

ETUC Position on the European Commission 'Skills and Talent Package'

Background

On 27 April 2022, the European Commission presented its [Communication Attracting skills and talent to the EU](#), as a follow up to the Commission's [Pact on Migration and Asylum](#), adopted on 23 September 2020. The ETUC is of the view that the Pact included a very limited number of proposals on labour migration, which have been over-shadowed by a significant focus on deportations and border controls. It is a great disappointment that labour migration has been framed around the EU's need for 'attracting the talents'.

The Communication includes legal, operational and policy initiatives in the area of labour migration. As part of the legislative framework, the Commission proposes the recast of the [Single Permit Directive](#) and the [Long-Term Residents Directive](#). The Commission is also proposing to step-up operational cooperation at EU level between Member States as well as with partner countries through the so called 'Talent Partnerships', and the development of an 'EU Talent Pool'. A specific action to support Ukraine refugees has been developed under the so called 'EU Talent Pool Pilot'.

ETUC Position on the recast of the Single Permit Directive (SPD)

On 27 April 2022, the European Commission presented its [Communication Attracting skills and talent to the EU](#), which included legal, operational and policy initiatives in the area of labour migration. As part of the legislative framework, the Commission proposes the recast of the [Single Permit Directive](#).

This proposal aims at amending Directive 2011/98/EU. This covers the single application **procedure** for a single permit for third-country nationals to reside and work in the territory of a Member State and a common set of **rights** for third-country workers 'legally' residing in a Member State.

Based on the [ETUC Resolution on Fair Labour Mobility and Migration](#), the Commission's proposal to review the SPD was an opportunity to increase labour market coherence and mobility, and to **tackle labour exploitation**. The harsh reality that trade unions encounter on a daily basis is that migrant workers in the EU are not treated equally, face abuse and labour exploitation, which can result in severe forms like forced labour and human trafficking for the purpose of labour exploitation. For this reason, the recast of the SPD is of high priority for the ETUC.

One of ETUC's demands was to **expand its scope and application**, in particular by: extending the use of applications from within the country and including other categories of workers in precarious situations; and by clarifying the continued validity of permits in case of loss of employment to source alternative work. These are vital tools to facilitate job-matching and labour mobility, and to tackle potential abuses stemming from dependence of migrant workers on a particular employer.

The proposal expands the scope to workers who are beneficiaries of national protection statuses, however, it continues to exclude seasonal workers. It also introduces a definition of an employer, which includes temporary work agencies.

Temporary work agencies should be curtailed as much as possible, particularly when it concerns migrant workers in sectors with high risk of labour rights violations.

The SPD shall include provisions to prevent forum shopping and artificial cross-border arrangements, Member States shall only issue single permits for the purpose of work habitually carried out on their territory. To this end, Member States shall provide for adequate measures to protect third-country workers from abuse through fraudulent postings to other Member States. In the single application procedure and in the monitoring of employers, due regard should be given to the provisions of Regulation (EC) No 593/2008 of the EP and of the Council ('Rome I') or the Rome Convention, in order for the competent authority to verify that the Member State concerned is in fact the habitual place of work. To ensure the proper enforcement of this Directive, Member States shall therefore provide for measures to prevent possible infringements by employers in regards to the habitual place of work of their third-country workers, thereby also giving effect to the Employers Sanctions Directive.

It is welcomed that the proposal requires MS to accept applications for the single permit both from inside and from outside the country. However, article 4 keeps referring to the 'legal' status of the migrant worker; and therefore, excluding undocumented migrant workers. Applicants should always be granted the choice between remote and in-person service provision and have the opportunity to submit documents relevant for the procedure both electronically and physically.

On the **right of access to information** (Article 9) it is positive that MS have the obligation to make 'easily' accessible information on entry and residence conditions, obligations, rights and procedural safeguards for the workers and their family members. To be strengthened, this should include labour and trade unions, and **complaints mechanisms** in a language they will understand before leaving the country. Upon arrival, they should receive a short introduction of the country and information on labour rights.

Regarding Article 10 on fees, ETUC recalls the ILO principle according to which there should be no fees borne by the worker in relation to their recruitment from public or private placement and employment services. Member States may require applicants to pay fees, where appropriate, for processing applications **to issue and renew single permits** in accordance with this Directive. The level of such fees shall be **affordable** and proportionate, and shall be based on the services actually provided for the processing of applications and the issuance of permits **and their renewals**. **When such fees are paid by the employers, they shall not be recoverable from the third-country national.**

The introduction of new provisions (Article 11) is welcomed, these give the **right to the worker to change employer** during the period of a permit's validity. Appropriate and sufficient safeguards must be in place to protect migrant workers from labour exploitation and abuse.

