



21 September 2022

EU Skills and Talent Package

KEY MESSAGES

- 1 The EU's economic migration policy has an important, complementary, role to play in helping to address labour and skills shortages, which are being experienced throughout all sectors of the economy, to varying degrees. As part of this, the EU Talent Pool, if well designed, can simultaneously help employers to find skilled workers and support third country nationals in their labour market integration.
- 2 The proposal for single permit holders to change employers would be a welcome addition to the Directive by affording third country nationals more flexibility in terms of their employment opportunities, thereby also helping to address broader labour market needs. At the same time, BusinessEurope considers that the definition of an employer is something that is best left to the national level.
- 3 The enhanced possibilities for the intra-EU mobility of long-term residents would be a welcome addition to the Long-Term Residents Directive, likewise efforts to facilitate the attainment of long-term residency through the accumulation of qualifying periods.

WHAT DOES BUSINESSEUROPE AIM FOR?

- The timely launch of the full version of the EU Talent Pool around halfway through 2023, which will take a targeted approach to matching and which should be based on up-to-date shortage occupation lists.
- An EU economic migration policy that is based on the stronger coordination of national immigration policies and which allows Member States to address their varying needs for skilled migrant workers while doing so in a way that is well coordinated at EU level.



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Introduction

1. On 27 April, the European Commission published its Skills and Talent Package. This package is made up of a communication, which includes the creation of an EU Talent Pool as well as a new platform to discuss labour migration governance and reforms. There are also proposals for legislative updates to the Single Permit and Long-Term Residents Directives. This paper constitutes BusinessEurope's position on the package.

General comments

2. The EU's migration policy needs to be situated within the wider context of Europe's macro-economic circumstances as well as national labour market diversity so as to ensure a more coherent, consistent and effective approach towards the development of a demand-driven migration framework. Currently, there are a number of inter-linked challenges affecting the functioning of labour markets across Europe. These include labour and skills shortages; demographic change; high rates of inactivity; and relatively low levels of intra-EU mobility.
3. Labour force and skills shortages are acting as a bottleneck to economic growth. They are a serious challenge hindering business development and, more and more often, their daily operations. They put additional pressure on labour markets as a growing number of companies depend on a shrinking number of workers, which results in fierce competition for talent, contributing to higher labour costs. Currently, the number of vacancies is well above pre-Covid levels in many Member States. Large numbers of unfilled vacancies may be also caused by skills mismatches, which are a structural problem across the EU and which require a better alignment between education and training and the skills needs on the labour markets.
4. In parallel, and a contributory factor to labour and skills shortages, ageing and the shrinking of the working population is reducing the number of potential workers. The total labour supply in the EU is projected to decrease by an average of 0,3% a year, corresponding to a reduction of 16% (32 million people) in the period to 2070. Male labour supply is projected to fall by 17% (approx. 19 million) and female labour supply by 14% (almost 13 million)¹.
5. Furthermore, Eurostat forecasts show that without migration there will be a decline in the EU population of around 60 million people by 2060. The European Centre for the Development of Vocational Training (CEDEFOP) has also forecast

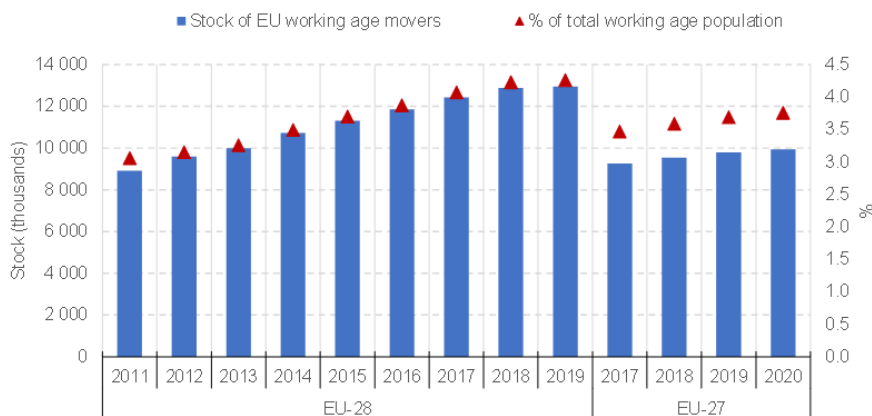
¹ 4 European Commission (2020), [The 2021 Ageing Report](#), Institutional Paper 142, p.4



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.

