REPORT

on new avenues for legal labour migration
(2020/2010(INI))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur:

Rapporteur for the opinion (*):
Elżbieta Rafalska, Committee on Employment and Social Affairs

(*) Associated committee – Rule 57 of the Rules of Procedure
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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on new avenues for legal labour migration
(2020/2010(INI))

The European Parliament,

– having regard to the Treaty on European Union, in particular Article 3(2) thereof, and to the Treaty on the Functioning of the European Union (TFEU), in particular Article 79 thereof,

– having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms, in particular Article 2 of Protocol 4,

– having regard to the Charter of Fundamental Rights of the European Union, in particular Article 45 thereof,

– having regard to the Universal Declaration of Human Rights of 1948, in particular Article 13 thereof,

— having regard to the European Pillar of Social Rights, in particular Principles 5, 6, 10, 12 and 16 thereof,

— having regard to the international labour standards on labour migration adopted by the International Labour Conference of the International Labour Organization, and to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families adopted by the UN General Assembly on 18 December 1990,

— having regard to the Commission communication of 13 May 2015 entitled ‘A European Agenda on Migration’ (COM(2015)0240),

— having regard to the Commission communications of 6 April 2016 entitled ‘Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe’ (COM(2016)0197) and of 12 September 2018 entitled ‘Enhancing legal pathways to Europe: an indispensable part of a balanced and comprehensive migration policy’ (COM(2018)0635),

— having regard to the Commission communication of 23 September 2020 on a New Pact on Migration and Asylum (COM(2020)0609),

— having regard to the action plan and political declaration adopted at the EU-Africa Summit on Migration, held in Valletta on 11 and 12 November 2015, in particular their respective parts on legal migration and mobility,

— having regard to the Global Compact for Safe, Orderly and Regular Migration of 10 December 2018,

— having regard to the EU Emergency Trust Fund for Africa,
having regard to its resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration,

having regard to its working document of 15 January 2016 on developing adequate legal economic migration channels,

having regard to the Commission communication of 24 November 2020 entitled ‘Action plan on Integration and Inclusion 2021-2027’ (COM(2020)0758),

having regard to its resolution of 19 June 2020 on European protection of cross-border and seasonal workers in the context of the COVID-19 crisis,


having regard to the studies by the Policy Department for Citizens’ Rights and Constitutional Affairs of its Directorate-General for Internal Policies of September 2015 entitled ‘Exploring new avenues for legislation for labour migration to the European Union’ and of October 2015 entitled ‘EU cooperation with third countries in the field of migration’, and to the EPRS study of March 2019 entitled ‘The cost of non-Europe in the area of legal migration’,

having regard to the Commission’s ‘Fitness Check on the EU Legislation on Legal Migration’ of 29 March 2019 (the ‘Fitness Check’),


having regard to the studies by the European Migration Network,

having regard to the studies by the Organisation for Economic Co-operation and Development,

having regard to the work and reports of the UN Special Rapporteur on the human rights of migrants,

having regard to the work, reports and resolutions of the Council of Europe,

having regard to the work and reports of the International Organization for Migration,

having regard to the EU legal labour migration acquis developed between 2004 and 2016, which regulates the conditions of entry and residence and the rights of third-country national workers, which includes:

2 PE573.223v01-00.


- Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 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\(^9\),

  - having regard to the Commission proposal of 7 June 2016 for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment (COM(2016)0378), and the respective positions adopted by the European Parliament and the Council in 2017,

  - having regard to the directives which regulate the conditions of entry and residence and the rights of other more general categories of third-country nationals, such as the directives on the right to family reunification\(^10\) and on the status of third-country nationals (TCNs) who are long-term residents\(^11\),

  - having regard to the directives which regulate the conditions of entry and stay for categories of TCNs who are not entering the EU in order to work, but are allowed to do so, such as the directives granting beneficiaries of international protection the right of access to employment and self-employment upon recognition of their status, or granting applicants for international protection access to the labour market no later than nine months after their application has been lodged,

\(^7\) OJ L 94, 28.3.2014, p. 375.
\(^8\) OJ L 157, 27.5.2014, p. 1. Intra-corporate transferees are seconded from an undertaking established outside the EU to an entity belonging to the same group of undertakings established in the EU.
– having regard to Rule 54 of its Rules of Procedure,
– having regard to the opinion of the Committee on Employment and Social Affairs,
– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0143/2021),

A. whereas the current Union legislative framework on legal labour migration is fragmented, comprising sectoral directives that lay down the conditions of entry and residence for specific categories of TCNs;

B. whereas a patchwork of rules based on 27 national approaches renders the Union and its Member States an unattractive destination for legal migration;

C. whereas, despite the intention set out in the European agenda on migration to pursue a comprehensive approach, legal migration has barely featured in EU migration policy development since 2015;

D. whereas the New Pact on Migration and Asylum does not include any specific proposals on legal labour migration, despite legal labour migration being indispensable for a comprehensive migration and asylum policy; E. whereas the current legislative framework is tilted towards employment with either multinational corporations (the ICT Directive) or those in highly skilled or highly paid sectors of the Union’s labour markets (the Blue Card Directive), with only one directive targeted at lower-paid migration (the Seasonal Workers Directive);

F. whereas there is a shortage of labour in the EU for specific skill levels, sectors and occupations, including for low-skilled occupations12; whereas the 2018 Commission communication on enhancing legal pathways to Europe acknowledges shortages in ‘skilled trades’ and ‘occupations requiring less formal skills’;