Information must be systematically provided to permit holders in an accessible way on rights, procedures (including the right to change employer), who to turn to for information, advice, in case of labour dispute, particularly to trade unions. It would be important to clarify if the worker will be able to change employer more than once during its validity and whether there are any checks on workers changing to an employer based in another Member State.

It would be important to introduce an obligation on the new employer before the start of the new employment to communicate to the competent authorities (be that within a Member State, in cases where another authority is concerned) of any change, providing information on at least the name and address of the employer, the habitual place of work, the type of work, working hours, and remuneration.

In the Commission proposal, MS may suspend or oppose the change of employment (within 30 days), while the MS concerned checks the labour market situation. The ETUC believes that no labour market test should be applied to migrant workers who are already holders of a single permit. It could be of relevance to introduce the obligation on MS to check that the employment and working conditions are in compliance with applicable labour standards. The rights of the worker should be strengthened during the period that MS is reviewing the request of a change of employer.

It is a reality that even if permits allow workers to change employers, it is not always possible, resulting in people losing their status due to exploitation and job loss. In this sense, the proposal introduces the obligation to MS not to withdraw the single permit for a maximum **period of three months in the case of job loss**. The ETUC advocates for a longer period – **nine months** - to allow time for job searching, as it would be more realistic and coherent with existing EU standards. Issues related to the access to unemployment benefits, subsistence, housing and access to the labour market during this period remain unsolved.

It is essential to provide migrant workers equal treatment together with national workers (under Article 12) . The ETUC advocates for an improvement, considering harmonisation with the Seasonal Workers Directive and the Directive on Transparent and Predictable Working Conditions regarding terms of employment and transparent and predictable working conditions, working hours, paid leave and holidays, as well as health and safety and training at the workplace. ETUC advocates for the addition of the right to strike and take industrial action, including the right to negotiate and conclude collective agreements. Discriminatory restrictions on social security, access to good and services and housing should be removed. It would be important to clarify that housing costs should not be deducted directly from their remuneration and that the rent contract should be decoupled from the work contract to avoid dependency on employers. Decent standards for housing must be ensured .

Lastly, Articles 13 and 14 addressed the ETUC demands on the need to strengthen the equal treatment provisions on the monitoring and effective complaint mechanisms. Article 13 includes monitoring, risk assessment, inspections and penalties, which shall be implemented in accordance with national law and practice. It would be important to include the obligation to MS to cooperate with social partners on measures to prevent possible infringements by employers. The penalties shall include, among others, publicly registering infringements conducted by employers, administrative and financial penalties, such as fines or the payment of compensation, and the exemption for employers from public procurement procedures. 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, in particular trade unions, have access to the workplace and, with the agreement of the worker, to their housing.

The same provisions on **facilitation of complaints** (Article 14), as provided under the Seasonal Workers Directive, have been added. Migrant workers may lodge complaints against their employers directly or through third parties, with their

approval, in any related judicial and/or administrative proceedings. Member States should ensure that migrant workers have the same access as nationals do for protection against dismissal or other adverse treatments by the employer. It is important to apply the legislation and regulations of different national labour systems, such as collective bargaining rights and trade union prerogatives. There is no provision that specifies that personal data on workers gathered through labour inspections and complaint mechanisms should not be used for immigration enforcement purposes. Safeguards for the migrant worker shall be introduced in cases of labour exploitation and abuse, in order for the worker not to lose its work and residence permit. The ETUC advocates for a transitional permit valid for twelve months to be introduced in such cases (obligation on MS to grant this permit).

The ETUC Assessment on the recast of the Long-Term Residents Directive (LTR)

The recast of the LTRs Directive was intended to create a more effective, coherent and fair system to acquire EU LTR status, in particular by strengthening the right of LTR to move and work in other MS. The ETUC welcomes and supports the revision of the LTR as an opportunity to strengthen the status granted to residents.

While keeping the required residence period of five years as a general rule, the proposal introduces two changes that would facilitate the acquisition of the LTR status in situations of mobility between MS. First, the Commission proposes to allow cumulating residence periods in different Member States to reach the five-year threshold. Second, that persons who already acquired LTR status in one MS should only need three years to acquire the status in a second MS.

