

Expert Group on Economic Migration

Discussion paper N°1

BETTER MANAGING LABOUR MIGRATION AT EU LEVEL

Disclaimer: This paper has been drafted by the Commission services for the sole purpose of facilitating discussion within the Expert Group on Economic Migration and getting feedback from the experts. It concerns third-country national workers and does not relate to mobility of EU citizens. It does not necessarily represent the views of the European Commission and does not bind the Institution as to any future decision that might be taken in respect of the issues discussed in the paper.

1. Introduction

The development of a "new policy on legal migration" is one of the ten priorities identified by President Jean-Claude Juncker in his Political Guidelines.¹ Such a policy should help the EU to better address skills shortages and mismatches and to attract talent, in order to better cope with the future demographic challenges (see annex) and make the EU more attractive and competitive on the world scene. This will include a review of the so-called "Blue Card" Directive² on highly skilled workers (see *Discussion paper N°2*).

These issues will be addressed in the comprehensive "European Agenda on Migration", that the Commission will put forward later this year.³

2. The EU labour migration legal framework

EU labour migration policy making is a shared competence between the EU - which can define the admission rules and conditions, as well as the rights, of third-country nationals admitted on EU territory – and its Member States, which remain responsible for determining the number of workers they admit, be them employed or self-employed (Article 79 TFEU). So far eight Directives have been adopted at EU level, four of which regulate admission for work purposes, both low and highly skilled.⁴ One draft Directive,⁵ aiming inter alia at further facilitating the admission conditions and the

¹ http://ec.europa.eu/priorities/docs/pg_en.pdf#page=10.

² Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0050&from=en>

³ http://europa.eu/rapid/press-release_IP-15-4545_en.htm.

⁴ In addition to the **Blue Card Directive** mentioned above, there is Directive 2011/98/EU on a single application procedure for a **single permit** for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State; Directive 2014/36/EU on the conditions of entry and stay of third-country nationals for the purpose of employment as

intra-EU mobility of students and researchers, is currently under negotiations. This "sectorial" approach as regards EU rules on legal migration has often been criticised for having led to a fragmented and not always consistent legal framework on the admission of third-country nationals to the EU.⁶ Moreover, even for those categories of third-country nationals covered under the legal migration Directives, the degree of harmonisation is, for some aspects, limited given that Member States retain a certain room for manoeuvre.⁷

EU rules on legal migration provide added value to the extent that they can regulate issues difficult to address at national level only. The most obvious example are EU rules providing EU-wide mobility rights for foreign workers, allowing them to stay and work in multiple EU Member States based on a single permit, recognised by other Member States as valid to stay and reside on their territory. Several Directives include mobility provisions (Long-term Residents, Blue Card, researchers, students), but mobility for work based on the "mutual recognition principle" - to a certain extent at least - was introduced for the first time in the ICT Directive. Similarly flexible mobility rules are likely to be developed for students and researchers as well.

EU-wide permits can also leverage the EU's recognition as an attractive migration destination, something with which smaller Member States may struggle. Moreover, aligning immigration policies allows the EU to present a single face in its relations with third countries, for example in free trade negotiations. Last but not least, EU rules on equal treatment, covering a broad range of aspects (e.g. working conditions, access to education, social security and goods and services) have contributed to creating a level-playing field as regards rights of (labour) migrants, even if certain exceptions and derogations remain possible in some cases. The rights given by EU Association, Stabilisation and Association, or Cooperation Agreements to nationals of certain third countries working in the EU complements equal treatment rights contained in the legal migration framework.⁸

3. EU Labour migration policies and labour market needs: assessing skills and labour shortages for better job matching

The EU labour market remains, to a large extent, managed at national level so that we can rather speak of several EU labour markets, reflecting inter alia Member States' different economic situations, welfare systems etc. Generally speaking, EU Member States have traditionally opted for

seasonal workers; and Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an **intra-corporate transfer**. On the Blue Card, see Part II.

⁵ Proposal for a Directive on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing (COM(2013) 151).

⁶ This is the consequence of the Council having rejected the Commission initial approach of proposing a framework Directive on admission for economic purposes (COM(2001)386, "Conditions of entry and residence of third country nationals for the purpose of paid employment and self-employed economic activities").