G. whereas the COVID-19 pandemic has highlighted our intense reliance on frontline workers and the key role that migrant workers play in providing frontline services in the EU, where populations are rapidly ageing and where 13 % of key workers are immigrants on average13; whereas COVID-19 has significantly affected migrants, their families, host communities and home countries, and has also exacerbated existing vulnerabilities that migrant workers and their families face across the EU, impeding their mobility, access to the labour market, right to decent working conditions, and access to social and health care;

H. whereas the Global Compact on Safe, Orderly and Regular Migration enhances cooperation on migration and acknowledges the shared responsibilities of all states to address each other’s needs and concerns over migration, and the overarching obligation to respect, protect and fulfil the human rights of all migrants, regardless of their migration status, while promoting the security and prosperity of all communities;

12 Policy Department C studies on exploring new avenues for legislation for labour migration to the EU and on EU cooperation with third countries in the field of migration.
1. Starts from the principle that migration is normal and that people are constantly on the move; acknowledges the contribution that TCNs make to our societies, economies and cultures and stresses that migration needs to be managed in an orderly, safe and regular manner; believes that to establish new avenues for legal labour migration, the EU should set ambitious and future-proof goals, while simultaneously making effective use of and improving the existing legal and policy framework;

The current EU legislative framework

2. Notes that Article 79 of the TFEU provides for the management of legal migration at Union level and commits the Member States to developing a common immigration policy, including common rules on conditions of entry and residence for TCNs and definitions of the rights they enjoy once legally residing in the Union, including conditions governing freedom of movement to and of residence in other Member States; acknowledges that Article 79(5) of the TFEU reserves the right for Member States to determine volumes of admission of TCNs coming to their territory to seek work;

3. Underlines the positive effects of the EU framework on legal labour migration identified by the Commission in its Fitness Check; notes the existence of a degree of harmonisation in relation to conditions, procedures and rights, and increased legal certainty for TCNs, employers and local, regional and national administrations; notes, furthermore, the benefits of that harmonisation for competition in the EU’s labour markets;

4. Underlines that an EU approach to legal labour migration does not automatically exclude the need for national legislative frameworks; recalls, however, that the existing Union framework regulating legal migration to the Union is fragmented, focuses on specific categories of workers, primarily workers employed in high-wage sectors, does not treat those categories of workers in the same way, including by providing for different levels of rights, and permits the existence of parallel national legislative frameworks; emphasises that the current asymmetric patchwork of national and EU laws, while reflecting differences between national labour markets, puts those national legislative frameworks in competition with one another and the Union framework, implying, by extension, bureaucratic procedures for both prospective workers and employers;

5. Believes that such an approach only serves to meet short-term needs and is not in keeping with the Union’s goal of having a comprehensive approach to migration policy; takes the view that, if well-designed and well-managed, legal labour migration can be a source of prosperity, innovation and growth, for both sending and receiving countries;

6. Highlights that in its Fitness Check, the Commission reached a similar conclusion and identified the need to address inconsistencies, gaps and shortcomings through a wide range of measures, including legislative measures; notes, furthermore, the favourable effects of new avenues for legal labour migration in reducing irregular migration, which is hazardous for TCNs seeking employment in the Union, and which can have negative effects on Member States’ labour markets;

7. Is aware that the current Union framework regulating legal migration was developed, in part, to prevent labour exploitation and protect the rights of TCN workers; notes, however, that the existing directives have had only a limited impact on preventing
labour exploitation, and that migrant workers continue to experience unequal treatment and labour exploitation; calls for the Union to take concerted action to address such unequal treatment and exploitation; considers the use of permits of limited duration in cases of exploitation a good practice that should be promoted across the Union; underlines the need for measures to improve the accessibility and efficiency of monitoring of the workplace; stresses that effective complaint mechanisms should be in place to protect all migrant workers against exploitation, in line with the 2009 Employer Sanctions Directive\(^\text{14}\), which should, in particular, guarantee effective access to justice and redress, thus ensuring a level playing field;

**Adopting a simplified approach**

8. Points out that the current legal framework and the divergent implementation of the existing directives by the Member States have resulted in many inconsistencies for TCNs as regards equal treatment, entry and re-entry conditions, work authorisation, residence status, intra-EU mobility, social security, recognition of qualifications and family reunification; notes that these inconsistencies can hinder integration; stresses, in addition, that these inconsistencies also create difficulties for businesses that employ TCNs\(^\text{15}\) and for local authorities providing integration services; calls for the dissemination at national level of relevant information for businesses;

9. Emphasises the added value of having a comprehensive Union framework for legal migration as part of a holistic approach to migration, as it provides opportunities through legal and safe pathways for labour-related migration, improves access for TCNs to the Union’s labour market, encourages more orderly migration, attracts workers, students and businesses that the EU and national labour markets need, helps undermine the criminal business model of smugglers and human traffickers, ensures that TCN workers are treated in accordance with fundamental rights, improves access to decent working conditions, and fosters integration on an equal basis for women and men; believes that such a holistic approach benefits TCN workers and their families, host communities and home countries;

10. Reiterates that better and more consistent implementation of the current legislative framework, better enforcement of the rights laid down in the existing directives, and better dissemination of information to raise awareness of the applicable procedures are the first practical steps that need to be taken;

11. Recommends that the legislative framework be simplified and harmonised by aligning provisions across the existing legal migration directives on application procedures, grounds for admission and refusal, procedural safeguards, equal treatment, access to the labour market, including the right to change employer, family reunification in line with Court of Justice of the European Union case law, and intra-EU mobility;


