employers would find the rules set by the Directive appealing (i.e. why to engage in a rather heavy administrative procedure to employ third country seasonal workers that they do not know, rather than employing those they already know in the territory of an EU MS?).
- Although all three directives are about the employment of and/or training/exchange of third country nationals, no direct reference is made in any directive to the recognition and/or validation of workers' qualifications. Given the problems experienced by the individual workers in this area, it is suggested to make references to the recognition and validation, with clear definitions provided. The definition of recognition of formal qualification: “A formal acknowledgement by a competent authority of the value of a foreign educational qualification with a view to access to educational and/or employment activities” (Lisbon Recognition Convention, 1997). The definition of validation of non-formal and informal learning: “A process of confirmation by an authorised body that an individual has acquired learning outcomes measured against a relevant standard” (EU Recommendation, 2012). The Directives could encourage Member States to use validation of non-formal learning to capture and formalise in certificates etc. skills of workers.

- The Blue Card Directive could broaden the scope of highly qualified workers beyond higher education to extend also to higher VET qualifications. References such as those at Recital 9 need to be updated to specify ISCED 2011, levels 6-8; they should also now incorporate European Qualifications Framework (EQF) levels - here levels, 5-8. References to the Regulated Professions Directive of 2005 as well as the 2006 Recognition Directive need to be updated to reflect its updating in a new version in 2013. More broadly, use of the EQF could be encouraged in the implementation of Directives in the Member States – as many of the sending countries already have NQFs; in some cases, non-Member States have referenced their NQFs to the EQF and so can benefit from this comparison tool. The new EQF Recommendation, adopted in May 2017, provides for third country comparison with the EQF, making it likely that even more countries outside the EU will refer to the EQF. So references to using the EQF could be inserted in the Directives.
- The recast of the Directive of 11 May 2016 can be welcomed as it applies also to school pupils, volunteers (other than those under the European Voluntary Services), trainees (though unfortunately only to higher education) and that it allows ‘students’ to gain ‘practical experience’ (and in this context access to the labour market during their studies – article (52). However, the term ‘school pupils’ and the notion applied in the text seems to disadvantage ‘vocational education’ as this type of education has certain characteristics that differ from general education.
- To avoid misinterpretation of the recast Directive as well as to ensure equal treatment of general education pupils and vocational education pupils, the Directive could further specify in the definitions (article 3) the eligible groups. Vocational education (also ISCED levels 2 and 3) by nature involve not only a school-based (classroom) part but also a work-based (company, practical part) component. ‘Apprentices’, a special category of school pupils in vocational education are not explicitly mentioned in the Directive which again may lead to unclarity or misinterpretation of the Directive. In most countries also in the EU ‘apprentices’ are legally ‘school pupils’. Only in very few countries they are ‘employees’ with an employment contract. ‘Traineeships’ are mentioned in the Directive only for higher education students but could be possible also for vocational education school students as these are often an obligatory part of the school curriculum at ISCED 2 and 3 level in EU and third countries. It is not entirely clear what ‘trainee employees’ are (article (19) – they fall under the scope of Directive 2014/66 – a clear definition could be provided to prevent any confusion.
- We would like to remind that the European Union has stronger policies than before on promoting apprenticeships and other forms of work-based learning (eg traineeship – e.g. EU Riga Council Conclusions 2015, European Alliance for Apprenticeships) in initial education and training (and not in higher education). In addition, the Commission (DG EMPL) is pursuing a policy to strengthen mobility of apprentices abroad, in particular long-term mobility (at least 6 months). In December 2016, the Commission proposed a new ErasmusPro initiative which will become operational in 2018 and which will allow an additional 50,000 young people to spend 3 and 12 months in another Member State. First pilot projects are already being pre-financed. Though the focus of the ErasmusPro is on EU member states, this opportunity could be also opened up for third country nationals (in particular for the priority countries in EU external relations).

Lessons learned from the ETF work on migration

As ETF has been working on the skills dimension of migration since 2007, a significant amount of knowledge has been collected both on the individual experiences of migrant workers before, during

and after migration, as well as the available migrant support measures from employment and skills perspective in the third countries (mainly in the EU Neighbourhood). Our work clearly show that hardly any migrant was aware of and used any EU legal migration scheme or hardly any public institutions in the third countries was aware of the legal migration opportunities to inform their citizens and to provide any migrant support measures. For more details of such information, please see the following ETF publications:

ETF (2015), Migrant Support Measures from Employment and Skills Perspective (MISMES): Global Inventory with a focus on Countries of Origin, available at:
http://www.etf.europa.eu/web.nsf/pages/MISMES_global_inventory