6. This helps to demonstrate the importance of strengthening a joined-up approach to employment and migration policies. This is further exemplified in relation to efforts to foster the labour market participation of the unemployed domestic workforce, which includes the inactive as well as unemployed EU workers or legally residing third country nationals. Inactivity is rather high across the EU and it can be seen that in Italy the inactivity rate is over 37% and over 30% in a further four Member States (Croatia, Romania, Greece and Belgium). An important part of the response to the EU demographic situation is to increase employment participation by reducing inactivity levels. Another important part of the response is about attracting third country nationals in a way that is better matched than in the past to our actual labour market needs in Europe. These two simultaneous key labour market priorities need to be well coordinated to achieve positive synergies and avoid potential contradictions.
7. Intra-EU worker mobility is also an important facet of well-functioning labour markets yet remains relatively low and continues to be impacted by Covid-related restrictions. As shown in the chart below, the rate of increase in EU movers has decelerated in recent years. Companies and workers face barriers in hiring/taking up employment across borders. These barriers include lengthy and costly procedures as well as a lack of sufficient and easily accessible information necessary while employing EU workers / taking up employment abroad. In this respect, the European Labour Authority can help with the provision of information to companies and workers through setting up a dedicated, on-demand helpdesk function that can provide real-time information to employers and workers.

The rate of increase in EU movers has decelerated in recent years



Source: Eurostat, population statistics [migr_pop1ctz], Milieu calculations.

8. Despite the situation in Ukraine and the ongoing refugee crisis that will need to be managed for some time to come, it is vital that we do not lose sight of our medium to long-term objectives for the EU's economic migration policy. These



labour market challenges demonstrate the complementary role that economic migration can play in helping to address employers' skills needs. Given the extent of labour and skills shortages there is a need to attract third country nationals of all skill levels. Therefore, BusinessEurope sees good potential in the EU Talent Pool initiative.

9. In parallel, it is important to facilitate the labour market integration of those third country nationals already legally residing in the EU. Facilitating the intra-EU mobility of legally residing third country nationals is also an important element in raising the attractiveness of the EU as a destination and in helping to address labour and skills shortages.
10. In relation to the labour market role and integration of third country nationals, both new arrivals and those already legally resident in the EU, including those holding a single permit or long-term resident status, it is important to reflect on the role of labour market tests. These tests² are shaped mainly at national level, including some EU coordination, as exemplified in the 1994 Council resolution on limitations on admission of third-country nationals to the territory of the Member States for employment³, which was formulated in a way that first seeks to restrict the possibility for employers to hire third country nationals. The changing labour market context in Europe calls for a fresh EU approach to labour market tests to achieve well-functioning labour market tests across Europe that are easy to manage for employers and fair for the domestic workforce.

Specific comments

EU Talent Pool

11. BusinessEurope has previously published a series of recommendations and analysis⁴ on the concept of an EU Talent Pool and employers' priorities. These recommendations remain valid and are guiding BusinessEurope's input into the ongoing technical work to establish the pilot version of the pool for Ukraine. They will also feed into the development of the full version of the pool, which should be launched around the middle of 2023.
12. The matching potential is one of the key advantages that BusinessEurope sees in establishing an EU Talent Pool and should be at the centre of the full version, for example through a dedicated matching tool within the pool and making full use of the potential for automated matching. Whereas it is understandable that in the pilot version with refugees the matching process between employers and individuals is facilitated by national contact points, the full version of the pool should be more (technically) mature in a way that an intermediary step to facilitate matching should not be necessary. The full version should enable employers to

² It can be noted that whereas the majority of Member States (seventeen: Bulgaria, Cyprus, Croatia, Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Ireland, Lithuania, Luxembourg, Netherlands, Poland, Slovenia and Slovakia) have a form of test, the nature can vary. Typically, the public employment services (PES) play the lead role, but employers themselves can also fulfil this function.