\(^{15}\) The Fitness Check identified the following main areas as having the most internal coherence issues: application procedures, admission and residence conditions (including grounds for rejection and withdrawal), equal treatment conditions, intra-EU mobility and family reunification.
12. Welcomes the Commission’s planned review of the Single Permit Directive; suggests that to reach a broader category of workers, the scope and the application of the directive should be expanded; further welcomes the Commission’s planned review of the Long-Term Residents Directive, which presents an opportunity to enhance mobility and simplify and harmonise procedures; looks forward to the upcoming Commission implementation report on the Seasonal Workers Directive, which should examine in detail provisions on residence status, equal treatment and the maximum period of stay; calls on the Commission to consider a legislative revision of the aforementioned directive following its evaluation; calls on the Commission to propose appropriate legislative action to improve the existing directives by aligning them with the most favourable provisions;

**Improving intra-EU mobility**

13. Highlights the fact that the intra-EU mobility of TCNs is a key component of the EU’s legal migration policy, as it provides clear added value that cannot be achieved at Member-State level; recalls that the free movement of workers helps to match demand with supply in the EU’s labour markets and can also contribute to labour market adjustments and overall economic growth in times of crisis;

14. Calls on the Member States to enhance coordination between national authorities related to schemes on the intra-EU mobility of TCNs; points to the need to facilitate the gathering of data, statistics and evidence, enhance information-sharing, coordination and cooperation between national authorities to improve the efficiency and effectiveness of the *acquis*, and exploit EU added value to the fullest;

15. Emphasises that more harmonised and supple rules facilitating intra-EU mobility would act as an incentive for TCNs, represent a positive measure for employers, and help the Member States to fill gaps in their labour markets and boost their economies; stresses, moreover, that enhanced intra-EU mobility would allow TCNs already in the EU to improve their integration prospects;

16. Notes that more recently adopted directives on students, researchers and intra-corporate transferees grant more far-reaching mobility rights to TCNs than legal migration directives adopted earlier, such as the original Blue Card Directive and the Long-Term Residents Directive;

17. Recommends that, as a first step towards simplification, rights to intra-EU mobility be enhanced across the existing legal migration directives; reiterates that the Commission should propose appropriate legislative action;

**Setting up a talent pool**

18. Underlines that new tools are needed to help match employers with prospective employees, address labour market shortages, and facilitate recognition of formal third-country qualifications and skills at Union level; highlights the fact that better information on legal migration to the EU is required for employers and TCNs, and that structured and meaningful dialogue with relevant third countries on legal migration needs to be scaled up;
19. Recommends the development of an EU talent pool and matching platform to serve as a one-stop shop for TCN workers, EU employers and national administrations; notes the Commission’s plan to explore the development of such a talent pool; recommends that this should cover all sectors of employment for low-, medium- and highly skilled workers, and salaried and self-employed labour, including in small and medium-sized enterprises and start-ups; notes that the involvement of public employment services, including at local level, in such a platform in both the EU and countries of origin could help to improve partnerships and build trust between Member States and third countries, create a climate of investment, and respond more appropriately to employment needs or labour market shortages; recommends that the participation of third countries in such a talent pool be facilitated, for example online or via EU and Member State diplomatic representations;

20. Highlights that such an EU talent pool could serve as an important new tool to match and manage skills supply with national labour markets, and that the EU could play an important role in setting up, monitoring and overseeing such a tool, including through funding and knowledge-sharing; recommends that the platform be used to clarify and better align education and training requirements between participating Member States and third countries; considers that a harmonised framework at EU level for applications, based on that talent pool, would help to reduce bureaucracy at Member-State level; believes that the EU can play an important role in pre-screening candidates’ qualifications, language levels and skills; highlights how important targeted information dissemination would be in promoting the talent pool and matching platform in third countries and participating Member States;

21. Recommends that the assessment, mutual recognition and certification of diplomas, certificates and other professional qualifications, including the formal and non-formal acquisition of skills in third countries, be made easier, quicker, fairer and more streamlined across Member States by implementing accelerated procedures and facilitating access to information; takes the view that this would strengthen intra-EU mobility; highlights that the European qualifications framework provides a good basis on which to relate third-country qualification systems to a common EU reference framework;

22. Insists that the Member States immediately put in place mechanisms and arrangements for the validation of professional experience and non-formal and informal learning in line with the 2012 Council Recommendation16; stresses the need for national authorities to share best practices; insists on the importance of involving relevant civil society organisations, social partners and diaspora networks and TCN workers themselves, as well as local authorities and international organisations (in particular the International Organization for Migration (IOM), the International Labour Organization (ILO) and the Organisation for Economic Co-operation and Development (OECD)), in discussions on the definition of skills, which should include on-the-job training, informal qualifications and work experience;

**Strengthening relations with third countries and enhancing legal pathways**

23. Stresses that given the EU’s ageing population and shrinking workforce, labour

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mobility schemes have the potential to galvanise EU labour markets and contribute to economic growth;

24. Supports global and regional cooperation on migration as one way to strengthen the availability and flexibility of pathways for regular migration; remains convinced that enhancing proper legal migration channels would help to reduce irregular migration, undermine the business model of criminal smugglers, reduce trafficking in human beings and labour exploitation, enhance equal opportunities for all workers and offer a legal path for those considering migrating to the Union; calls, in that respect, on the Commission to regulate recruitment agencies, potentially through the European Labour Authority;

25. Considers that a wider migration dialogue, for instance through regular summits between the EU and multiple third countries, could facilitate the meeting of the needs of the EU labour markets and the development of balanced partnerships, including on the initiative of businesses and civil society, which can help prepare for the integration of TCNs into the labour market of the country of destination and can enhance the sustainable transfer of acquired skills between countries of origin and destination; highlights that inspiration could be found in existing skills-based agreements on the development of talent partnerships that allow the destination country to be directly involved in shaping the skill sets of TCNs potentially interested in migrating to the EU, including by establishing training facilities and programmes for third countries, and address the need for transparency of partnerships with third countries, including through the need to involve social partners;