⁷ This is also linked to the fact that it is only with the entry into force of the Lisbon Treaty, on 1st December 2009, that decisions within the Council are taken by qualified majority (instead of unanimity) and that the EP has become co-legislator in the area of legal migration.

⁸ For example, the Agreement establishing an Association between the European Economic Community and Turkey ("the EEC-Turkey Agreement"), OJ 1964 217, p.3685 and its Additional Protocol of 23 November 1970, OJ 1972 L293, p.1.

demand-driven labour migration policies, where a labour migrant is only admitted if he/she has already found a job in Europe.⁹ A notable exception is schemes which allow non-EU graduates a job-seeking period upon completion of their studies.¹⁰ Demand-driven schemes (e.g. requiring a contract before entry) suffer from the absence of a global labour market, preventing contacts between employers and potential labour migrants and proper labour matching. They therefore tend to underperform when used to address local shortages of qualified workers. There are usually no provisions and ways to directly engage employers. Current demand-driven policies in Member States often do not place any numerical limits on highly-qualified workers, relying instead on admission criteria to manage immigration. This is quite different from systems that have been developed by other countries, such as Canada, Australia or New Zealand (*see Annex for more details*).

Demographic imbalances and skills mismatches in the workforce can only be observed and quantified to a limited extent, and translating this into a selective labour migration policy is fraught with difficulties. Actual labour shortages per occupation should best be determined at a very detailed level of occupational classification, which is rarely available at country (or EU) level. Shortages can also shift over time, which could result in inadequate policy responses if the time between the measurement of the shortage and the adaptation of the migration policy is too long.

At EU level, several relevant tools have been developed. The **EU Skills Panorama**¹¹ brings together data on skills trends in occupations, shortages and mismatches. **EU level Sector Councils on Employment and Skills**¹², consisting of representatives of the supply side of labour (trade unions, educational organisations) and the demand side (employment organisations), were set up to gain insight into the likely developments in employment and skills needs in each economic sector. The EU supports **Knowledge and Sector Skills Alliances** to bring together companies and education providers to identify skills needs and develop training accordingly. The **EURES Portal** is the most visible element of the EURES network and contains job vacancies from across the EU.¹³ Although the support services are only available to EU citizens and foreign residents in the EU, the Portal is searchable by anyone, anywhere. It also allows EU jobseekers (EU citizens and foreign residents) to register their CVs. The **EU Immigration Portal**¹⁴ provides a multi-lingual overview of admission channels available per Member State and per category of worker. An internal reflection is ongoing on how to further develop such tools, including to better cover the migration dimension. **Mobility Partnerships** offer a flexible framework for the EU and its Member States to engage in innovative projects and to tailor policies (not only admission schemes, but any related policy) to partner countries.

⁹ Notable exceptions are NL ("Orientation year highly educated persons", for PhD graduates from a NL university or one that is in the top-200 in any of three international rankings), DK ("Green Card") and UK ("Tier 1"). Other MS introduced and then abandoned sponsor-based job-seeking schemes (e.g. IT 2000-2001).

¹⁰ Several EU countries allow post-graduation extension for job search: DE (18 months), FR, IT, NL, PL (12 months), IE, AT, DK, EE, FI, SE (6 months). The Commission's proposal for a recast Directive on Students (under negotiation in Council and EP) also foresees such job-searching period.

¹¹ <http://euskills Panorama.cedefop.europa.eu/>

¹² <http://ec.europa.eu/social/main.jsp?catId=782&langId=en&newsId=743&furtherNews=yes>

¹³ In March 2015 it contained 1.48 million vacancies. These are the job vacancies registered and processed by public employment services of all the Member States, estimated to be about 40-45% of the entire job vacancy market in the Union. <http://ec.europa.eu/eures>

¹⁴ <http://ec.europa.eu/immigration/>

These tools could be further developed by the EU, together with stakeholders, to provide information to employers and migrants, and to facilitate job/worker-matching. The "expression of interest" systems introduced elsewhere in the world (New Zealand, Australia and Canada) rely on similar tools to identify potential labour migrants and link them with interested employers. Information campaigns (pre-departure or other), administrative capacity-building (e.g. in the employment services of the partner country), and labour matching could be undertaken in specific countries of origin. Ways to ease or support the recognition of qualifications could be explored. The extension of EU programmes aimed at facilitating mobility of (potential) workers, such as student exchanges or Erasmus for Young Entrepreneurs exchange programme, to selected third countries is possible. The take-up of EU standards and practices in countries of origin, in particular in the neighbourhood, can facilitate recruitment and migration from those countries.