³ [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31996Y0919\(02\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31996Y0919(02)&from=EN)

⁴ https://www.businesseurope.eu/sites/buseur/files/media/position_papers/social/2021-11-25_final_businesseurope_recommendations_eu_talent_pool.pdf



have direct contact with candidates and vice-versa in terms of candidates being able to directly apply for jobs based on vacancies employers publish in the pool.

13. The Talent Pool needs to be designed in a way that helps to address employers' labour and skills needs in an efficient and effective way. A relevant starting point for the launch of the full version of the Pool would be to base a targeted approach to matching on up-to-date shortage occupation lists
14. Hand in hand with developing the Talent Pool concept, it is important to continue to develop real-time labour market and skills intelligence, which will be a foundation for the successful functioning of improved skills matching across Europe. As part of the EU social dialogue work programme 2022-2024, the European social partners have agreed to undertake a joint research project on improving skills matching in Europe. As part of these efforts, and of a Talent Pool, it will be important to enhance the EU's capacity to gather and interpret comparable and credible data on the need for third country migration.
15. Following the expected launch of the pilot version of the pool in the autumn, it will be important to immediately continue the developmental work for the establishment of the full version of the pool, taking into account the user experiences of the pilot version.

Improving the governance of labour migration at EU level

16. BusinessEurope has previously called for the EU's legal migration policy to evolve into a model based on the stronger coordination of national immigration policies⁵. Such an approach would allow Member States to address their varying needs for skilled migrant workers while doing so in a way that is broadly coordinated at EU level.
17. In this vein, the Commission's proposal to foster greater cooperation between employment and migration policies through the creation of a new platform is very welcome. It is particularly encouraging that this platform aims to discuss concrete, practical issues related to labour shortages and issues linked to the labour market process and that these discussions could feed into political level exchanges such as in the Council and the European Parliament.
18. As part of its ongoing work on labour and skills shortages, BusinessEurope has already proposed that the European Commission should include in its 2023 work programme the preparation of an action plan aiming to give shape to a well-coordinated EU strategy drawing on EU employment, skills, single market and migration policies. This action plan should take stock of important initiatives such as the EASE recommendation, the EU skills agenda, a future EU talent pool, and make a better use of the EU directive on recognition of professional qualifications 2005/36/EC to improve the match between the available workforce at global, EU and national levels and job vacancies.

⁵ https://www.busesseurope.eu/sites/buseur/files/media/position_papers/social/2019-09-24_future_migration_policy.pdf



19. Therefore, we see a particular importance in the voice of employers being heard via such a platform and BusinessEurope would be pleased to contribute to the discussions, feeding in the views and experiences of our national member federations.

Single Permit Directive

20. BusinessEurope supports the overarching aim of this directive as concerns facilitating the procedure for the admission of third-country nationals to Member States for the purpose of work and enabling them to access employment as soon as possible. Specific comments on the main articles of relevance for BusinessEurope are as follows:

Article 2: Definitions

21. A new Article 2C is added to define an employer in the context of this directive as meaning “*any natural person or any legal entity, including temporary work agencies, for or under the direction and/or supervision of whom the employment is undertaken*”. This addition also relates to a new recital 6, which directly refers to the role of temporary work agencies and reads as follows: “*This Directive should cover employment relationships between third-country workers and employers. Where a Member State’s national law allows admission of third country nationals through temporary work agencies established on its territory and which have an employment relationship with the worker, such agencies should not be excluded from the scope of this Directive.*”
22. BusinessEurope questions why there is a need to define an employer within the specific context of this directive, especially when such an approach does not appear to have been taken in other directives, such as, for example, in the recently revised Blue Card Directive. This is a matter that is best left to the national level, as applicable.

Article 3: Scope

23. Article 3.2(h) of the current directive states that the single permit directive does not apply to beneficiaries of protection in accordance with national law or international obligations. The revised proposal deletes this point, meaning that beneficiaries of international protection would be able to apply for a single permit. In the current context and in view of the need to increase the size of the labour force in the EU, BusinessEurope considers this to be a relevant approach to take.