- **Scope and duration of residence (Art.3 & 4)**

The personal scope of the directive is clarified but it remains restricted and unclear. For example, Ukrainians refugees who have obtained temporary protection in the EU remain outside of the LTR status.

The ETUC demands to reduce the five-year limit to three is not part of proposal. However, the inclusion of any period of residence as holder of long-stay visa or residence permit under Union or national law including study, training, national or temporary protection, or other temporary status is counted in the five years waiting period is welcomed. Nonetheless, residence under short-term visas do not count – seasonal workers and au pairs are excluded – and the holder should have accumulated *two years of legal and continuous* residence in the MS applying (residence in different MS is accepted).

Intra-EU mobility rights

The ETUC was of the view that mobility within the EU should be made easier and more convenient for those in possession of this permit and ensure greater harmonisation in the treatment of people who move from one MS to another; as well as in the services and rights made available to the LTR and their families, such as: tax treatment, social security, social protection.

- **Equal treatment (Art.12)**

The proposal extends the LTRs' equal access to social protection and social assistance, by removing the possibility for MS to limit such access to core benefits. It is clarified that LTRs should have the same right as nationals with regard to the acquisition of private housing.

It aligns the definition of social security and the right to the export of pensions and family benefits to the provisions of the most recent legal migration Directives. In particular, reference is made to Regulation (EC) No 883/2004 with regard to the definition of social security (point d of paragraph 1); EU long-term residents or their survivors moving to a third country should receive statutory pensions under the same conditions and at the same rates as the nationals of the MS concerned, where such nationals move to a third country, in line with other legal migration Directives (paragraph 6).

•Family rights (Art.15)

The ETUC welcomes the new provision for MS's obligation not to apply *conditions relating to integration for the purpose of family reunification* and not to apply any time limit in respect of access to the labour market for family members. As well as the automatic acquisition of the LRT status for children of LTR residents born or adopted in the territory of the MS that issued the permit. It also welcomes the obligation for LTRs to enjoy equal treatment with regards to recognition of professional qualifications.

•Access to information (Art.27)

Another important aspect that ETUC highlighted, was that during the application procedure for LTR status information needs to be given about the existence of the permit, the rights and safeguards attached to it. The new proposed article on the obligation to make 'easily accessible' information to applicants on documents for application, status acquisition, conditions (rights, obligations, procedural safeguards) is welcomed. It could be expanded for people who acquire LRT status the obligation to 'provide' and must include information on living and working conditions in other MS, including labour and trade union rights in the relevant language.

To sum up, the ETUC believes that both legislative proposals are a positive step forward. Many of the ETUC demands have been considered. There are some elements that could be strengthened, particularly, in the recast of the SPF for the rights and protection of the migrant worker (change of employer, in-country applications, access to information) and in the LTR on measures to improve access to settled status and avoid irregularity. In the latter case that the scope is also clarified and does not exclude certain categories of migrants and refugees. It should be improved in a way that allows TCNs to have a long-term perspective on their integration and social inclusion in Europe.

The ETUC's Assessment on the Talent Partnerships and the EU Talent Pool

The Commission proposes a number of steps to operationalise the Talent Partnerships, with the aim of agreeing on the first **Talent Partnerships (Egypt, Morocco and Tunisia)** by the end of 2022. The work of the Talent Partnerships will build upon pilot projects developed with these partners, expanding their scope and level of ambition, and mobilising all relevant stakeholders in the process. According to the Commission they will target all skills levels in various economic sectors including ICT, science, engineering and health care.

The ETUC remains critical about these Partnerships and is concerned about the trend towards the use of bilateral labour migration agreements and partnerships with third countries as a means of labour migration governance. Those that are in place and that will be developed need enhanced **safeguards, protection and rights for migrant workers**.

They should build on lessons learnt from the pilot projects and have an adequate regulatory framework addressing areas of potential improvement identified by stakeholders, including trade unions. It should address the need for **transparency, information and involvement of trade unions** both in the countries of origin and destination at relevant levels, coverage of recruitment fees and travel costs by employers, as well as access to information for workers, including labour and trade union rights, complaints and redress mechanisms.