26. Underlines the important role of remittances and the benefits that safe, regular and orderly migration has for both sending and receiving countries; supports efforts to address the ‘brain drain’ and ‘brain gain’ issues by further developing instruments that allow for circular migration; calls on the Commission in that respect to analyse the benefits and downsides of existing models applied by other countries, such as a points-based system and expression-of-interest-based models; recommends, with a view to facilitating circular migration, the introduction of preferred mobility, and access to renewable permits, the right of re-entry, and an extension of the permitted period of absence for TCNs to allow them to return to their home countries;

Developing the EU’s legislative framework

27. Recalls that the EU is lagging behind in the global competition for talent; notes that the only proposal concerning legal labour migration presented by the previous Commission was for a revision of the Blue Card Directive; remains committed to seeking a meaningful and robust revision of the Blue Card Directive to bring added value in terms of harmonisation, recognition of skills, simplification of procedures and improved intra-EU mobility;

28. Emphasises the need for a structured dialogue and consultation of stakeholders, including relevant civil society organisations, social partners and diaspora networks, TCN workers themselves, and local authorities and international organisations (in particular the IOM, the ILO and the OECD), when considering the future development of the EU’s legislative framework;
29. Takes the view that EU and national policies on legal migration should focus on responding to labour market and skills shortages; calls on the Commission, to this end, to analyse inefficiencies in labour market tests and labour migration schemes which do not respond to real labour market needs; recommends that the Union develop its legislative framework to cover, to a greater extent, TCNs seeking work in low-skilled or medium-skilled employment;¹⁷

30. Notes, in that context, that TCNs are often employed in the home and domestic care sector; notes that this is a sector in which most employees are women; calls on the EU and its Member States to ratify ILO Convention 189 on domestic workers and to ensure the full application of employment standards; calls on the Commission, moreover, to consider legislative action in this area;

31. Calls on the Commission to develop an EU-wide scheme to attract and facilitate the cross-border activities of self-employed people, entrepreneurs, and start-ups – in order to enhance innovation – as well as younger TCNs with no formal qualifications, through, for example, job-seeker and training visas, taking into account the services of the Europass platform in line with Council (EU) Decision 2018/646;¹⁹

32. Recognises that sectoral directives are a panacea neither for the EU’s labour market needs, nor for the issue of legal migration more generally, while acknowledging that most Member States have national schemes to attract labour migrants; believes that, in the medium term, the EU must move away from a sectoral approach and adopt an immigration code setting out broad rules governing entry and residence for all TCNs seeking employment in the Union and harmonising the rights enjoyed by such TCNs and their families;

33. Points out that such an overarching legislative instrument would address the current patchwork of procedures, remove the different requirements laid down across the Member States and provide the needed simplification and harmonisation of rules without discriminating against any sector of employment or type of employee; considers, furthermore, that such an instrument would facilitate cooperation between Member States and between the EU and third countries;

34. Instructs its President to forward this resolution to the Council and the Commission.

¹⁷ See e.g. European Migration Network, Determining labour shortages and the need for labour migration from third countries in the EU, European Commission, Brussels, 2015.


EXPLANATORY STATEMENT

In her 2020 State of the Union speech\(^1\), European Commission President Ursula Von der Leyen identified the creation of legal pathways as part of the key actions to address irregular migration in Europe.

Indeed, it would be naive to think there is one single solution. Migration, irregular or not, has always been and will continue to be part of our history. When understanding the key challenges faced by the European Union and globally - such as climate change, famine and war and inequality - it becomes clear that the EU has to do much more.

This report deals with legal labour migration, recommending a gradual approach, based on addressing immediate issues immediately, looking to expand the sectors governed by EU law thereafter, and then looking at a more overarching reform of EU legal migration policy. There is a reality in the EU that has not been properly addressed: an ageing population, the exploitation of foreign workers, the reality of migration, and the global race for talent.

According to the 2019 Ageing Report\(^2\), almost one fifth of the population living in the EU-28 at the start of 2018 was aged 65 years or more. The report forecasts that, during the next three decades, the number of older people in the European Union (EU) is projected to follow an upward path, peaking at 149.2 million inhabitants in 2050; their relative share of the total population will also gradually increase and is projected to reach 28.5 % in 2050.

With this in mind, coupled with the gaps identified in the labour market, a new legal migration policy is one of the four pillars of a balanced EU migration management.

In its Communication on the New Pact on Migration and Asylum, the European Commission acknowledges the benefit that legal migration brings to society and the economy. While Member States retain the right to determine volumes of admission of third country nationals coming from third countries to their territory for employment purposes, there is an opportunity to address the gaps in the labour market whilst offering those workers the right opportunities and working conditions that are so often denied.

A 2019 report\(^3\) by the Fundamental Rights Agency highlighted the exploitation of migrant workers, including TCNs who come to the EU and EU nationals who move to another EU country. This included being paid as little as €5-a-day, forced to pay debts to traffickers before earning a cent and sleeping in shipping containers with no water or electricity. The report shed light on precarious employment in various sectors, including agriculture, construction, domestic work, hospitality, manufacturing and transport.

Neither can the situation caused by COVID-19 be ignored. Migrant and seasonal workers are often in precarious employment, with poor working conditions and housed in sub-standard...

accommodation. Providing an appropriate legal framework for this situation would ensure access to income support measures, social protection and health care.

The European Commission speaks of attracting skills and talent to the EU. Indeed, the EU labour market faces specific skills shortages in different sectors, be it low, medium and high-level sectors. In the recently published Skills Agenda for Europe, the European Commission said\(^4\) it would work with Member States on modern and comprehensive national skills strategies and join forces with national public employment agencies to realise them. Here, it also suggests that this can be coupled with a more strategic approach to legal migration, oriented towards better attracting and keeping talent.