Article 4: Single application procedure

24. Article 4.1 outlines the approach to the submission of applications for a single permit, i.e. that this can be done by an employer or a third country national. The new proposal seeks to facilitate the process in cases when third country nationals are submitting the application by enabling them to make the submission from a third country or from a Member State in which they are already legally residing.



25. Article 4.3 also seeks to facilitate the application process by stipulating that when a Member State issues a single permit it shall also issue the requisite visa. This new addition aims to avoid a situation whereby the issuing of a separate entry visa is rejected or delayed if the requirements for issuing a single permit have been met.
26. In terms of efforts to simplify and facilitate the application procedure, both of these amendments appear relevant and could shorten the time that it takes for applications to be made and, therefore, for third country nationals to begin working in their destination Member State.

Article 5: Competent authority

27. The proposal to amend Article 5 would mean that within the four-month timeframe a decision should not only be taken on the complete application, but also that any checking of the labour market situation and issuing of a visa (as per Article 4 above) is also carried out within this period.
28. In the same vein as the amendments to Article 4, this aims to achieve an efficient process for the issuing of single permits and related aspects, including if a labour market test is to be conducted, and would, therefore, be a positive development.

Article 11: Rights on the basis of the single permit

29. Whereas the current directive provides that third country nationals can only be employed by a single employer, as linked to the issuing of the permit, the revision proposes that a single permit holder can be employed by a different employer than the first employer with whom the permit holder concluded a contract of employment. Such a change of employer should be communicated to the competent authorities and is subject to a check of the labour market situation. The possibility to change employer may be suspended for a maximum of 30 days while the Member State concerned checks the labour market situation and verifies that the requirements laid down by Union or national law are fulfilled. The Member State concerned may oppose the change of employment within those 30 days.
30. These provisions aim to enhance the rights and protection available to third country workers. At the same time, they could be read as having a labour market benefit in terms of affording third country nationals more flexibility in terms of their employment opportunities by not tying their permit to one employer, thereby also helping to address broader labour market needs. BusinessEurope welcomes this approach.
31. As concerns the process around labour market tests, in some countries, such as Czech Republic, Luxembourg and Poland, the PES search for suitable candidates in the unemployed registry and refer them to the employer. This intermediary, or mediation, role played by the PES with jobseekers and employers makes the process much more complex. A simpler approach, such as in Italy or the Netherlands, involves the employer submitting the proper documentation, the PES performs the labour market test by simply publishing the



vacancy and gives or denies permission to the application without playing the intermediary role between jobseekers and employers. Spain and Latvia also have lite approaches, which are not described as a labour market test per se, although there are similar elements to such tests.

32. BusinessEurope highlights that Member States should avoid placing unjustified administrative burdens on EU employers when hiring third country nationals, including by revisiting and improving, as appropriate, the approach to, and role of, labour market tests relative to the legal basis of the 1994 resolution, which is almost 30 years old.

Article 13: Monitoring, risk assessment, inspections and penalties

33. Article 13 includes completely new proposals that aim to reinforce equal treatment provisions as well as discouraging potential infringements by employers. Suggested preventive measures include monitoring, assessment and, where appropriate, inspections in accordance with national law or administrative practice.
34. While noting that the vast majority of employers go about their business in a correct and proper manner, including as concerns the employment of third country nationals, BusinessEurope recognises the relevance of penalties for cases of fraudulent non-compliance, where needed, and that these should be effective, proportionate and dissuasive, and take into account national labour market circumstances. There may also be situations where employers are not fully aware of their duties, and it is therefore essential for the relevant authorities, particularly the Public Employment Services, to provide the necessary information to employers for them to be well aware of the applicable rules.
35. It is also proposed that Member States shall ensure that services in charge of inspection of labour or other competent authorities and, where provided for under national law in respect of national workers, organisations representing workers' interests have access to the workplace. In this respect it is important to underline that trade unions do only have access to workplaces where this is compatible with national law and/or in cases where unions are recognised in the workplace. Equally, the possible involvement of trade unions and employers' organisations in inspections should only occur in instances where there is an established national practice and the need for this is to be assessed on a case-by-case basis.