In this sense, the ETUC reiterates its calls on the Commission and MS to promote **fair recruitment standards**, including bans on abusive practices and recruitment fees. This should build on the extensive work of ethical recruitment policies and principles of the ILO and the WHO Global Code on the International Recruitment of Healthcare workers, including social partner initiatives such as the EPSU-HOSPEEM Code of Conduct. In addition, the ITUC Migrant Recruitment Advisor tool allows migrant workers to: review the performance of recruiters against the ILO Fair Recruitment Principles, address grievances and inform evidence-driven fair recruitment.

In relation to the **EU Talent Pool**, the Commission is proposing to establish the **first EU-wide platform and matching tool**, to 'make the EU more attractive for non-EU nationals looking for opportunities and help employers find the talent they need'. To address the urgent need to facilitate access to the labour market for Ukraine refugees, the Commission is proposing a **pilot initiative**. The launch of the EU Talent Pool Pilot is foreseen sometime in October 2022.

The ETUC remains highly critical on the development of such a matching pool, which seems to take us back to earlier models of labour migration designed for, and driven by, employers, which the ETUC clearly rejects. There are several aspects that the Tool should consider, such as the fact that there is no legal basis for the set-up of such instrument, its governance and accountability, including the involvement of trade unions in both origin and EU countries at all relevant levels.

Furthermore, the EU Talent Pool Pilot will now be implemented using the EURES IT platform, through a dedicated landing page, which will contain information and instructions on how to use the Pilot and the underlying EURES functionalities. The participation of Member States in the Talent Pool Pilot initiative remains on a voluntary basis.

A key aspect is who and how the working and employment conditions will be checked, not only on the EU Talent Pool platform but also within the Pilot. So far this responsibility lays with the National Contact Points, so there will be different levels of protection in different member states. If the national contact points are to retain this key role, a formal legal basis will be required to make any criteria mandatory for Member States.

It is not only about 'matching' the skills but about the possibility to access decent and good quality jobs based on the principle of equal treatment. In particular, in the Talent Pool pilot, there should be no discrimination and/or unequal treatment. It should be noted that all beneficiaries of temporary protection and/or adequate protection under

national law with access to the labour market would be able to access the Pilot Tool. In some countries, like in Spain, this includes TCNs or stateless persons who were regularly residing in Ukraine before 24 February (and their family members) and UA nationals who were in an irregular situation in Spain before 24 February and who, as a result of the conflict, cannot return to Ukraine¹.

There is also another aspect to be considered regarding the validation and recognition of skills and qualifications, which is a practical barrier that migrant workers experience. Ukraine refugees have shed further light on this basic and critical aspect. Beneficiaries of temporary protection have the right to access the EU labour market, vocational education and training and adult learning. In this sense, the Commission rightly suggested that MS, when taking measures regarding mapping and recognition of skills and qualifications, ensure that people's skills and qualifications can be valued, assessed and swiftly recognised, as necessary, whether or not documentation is available. However, proper implementation is lacking. It needs to be noted that these measures should be extended to other refugees who are victims of wars, such as in Yemen, Afghanistan, Syria, Ethiopia, Gaza, and Myanmar.

Data protection considerations, such as how the data will be collected and processed, should be part of the public portal. There should be strict safeguards for the migrant workers concerned.

Lastly, the Commission will launch a **new platform** that will enable discussions on practical issues of **labour migration**, in particular on the external dimension of migration policy, labour shortages and issues linked to the labour market processes. The operationalisation of Talent Partnerships and the EU Talent Pool would be supported by the work of the platform.

The ETUC urges caution on labour shortages resulting from poor working conditions, unfair wages, lack of active labour market policies or under-investment in education and training. It is up to companies to improve working conditions and wages, to governments to ensure effective ALMP and education and training policies, and not up to migrant workers to assume the cost of their inaction. The ETUC recalls the words of the founding Declaration of Philadelphia for the ILO that "labour is not a commodity".

Next steps

With regards to the legislative initiatives, the ETUC set up a Working Group in order to assess the possible amendments to push forward with the European Parliament. The ETUC will engage throughout the legislative process, so that trade unions' demands are taken into account. As for the Talent Partnerships and Talent Pool, the ETUC will critically engage with the European Partnership on Integration and the Talent Pool group set up by the Commission and under the coordination of the EMN. The ETUC will also request, and engage, in the new platform on labour migration once set up.

¹ Countries such as Germany, Spain, the Netherlands and Luxembourg have chosen to extend the scope of the TPD, whereas countries including Hungary and Poland decided on a limited scope. See ECRE's Info Sheet.