ETF (2015), Migrant Support Measures from Employment and Skills Perspective (MISMES): Armenia report, http://www.etf.europa.eu/web.nsf/pages/MISMES_Armenia

ETF (2015), Migrant Support Measures from Employment and Skills Perspective (MISMES): Georgia report, http://www.etf.europa.eu/web.nsf/pages/MISMES_Georgia

ETF (2015), Migrant Support Measures from Employment and Skills Perspective (MISMES): Moldova report, http://www.etf.europa.eu/web.nsf/pages/MISMES_Moldova

ETF (2015), Migrant Support Measures from Employment and Skills Perspective (MISMES): Morocco report, http://www.etf.europa.eu/web.nsf/pages/MISMES_Morocco

ETF (2015), Migrant Support Measures from Employment and Skills Perspective (MISMES): Tunisia report, http://www.etf.europa.eu/web.nsf/pages/MISMES_Tunisia

ETF (2014), Migration and Skills Development Agenda in ETF Partner Countries, available in EN, FR, RU), Turin

ETF (2013), Migration and skills in Armenia, Georgia and Morocco: Comparing the survey results www.etf.europa.eu/web.nsf/pages/Migration_and_skills_Armenia_Georgia_Morocco

ETF (2013), Migration et compétences au Maroc, available at:
www.etf.europa.eu/web.nsf/pages/Migration_and_skills_Morocco

ETF (2013), Armenia migration country report, available at:
http://www.etf.europa.eu/web.nsf/pages/Migration_and_skills_Armenia

ETF (2013), Georgia migration country report, available at:
http://www.etf.europa.eu/web.nsf/pages/Migration_and_skills_Georgia

World Bank-ETF (2010), Migration and skills: the experience of migrant workers from Albania, Egypt, Moldova, and Tunisia, Washington DC, available as a book widget at <http://issuu.com/World.Bank.Publications/docs/9780821380796>

Key messages coming from these publications are the following:

- Attention to migrants' skills and skills-related support measures in the migration management is crucial for any labour migration policy interventions. In particular, professional skills development for migration and job-linked training programmes feature a high level of success in terms of labour market integration. They remain a key instrument to overcome widespread skills

mismatches between countries of origin and destination, which is one of the main factors repressing the benefits of migration. In more concrete terms, the information asymmetry between the needs of employers and skills of migrant workers often leads to mismatch and a lack of suitable candidates for international job vacancies (a frequent problem even when job opportunities abroad are available). In particular, programmes which combine training investment with migration prospects in regions with high migrant outflows can help likely migrant populations to develop, use, enhance and renew skills with longer-term social benefits to the region.

- Direct involvement of employers from the member states in the management of labour migration seems to be key for the success and could be explicitly mentioned in the directives. There is a need to focus on the migrant's qualifications and skills level in the design and implementation of any labour migration scheme. Therefore, there should be higher attention to international transparency and quality of education and training systems across countries, a quasi-compulsory pre-departure evaluation and documentation of migrant skills. In general skills should be more visible, readable and portable internationally regardless of where and how they were learnt.
- The EU and its directives could encourage more 'skills partnerships' between the third countries and EU member states. The ETF work already identified some interesting skills partnerships which combine international development cooperation with migration management policies between countries of destination and origin. Although these two policy fields are usually kept separate from each other, there is an added value in combining them in certain sectors with high labour mobility. For example, interesting projects with good potential development effects include investing in schools from likely emigrant regions to learn, use and renew skills; or creating international traineeships for professional skills development across countries.
- Skills partnerships have a high added-value potential if (i) involve multiple actors (employers, VET providers, intermediary bodies, as well as public employment services) (ii) invest in the education and training systems of origin countries (iii) include cooperation programmes between education and VET institutions of origin and destination countries (e.g. twinning, dual certification programmes, common curricula, student exchanges) and (iv) focus first on the sectors with high labour mobility and migration. EU conclusions on migration have already called for mainstreaming of migration policies with the development cooperation and neighbourhood policies and tools, and adequate funding for the implementation of relevant policies. 'Coherence and synergies between different policy fields, such as common foreign and security policy, justice and home affairs, human rights, development cooperation, trade and employment, is key' (Council of the European Union, 2015).

The ETF, within its mandate of contributing, in the context of EU external relations policies, to improving human capital development in its partner countries, focuses its work on the skills dimension of migration according to these policies. In particular, it works on approaches, methods and tools for improving transparency of skills and qualifications and fostering skills recognition that can be further improved based on the future EU initiatives in this field (incl. European Skills Agenda).