The Rapporteur raises a number of points in her report, including the fact that the EU’s legislation on legal migration is highly fragmented. The patchwork of different rules and regulations makes the EU’s framework unclear and unattractive for both TCNs and Member States themselves. Whilst it remains the competence of Member States to decide what their market needs are and how many work permits should be granted, increased coordination and cooperation is a must, as well as to ensure that TCN workers, like EU nationals, are treated in accordance with fundamental rights in the EU. Increased research is also required to understand the labour market integration of non-economic migrants, patterns of intra-EU mobility and the necessary mechanisms to match the profile of labour migrants to the needs of EU labour markets.

In this regard, the Rapporteur is proposing the development of a talent pool: a matching platform that would ensure an efficient international matching of migrant workers with EU labour market requirements. A one-stop-shop where employers can advertise the needed skills and where prospective employees can know which skills are in demand. The platform would be used to optimize the use of the current labour force in the EU, to provide clear information to those offering their skills and to those who are in need of specific skills. The digital platform would facilitate the available information, connecting businesses with institutions or authorities and provide a reliable service that does not leave employers and employees in waiting for months on end.

Moreover, the Commission should consider developing an EU-wide scheme to attract self-employed people and entrepreneurs.

A coordinated approach is needed. The existing legislative fragmentation means that there are different rules and regulations for different groups of workers, and those seeking to reunite with their families. This is worsened by complex procedures and lack of uniformity in their implementation.

The European Union is at an important juncture. The decisions taken today will determine the Europe we will be living in, the opportunities offered and the values upheld.

MINORITY POSITION

Pursuant to Rule 55(4) of the Rules of Procedure

Charlie Weimers, Peter Kofod, Jorge Buxadé Villalba, Nicolaus Fest, Tom Vandendriessche

There is no legal basis in the current Treaties and frameworks for a common migration or labour policy. Member States have the sovereign right to determine volumes of migration as affirmed in Art 79(5) TFUE, that competence must be fully respected. Harmonized migration rules erode Member State competences and will not lead to a regulated distribution of migrants. Extending labour rights, free movement to third country nationals (TNCs) and family reunification schemes can create loopholes to facilitate illegal migration and may serve as a strong pull factor for more illegal migration. Moreover, facilitating labour migration at EU level undermines Member States’ unique and diverse labour market policies. We stress that the Member States of the EU have the sovereign right to determine their own future and migration policies. We believe that external borders must be secured and that migrants who lack the right to stay or enter the Member States must be swiftly returned. The belief that regular migration channels will reduce illegal migration is misguided as it will hardly reduce illegal migration or human trafficking.

Given that we fundamentally disagree with the spirit and word of the report, which seeks to erode Member States competences, we will vote against.
15.1.2021

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

on new avenues for legal labour migration
(2020/2010(INI))

Rapporteur for opinion (*): Elżbieta Rafalska

(*) Associated committee – Rule 57 of the Rules of Procedure

SUGGESTIONS

The Committee on Employment and Social Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

A. whereas there are three types of legal status benefiting from international protection: people with refugee status, people seeking asylum, and people benefiting from subsidiary protection; whereas social inclusion and labour-market integration policies should be tailored to their specific needs and ensure equal treatment with nationals;

B. whereas the number of third-country nationals that are posted from one Member State to another has increased significantly over the past years; whereas a third-country national worker who obtained a work and residence permit in one Member State can be posted by their employers to any other;

C. whereas Member States retain the right to determine the volumes of admission for third-country nationals to seek work and determine their access to residence and working permits; whereas the criteria and practices between the Member States differ considerably;

D. whereas free movement of persons stimulates the Member States' economies, allowing for an efficient matching of skills with EU labour market demand and vacancies; whereas social, employment, migration, housing, health, education and training policies play a crucial role in legal labour migration and labour market integration; whereas the coordination of the different social policy areas remains a challenge for the EU; whereas access to work is a much stronger incentive for migration than welfare for both EU and non-EU citizens;

E. whereas in 2019, the EU-27 employment rate for people aged 20 to 64 years was 64.4 % for those born outside the EU, 73.9 % for the native-born population and 75.3 %
for those born in another Member State; whereas in 2019, the EU-27 unemployment rate for people aged 20 to 64 years was 12.3 % for those born outside the EU, 7.3 % for those born in another Member State and 6.0 % for the native-born population; whereas the EU’s fragmented migration policy may have a negative impact on businesses, since it may limit their possibility of using the internal market as and attracting third-country nationals (TCNs) to work for them;

F. whereas women and minors have specific protection needs; whereas all social inclusion and labour market integration policies for third-country nationals need to include a gender and child protection perspective;

G. whereas the demographic change and other societal and economic factors such as the current pandemic are gradually bringing about qualitative shortages on the labour market, making it hard to find suitably qualified workers, and, as demographic trends become increasingly unfavourable with an expected rise of old-age dependency ratio to increase from 29.6 % in 2016 to 51.2 % in 2070, there are also quantitative shortages, in particular in strategic areas such as artificial intelligence (AI) and information and communication technologies (ICTs) as well as a general shortfall in the number of people who are willing and able to take up employment in specific sectors, including the care sector, the construction industry, the agricultural sector and the domestic sector, thus leading to a general mismatch between the jobs available on the market and workers’ skills and competences, regardless whether or not efforts are made to match supply in terms of the skills and knowledge that can contribute to filling this gap in the EU labour market;