In adopting any policies, special care should be given not to encourage unfair competition between workers (migrant and EU-native) or between companies (large and small). A buy-in by employers in any labour matching scheme should be ensured.

4. Labour market integration of migrants

While managed labour migration is essential, its impact remains nevertheless relatively small if we consider the nature of the migratory flows to the EU, i.e. the fact that most migrants enter the EU for reasons other than employment and the fact that admission rules do not strongly influence the decision to migrate, even for labour migrants.¹⁵ This means that labour market integration policies deserve as well special attention, to ensure that skills, competences and qualifications of migrants do not remain under-used, to the benefit of both the migrant and the hosting society.

The recognition of non-EU qualifications and skills remains one of the most important hurdles for labour migrants. Firstly, it is often required as part of the admission procedure: it can add significant time to it and in some cases the required qualification can be very narrowly defined in relation to the job, resulting in rejected applications of otherwise able and qualified labour migrants. Secondly, the procedures are not always transparent, are generally quite burdensome and differ substantially between Member States, or even between regions of the same Member State.

While not, in itself, an instrument for recognising qualifications, the European Qualifications Framework (EQF) can play an important role in making levels of qualifications more transparent and comparable. So far the focus of the EQF has been largely on making qualifications comparable across the EU, however its potential to be used also in comparing qualifications from within and outside of the EU is being explored. Other European instruments for documentation of skills and qualifications such as the Europass framework are being reviewed and specific needs of third-country nationals could be considered.

Studies also show the importance of language training, in particular if it is on-the-job and/or job-specific. This holds true for all destination countries, even those where English is the main (working)

¹⁵ In 2013, 2.357.583 million residence permits (covering stays of 3 months or more) were issued in the EU28 - 29 percent of which for family reunification, 23 percent for employment and 20 percent for studies. The beneficiaries were mainly from Ukraine, India, USA and China.

language). Few EU Member States have a large pool of potential labour migrants who already speak their national language, making language training even more important but also more challenging.

Questions for discussion:

1. Taking account of respective EU and Member States' competences in the area of labour migration, what should be the focus of the EU action in this area for the future? More specifically:
 - a. Would there be an added value in easing intra-EU mobility (either based on mutual recognition of permits or on a much more facilitated access to another Member State territory and labour market) to categories other than intra-corporate transferees (e.g. long term residents; all non-EU workers¹⁶)? Are there other areas in which the EU should do more, besides mobility, for those categories foreign workers already covered under EU Directives? **From an economic migration perspective focus should be placed on keeping facilitating the movement of high skilled resources. This would favor a dynamic skills transfer within the EU as well. Increased collaborative efforts intra-EU would be favored.**
 - b. Would there be an added value in having additional categories of third-country nationals workers covered under new EU legal migration instruments? If so, which ones and why? **A new special category could be introduced such as 'short-term migrant or casual migrant'. This being a high-skilled or experienced resource attached to a company that holds a residence permit and a work permit in one Member State and is required to perform work for a short period (less than 3 months) in another Member State on behalf of the same company. Regarding the "short-term" migrant concept, these individuals are not a threat to any one country's local labour market; their purpose of travelling to another EU Member State is for a specific purpose which is short-term, so it is important within the region that business is enabled and not have every migrant worker assessed against a country's broader skills gaps etc. where a need is actually short term. (A-typical program in Ireland which is not exclusive to an individual in another EU state).**
 - c. Should the EU refrain from further harmonising EU labour migration law in the short/medium term? **Not in our view. On the contrary, the EU should work on getting a more standard set of admissions, rules and conditions at EU level which are equal and mutually recognized by all EU Member States. This would reduce the bureaucracy and complexities faced by big multinational companies when trying to mobilize their non-EU resources into and within Europe. Europe needs to be seen as "business friendly" and that means it needs to enable mobility within the region rather than country specific requirements and criteria. The criteria from country to country can often be difficult to interpret and business needs to be confident that Europe is a flexible and reasonable region to do business in rather than determining how to climb through multiple layers of red tape. As a region we need to send a unified message; the execution piece needs to gain momentum and become more harmonized.**