Article 14: Facilitation of complaints and legal redress

36. This Article is entirely new and proposes that Member States shall ensure that there are effective mechanisms through which third country workers may lodge complaints against their employers either directly; via a third party that has a legitimate interest in ensuring compliance with the directive or through a competent national authority.
37. It is also proposed that such third parties may engage either on behalf of or in support of a third-country worker, with his or her approval, in any judicial and/or administrative procedures aimed at enforcing compliance with this Directive.



38. BusinessEurope is concerned with the proposal that third parties with a legitimate interest in ensuring that the provisions of the Directive are complied with can engage on behalf of or in support of third country nationals in judicial or administrative proceedings.
39. We believe that this issue is best addressed in the context of national legal systems. It is also important to stress that an individual must give permission for any associations, organisations or other legal entities to represent them.

Long-Term Residents Directive

40. BusinessEurope supports the overarching goal of improving the possibilities for third country nationals to achieve the status of EU long-term resident, including the accompanying mobility opportunities. This can help to contribute to improving the attractiveness of the EU as a destination for skilled third country nationals, including as concerns facilitating labour market access in order to help address labour shortages and skills mismatches, including through intra-EU mobility of third country nationals. Specific comments on the main articles of relevance for BusinessEurope are as follows:

Article 4: duration of residence

41. The changes to Article 4 propose that third country nationals can achieve long-term resident status after 5 years of legally and continuously residing in a member state. These changes mean that in order to get to the 5 years it will be possible for third country nationals to spend part of that time in other member states, even though they must have been legally and continuously resident for 2 years in the member state where the application for long-term resident status is submitted. In this respect the proposed changes seek to promote the intra-EU mobility of third country nationals.
42. BusinessEurope also views these changes in relation to the new recital 10, which broadens the understanding of qualifying periods of residence to include periods of study or vocational training; residence as a beneficiary of national or temporary protection; or residence based solely on temporary grounds.
43. It is also noted that recital 17 seeks to promote circular migration by allowing EU long-term residents to be absent from the EU for up to 24 consecutive months without losing their long-term resident status. If such third country nationals are absent for longer, Member States should establish a facilitated procedure for the re-acquisition of long-term resident status.
44. BusinessEurope broadly welcomes these new provisions, which would facilitate the opportunities for acquiring long-term resident status, which would also encourage their labour market participation to the benefit of the Member State where the application was made, other EU Member States, or third countries including those of origin. The increased opportunities for intra-EU mobility can in particular help to foster a better matching of labour supply with demand, while



simultaneously helping to increase the attractiveness of the EU to third country nationals.

Article 15: Family members

45. A new Article 15.1 provides that the children of an EU long-term resident who are born or adopted in the Member State that issued the EU long-term residence permit shall automatically acquire EU long-term resident status, following a request from the long-term resident (parent).
46. Whereas this provision relates to children and does not have an immediate labour market impact, it could be viewed as contributing to the overall attractiveness of the EU as a destination for skilled third country nationals and, therefore, would be a positive addition to the directive.

Article 17: Residence in a second Member State

47. Article 17.4 provides that long-term residents seeking to perform a regulated profession in a second Member State and who are applying for a residence permit to do this, shall be treated in the same way as EU citizens as concerns the recognition of their professional qualifications.
48. Article 17.5 also seeks to make the process more efficient for long-term residents to commence work or study in a second Member State by stipulating that they can start this not later than 30 days after the date of submission of the completed application.
49. These articles seek to facilitate the labour market activity of third country nationals with long-term residence status who move to a second Member State, which could, therefore, be viewed as contributing to reducing skills mismatches and labour shortages. These articles are also to be viewed in conjunction with recital 34 which states that *“In order to facilitate the intra-EU mobility of EU long-term residents for the exercise of an economic activity in an employed or self-employed capacity, no check of the labour market situation should be carried out when examining applications for residence in a second Member State.”*
50. The proposal to not conduct a labour market test for a third country national with long-term resident status that plans to move to a second member state can also be viewed as positive from the point of view of utilising the potential of the intra-EU mobility of third country nationals to help address employers’ skills needs.