H. whereas according to the Commission communication of 12 September 2019 entitled ‘enhancing legal pathways to Europe: an indispensable part of a balanced and comprehensive migration policy’ (COM(2018)0635), the share of employers reporting difficulties filling jobs is on the rise, reaching on average more than 40 %; whereas TCNs play an important role in addressing Europe’s demographic trends, filling vacancies and boosting jobs and growth in the EU; whereas this role should be taken into account in terms of the mobility rights for TCNs; whereas the lack of skilled workforce is often the direct consequence of poor working conditions and lack of attractive career paths offered; whereas the EU attracts migrants from different backgrounds and who possess different kinds of knowledge, as well as sets and grades of skills; whereas the Union could make better use of the free movement of workers from the Member States, labour mobility and the labour force of persons who already have the right to legally reside in the EU;

I. whereas discrimination, along with linguistic, educational, and institutional factors, are the most significant barriers for TCNs; whereas language courses play a key role in the successful integration of migrants from third-countries in the labour market; whereas according to Eurofound research, fostering entrepreneurship for migrants could create

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social leadership and generate the creation of jobs through good policy initiatives;

J. whereas as regards integration and access to the labour market, there is an ongoing discussion within CEAS (Common European Asylum System) to reduce the current maximum waiting time for asylum seekers’ access to the labour market from 9 months to 6 months after applying; whereas multi-level cooperation between the Member States, local and regional administrations, social partners, civil society, and non-governmental organisations are required to unify efforts and face potential challenges that could arise in labour-market integration processes;

K. whereas according to Eurofound\(^4\), workers with a foreign background and first-generation migrant workers tend to be overrepresented in sectors dominated by lower-skilled employment, including commerce and hospitality, transport, construction and other services such as home care, long-term care, and the agri-food sector; whereas the Commission’s Fitness check on legal migration of March 2019\(^5\) emphasised the substantial obstacles in legal migration pathways for low and middle skilled workers, despite increased labour demand;

L. whereas the decline of fertility in a number of European countries has led and continues to lead to much smaller cohorts of new labour-market entrants;

M. whereas the condition of thousands of agricultural workers is particularly critical in this emergency period, with thousands of them living segregated in informal dwellings with poor sanitary conditions and in constant fear of deportation;

N. whereas Eurofound research found that migrants’ region of origin plays a bigger role than their status in their integration into the labour force; whereas immigrants from all regions of the world, except North America, are more likely to hold jobs lower down the occupational ladder than the native population; whereas overall, the evidence suggests that there is no automatic gradual assimilation of immigrants and their descendants into the same patterns of employment as natives, with many instances of persistent disadvantage for individuals from certain regions of origin;

O. whereas the EU attracts fewer highly-educated TCNs than other Organisation for Economic Co-operation and Development (OECD) destinations and should provide more transparent and more comprehensive information for potential qualified legal migrants and regarding verification of their qualifications; whereas, of all the migrants residing in OECD countries in 2015-16, just 25 % of workers with a high level of education chose an EU destination\(^6\); whereas the EU aims to become stronger in the global competition for qualified professionals;

P. whereas the COVID-19 crisis has shown the significant contribution of migrant workers in supporting European economies, public services, filling labour shortages and boosting jobs and growth in the EU; whereas 13 % of key workers in essential jobs in


the EU are migrants, the share of migrant workers in these professions is close to 20% in many countries and in some key sectors (e.g. domestic work and construction) up to a third of keyworkers are migrants\(^7\); whereas the COVID-19 crisis shed new light on, inter alia, the working and housing conditions affecting a vast proportion of migrant workers employed in some sectors of the economy, such as food manufacturing and agriculture; whereas the COVID-19 pandemic, and its possible economic consequences, could affect the movement of legal labour migration;

Q. whereas many EU citizens who migrate for work reasons and 40% of highly educated TCNs in employment in the EU work below their qualification levels\(^8\); whereas Eurofound\(^9\) research shows that lack of language skills and lack of recognition of qualifications are among the main barriers preventing first-generation migrants, from obtaining jobs equivalent to their qualifications; whereas the Commission’s fitness check on legal migration (March 2019)\(^10\) underscores the challenge raised by the sectorial approach to EU labour migration that determines different rights and rules depending on the level of qualification of workers, which can lead to confusion and discrimination among workers;

R. whereas the Global Skills Partnership, which is designed to channel migration pressures into tangible, mutual benefits for both a country of origin and a country of destination, allow the workforce to be attracted in accordance with the exact needed set of skills; whereas select innovative European pilot projects on labour migration have already incorporated the main tenets of the Global Skills Partnership in the spirit of encouraging north-south cooperation, as enshrined in the UN Sustainable Development Goals, and have increasingly shown the positive outcomes of legal labour migration pathways;

1. Emphasises that, in accordance with Article 79 of the Treaty on the Functioning of the European Union, the EU should pursue a migration policy that is aimed at ensuring fair treatment of third-country nationals residing legally in the EU, including inclusive standards, equal opportunities, decent working conditions and equal treatment; stresses however that reference to labour market challenges must not lead to the spread of unfair competition or the violation of EU and national rules on legal migration;

2. Emphasises that a structured immigration policy should already start in the country of origin with language training and courses on values and the legal foundations of the country of destination; underlines that bureaucratic procedures should enable legal migrants to bring their potential fully to the fore;

3. Recalls its resolution of 19 June 2020 on European protection of cross-border and


\(^8\) https://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/integration/integration-labour-market_en


seasonal workers in the context of the COVID-19 crisis\textsuperscript{11};