2. Should the focus of a new EU strategy on labour migration be on highly skilled workers only or cover all skill levels, taking account of existing and foreseeable skills shortages? Both approaches should be considered since skill shortages might differ from Member State to Member State. A transparent framework and transparent review process should be considered to address both highly skilled and skill shortages to ensure that climate/environmental changes are factored into account on a timely and ongoing basis.
3. How can the EU's migration policy achieve the right balance between, on the one hand, filling the EU's labour market needs using its own internal human capital and, on the other hand, attracting workers from outside? Establishing open and effective communication between the respective Member States and the private sector, and discussing ways to create win-win situations for both parties. In addition, policy should give greater thought to retention of talent. Often programs enable addressing the skills gaps, however, at times it can be challenging in terms of retention and supporting career growth and ultimately securing long term residency. Furthermore, this may be an opportunity to also consider global drives on diversity and whether that may alter the way in which migration policy discussion points are viewed.
4. How can the EU help in facilitating access to labour market information and improving matching between potential migrant workers and employers? Should this build on existing tools (e.g. Immigration Portal, Skills Panorama, Eures) or could specific means and tools be further developed? What role could employers and trade unions play in this respect? Assess and define the specific skill shortage per country and set up ways to cooperate to re-train local unemployed persons, train recent graduates and facilitate the access of non-EU skilled workers to the EU so that the transfer of knowledge can take place. In addition to posting country skill shortages, it may also be useful to understand from a regional perspective where the skill pipelines are growing, giving business/countries more transparency and visibility as to where potential skill pipelines may be available.
5. Would the development of an "expression of interest" model at EU level be viable and useful to facilitate the job matching? If so, what should be its main features? How should employers and trade unions be involved?
6. How can the EU step up its action in facilitating the process of recognition of migrants' qualifications and skills? Should this build on the European Qualification Framework and the European National Qualifications Frameworks related to it? How should countries of origin

¹⁶As regards Blue Card holder see Discussion Document n°2.

be involved? How could alignment between the EQF and external Qualifications Frameworks support this? EU regulations on the mutual recognition of foreign diplomas could be considered. Establishing the common and essential criteria that any foreign diploma intended to be used in the EU should match. Establishing one single entity within the EU that should award the recognition valid for all EU Member States. A framework on how to evaluate qualifications and recognize qualifications would be valuable.

7. How can labour migration policies best ensure that recruitment from abroad is driven by unmet needs on the domestic labour market and not labour cost/ work conditions considerations? Response to 7,8 Recruitment from abroad is not necessarily driven by labor costs/work conditions as the question seems to suggest but most of the times by skill shortages. Recruitment from abroad is also not a cost saving exercise since the foreign resource needs to meet the same terms and conditions as any locally hired resource but with additional costs for living and housing allowances. The latter could be very limiting for small enterprises that cannot afford these extra expenses.
Labor migration policy could create a cooperation framework between the governments and the private sector to find ways to reduce the skill shortage by, for example, re-training unemployed local resources, introducing programs with universities for recent graduates, to name just a few.
Hiring overseas is not a cost saver, but rather costly and often due to longer term immigration challenges can make the retention of the investment made very difficult so often a last resort. Therefore more “joined up thinking” on talent and pipeline in conjunction with migration policy is essential to ensure Europe is appealing from both a business perspective as well as a talent perspective.
8. How can labour migration policy ensure a level playing field between large and small enterprises when it comes to international recruitment? This is always a very difficult balance. Perhaps the focus should be on the talent itself rather than the employer so that all employers have a level playing field and the skilled worker’s immigration status is independent.
9. What is the perception of stakeholders on EU labour migration law? Is the law easily understood or would the employers/recruiters find it useful to have more information about possibilities offered under the existing legislation? A clear set of practical clarifications on the following points will surely be helpful:
 - The fact that European rules are limited by the way each Member State practically implements them. Hence there will be an unavoidable diversity per country that could be compiled and listed (e.g. which countries opted out, how each country performs the recognition of diplomas, what is the set of documentation required by each country to apply for a blue card etc.).
 - What are the target groups of each directive e.g. skilled migrant vs students or scientist?
 - What are the common elements of all the directives that apply to recruitment of foreign workers?
10. How can strategies on fostering labour market integration of migrants be maximised? What role should employers and other economic stakeholders play in this respect? What role