4. Underlines that, due to an increase in demographic changes – in particular an ageing population, a fast-changing global and digital environment in the labour markets, and the unprecedented COVID-19 crisis – there is a growing demand for workers in specific, sectors and professions, for example in some Member States in sectors such as care for the elderly, long-term care, the health sector, construction, agriculture, tourism, domestic, ICTC and AI sectors; emphasises the need to attract workers that can fill in the gap in these specific sectors within the labour market; emphasises that there is also a need for regulated labour migration, including temporary labour migration, with not only a focus on highly skilled labour but also on the middle skilled sector\textsuperscript{12} and low skill labour; calls on the Commission and the Member States to promote policies that assist with the entry of these migrants into the labour market and that recognise workers from these specific trades and professions, especially during the COVID-19 pandemic; notes that such policies could support the promotion of legal labour migration, including temporary labour migration; considers that effective integration of TCNs into the EU labour-force could support local communities and bring an added value to the Member States, by filling the existing gap in terms of skills and knowledge, generating economic activity and growth, and bringing a positive return to host communities; recalls that the current crisis has shown evidence that no profession should be a reason for contempt; notes that low-skilled workers often develop an essential role in their jobs for society and should not be underestimated, or high-skilled TCNs prioritised, in labour-market integration policies and activities;

5. Notes that providing incentives for high-skilled migrants that could enrich European science and research would help the European Union to achieve its goal of becoming a leader in the area of science and research;

6. Emphasises that there is also a need for regulated temporary labour migration, which does not solely focus on highly skilled labour but also on the middle-skilled sector;

7. Calls for the European institutions to resume discussions and agree on reducing the current maximum waiting time for asylum seekers to have access to the labour market from 9 to 6 months after applying, which would significantly facilitate the integration process and its success;

8. Emphasises that the situation for mobile and seasonal workers, including third-country workers, may not be consistent with the relevant legislation and mobility rules, thus leading to sometimes unacceptable, and precarious living standards and working conditions and potential breaches of human and workers’ rights, loss of social security coverage or at the very least its adverse fragmentation; stresses the need to better protect third-country migrants at work; calls on the Member States to ensure healthy living conditions, security of residence, access to consultation and information about the applicable labour rights for all workers and to ensure that work places comply with occupational safety and health standards; stresses, in addition, that the internal market and the free movement of workers must be protected;

\textsuperscript{11} Texts adopted, P9_TA(2020)0176.
\textsuperscript{12} https://www.oecd-ilibrary.org/sites/c9d28c24-en/index.html?itemId=/content/component/c9d28c24-en
9. Emphasises the need to better protect third country migrants at work; calls on the Member States and the Commission to guarantee full social protection, minimum standards for accommodation, access to consultation and information about applicable labour rights;

10. Calls on the Commission and the Member States to identify and address the reasons explaining the EU’s lack of attractiveness for global talents and stresses the need for better coordination among the Member States in order to improve the collection of accurate and comparative data; notes that the Member States should provide a clearer picture of different target groups of skilled workers, include the collection of information on the demand for skills and their equivalents and ensure consistent legislation, best practices and information on the implementation of EU law, and the mobility of TCNs in the EU by providing support for networks of experts and research, and by presenting their own statistics in real-time; asks the Commission to conduct an extensive investigation into the trends of posted TCNs and emphasises the need for possible policy measures at EU or national level based on the outcome of the investigation; calls on the Member States and the Commission to ensure data collection on the impact of COVID-19 on legal labour migration in the EU;

11. Emphasises the need to improve the functioning of work permit routes for non-EU migrants to reach Europe and enforce respect for migrants and refugee workers’ rights; calls, in that respect, on the Commission to regulate all recruitment agencies, potentially through the European Labour Authority (ELA);

12. Emphasises the need to strengthen existing legal migration pilot projects in dialogue with trade unions and other organisations working with migrant workers;

13. Emphasises the need to create a more favourable environment for the integration and protection of migrant workers’ rights, irrespective of their skills or wage level, immigration status or nationality, ultimately leading to a European Migration Code;

14. Emphasises the need to make common agriculture policy payments conditional on the respect of applicable working conditions resulting from relevant collective labour agreements and national and EU social and labour law;

15. Emphasises that differential treatment of TCNs undermines the EU’s ability to attract workers; stresses the need to combat unfair competition between service providers, and the nationals of the Member States and TCNs by ensuring equal treatment in the terms of employment, by means such as access to social protection from the first day, the right to strike and to join a trade union, access to public services and to education and by taking action to prevent the abuse and the exploitation of workers regardless of their status; calls on the Member States to ensure effective compliance with commonly shared standards and labour laws and conventions to prevent discrimination and the exploitation of workers; underlines that existing EU legislation on regular migration
such as the Seasonal Workers Directive\(^{13}\) and the Blue Card Directive\(^{14}\) do not correspond to the current labour market context, demands, and needs; stresses that existing legislation, such as the Employer’s Sanctions Directive\(^{15}\), which establishes measures protecting workers from abuses and exploitation at the workplace, must be applied and properly implemented in all Member States; recalls that EU legislation promotes equal treatment and access to employment rights for all; underlines the importance of the Blue Card Directive, which could help make the EU an attractive place for global talents and provide European companies the skills they need to stay competitive; stresses that the Member States could make use of the Blue Card scheme;

16. Calls on the Member States to participate in the migration pilot projects launched by the Commission in 2017 (Delivery of the European Agenda on Migration, COM(2017)0558 final) and to actively promote the role that migration can play in the labour market; further calls on the Commission to ensure that these pilot projects are inclusive and guarantee equal treatment and equal opportunities for TCNs;

17. Emphasises the need for more opportunities for regular migration and for economic migrants to enter and work in the EU and the need to enforce respect of minimum rights, decent working standards and the equal treatment principle in favour of all workers regardless of their migration status, including minimum rights that ensure the transition from irregular to regular employment;