should third-countries play? It is difficult to find a strategy that fits all Member States' situation. A unified approach from the private sector and the governments should be fostered. Start with small concepts, try not to aim for anything too ambitious.

Annex

1. Key figures and demographic trends

The European Union's **working-age population** (15-64) is set to decline by 7.5 million between 2013 and 2020. If net migration is taken out of the equation, the decline would amount to 11.7 million over the same period (Eurostat). Longer-term projections foresee a stabilisation of the EU population slightly around 520 million, but without migration it would sink to below 400 million by 2080 (see Figure 1). Ageing will happen in all scenarios, but is less significant if net migration remains positive or is increased.

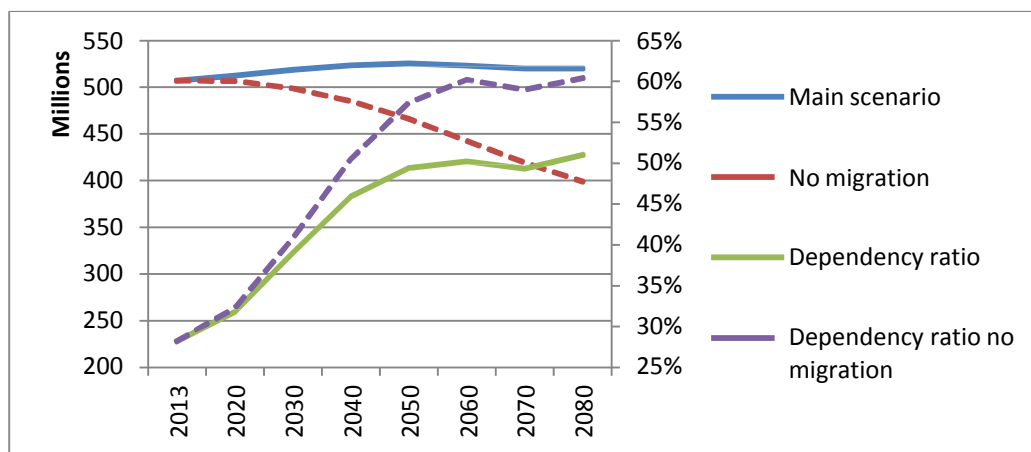


Figure 1 — Population projections and old-age dependency ratios with and without migration (source Eurostat, 2014)

The EU is certainly not the only region in the world to face population ageing, but it is among those where it is happening the soonest. As shown in the graph, migration can cushion the effects of ageing. Contrary to policies aimed at increasing fertility, migration can have an immediate impact on the age structure of the workforce. The demographic case in favour of migration would therefore apply mostly to the short-to-medium term, helping the EU to address structural imbalances in its age pyramid.

The **demand for labour** is also predicted to undergo substantial changes. Between 2012 and 2025, due to evolving structures in the economy, the share of highly-skilled jobs will increase by 23 % while the demand for lower-skilled workers is set to decline by the same share. As a result, demand for highly-qualified workers will increase markedly (see Figure 2).

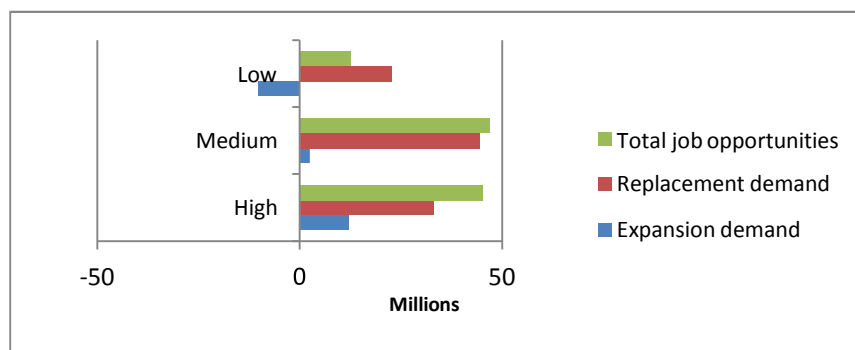


Figure 2 — Trends in job opportunities by qualification level (source: CEDEFOP, 2014)

Migration towards the EU is mainly for family reunification, and it has been for some time, as residence permit data shows (see Figure 3). Work-related migration seems sensitive to economic growth. The category "other" includes asylum and has seen large fluctuations in recent years.

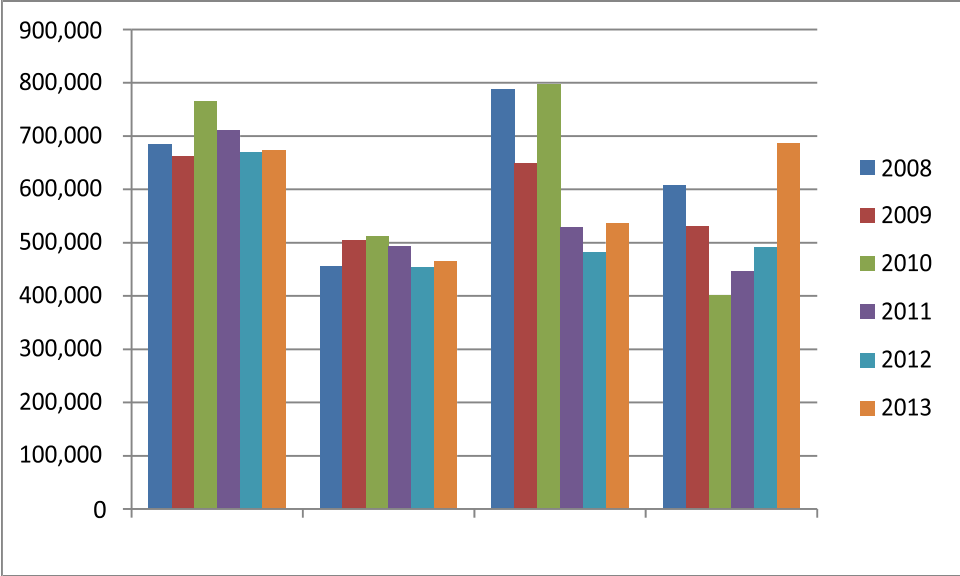


Figure 3 — First permits issued per reason and per year

2. Expression of interest systems

While EU Member States have traditionally opted for demand-driven labour migration policies, other destinations, such as Canada or Australia, chose for points-based systems. Such systems may admit migrants upon merit but without necessarily any prospects of employment, essentially favouring admission over employment. They are often accompanied by a numerical limit.

Points-based systems can result in fairly long waiting times if the number of applications outstrips the country's administrative capacity and if they are on a "first-come, first-serve" basis.¹⁷ They often result in migrants being employed (far) below their skill level and they do not sufficiently take into account local labour market needs, risking to produce a glut of qualified migrantworkers.

In response to these shortcomings, more demand-driven schemes emerged, such as the "expression of interest" systems adopted by New Zealand, Australia and more recently by Canada. The OECD in its 2014 International Migration Outlook had identified such approaches as one way of combining the virtues of a points-based selective approach (as Canada had before) with a demand-(employer)-driven system of labour immigration (such as the EU Blue Card). In such schemes, verifiable criteria are used to automatically make an initial selection of potential migrants. Employers are invited to identify priority applicants from the pool of candidates and actual migration would only take place after the migrant is offered a job. In federal countries, such as Canada, the provinces can choose to facilitate admission of certain pre-selected people, for example if they meet specific local labour market needs. In Canada, participation in the Express Entry program is mandatory for all economic immigrants, including intra-company transfers.

¹⁷ Waiting times for permanent labour migrants in Canada had reached 14 months, which is one of the reasons which compelled it to introduce the "Express Entry" expression-of-interest system.