18. Stresses that measures should be proposed that promote a requirement to boost the potential of legally residing immigrants in the EU, so that they develop the skills needed on the labour market they are seeking to access by means of training schemes that enhance employability through the pursuit of excellence;

19. Stresses the need to maintain flexibility in EU regulations in order to take into account the specific circumstances of the individual Member States, including their own labour market situations, with the possibility of optional clauses in directives;

20. Stresses that further opportunities for labour mobility within the Union must be legally guaranteed;

21. Highlights that slow and excessively bureaucratic procedures may affect refugees and asylum seekers’ access to education and the labour market, thus making them increasingly at risk over time of having to resort to undeclared work and falling in situations of vulnerability; points out that a lengthy processing of international protection applications and the failed registration of asylum seekers at their arrival not only impedes timely and legal access of refugees and asylum seekers to the labour market, but also generates conditions for the development of undeclared work practices


and all forms of exploitation and abuse;

22. Calls on the Member States to step up their efforts to make their countries more attractive places for mobile human capital in the international arena, including investors and businesspeople, who are increasingly regarded as valuable assets to be attracted;

23. Calls on the Commission and the Member States to further develop legal pathways for labour migration, while taking into account the demands and needs of the national labour market and with a focus on occupations with a systemic shortfall of workers;

24. Underlines the importance of providing legal migrants within the Union with relevant opportunities to benefit from their labour skills and from the opportunities offered by EU mobility;

25. Calls for equal opportunities for men and women in all policies and procedures relating to social inclusion and to labour market integration of TCNs, bearing in mind that often women take responsibility than men do for the care of children, elderly, or other dependent family members; recalls that provision of quality and accessible childcare and care for other dependants, as well as flexible working arrangements and the implementation of existing EU legislation such as the Work-life balance Directive16, are examples of how to improve access to labour markets for all parents and carers and enable their economic and social empowerment;

26. Welcomes the Commission’s initiatives of bringing together economic and social partners on the topic of integration in the labour market; stresses the need to continue initiatives such as ‘Employers together for integration’, ‘European partnership on integration’, and ‘European dialogue on skills and migration’ to spur the support and understanding of benefits and pitfalls in terms of labour migration; calls, in this respect, on the Commission and the Member States to continue dialogue with economic and social partners and other stakeholders on the topic of labour migration;

27. Calls on the European institutions to resume discussions on the revision of the Blue Card Directive immediately, and to unblock the situation at the Council;

28. Underlines that undeclared TCN workers find themselves in a particularly vulnerable situation in which they are without job security and access to social protection and are at risk of abuse; considers that undeclared TCN workers may experience particular difficulties in reporting abuse, since they are afraid of losing not only their job but also their home and residency; calls on the ELA and the Member States to step up their efforts in tackling undeclared work and to enforce effectively the obligations of employers to end exploitation and to declare and regularise their workers; calls for the introduction of firewalls between labour inspectorates and migration authorities in order to guarantee that the rights of undocumented migrant workers are respected;

29. Highlights the crucial work done by social partners, civil society, local and regional authorities and volunteer organisations in offering support for the empowerment and integration of migrants from outside the EU into the labour force, and in providing

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migrant workers with information, in particular about their rights and duties and the protection to which they are entitled; calls, moreover, for the full involvement of these stakeholders in the policy-making process;

30. Considers that it is important to provide adequate training on employment legislation, rights, and duties to TCNs, as well as to institutional authorities, to ensure that migrants are not exploited through undeclared work practices and other forms of severe labour exploitation or discrimination in the workplace;

31. Underlines the fact that labour market conditions within host countries are one of the determining factors when it comes to ensuring sustainable and successful integration of TCNs; is aware of the fact that these persons are heterogenic in terms of age, skills, knowledge, and background; stresses that unemployment in the EU, in particular youth and long-term unemployment, is still at alarming levels in some countries and regions, and that the Commission and the Member States should continue to prioritise policies and investments aimed at providing quality employment for the whole of society, with a particular focus on the most vulnerable people, regardless of their situation and birthplace; recalls that actions to create quality employment for all promote active labour markets and growth, having a positive impact on national gross domestic products;

32. Notes that TCNs may be posted either from a third country to a Member State, or may obtain a work permit in a Member State prior to their posting to another Member State; emphasises that where TCN workers are posted from one Member State to another, the host Member State does not have the possibility to determine how many or which TCN work in its territory; emphasises, further, that such TCN workers are often in a vulnerable position because their permit is tied to their employment contract and they are therefore dependent on the employer for their permit; stresses the need to strengthen cooperation and information exchange between Member States, in particular with regard to the intra-EU mobility of TCN workers; underlines that the increase of posted TCN workers in the EU is not problematic per se, but there is the worrying risk of abuse, exploitation and violation of workers’ rights in relation to this particularly vulnerable group of workers; urges the Commission and the Member States to step up their efforts to tackle abuse in relation to such TCN workers, and notes that such abuse could include bogus subcontracting, temporary work agencies, letter-box companies, bogus self-employment arrangements, bogus posting and undeclared posted workers; underlines the importance of ELA in coordinating and providing support in this regard and stresses the need to provide relevant information on the rights of workers and obligations of employers as regards TCN workers in the EU; recalls that the ELA’s function is to coordinate and support concerted and joint inspections on posting and undeclared work, and that this extends to TCN workers;

33. Draws attention to the problem of people working in jobs that they are too qualified for; emphasises the need to improve the existing system of recognition of professional qualifications among the Member States, as difficulties in recognition of foreign qualifications remain a substantial obstacle for employment matching, which hampers mobility, and notes that this constitutes a precondition for facilitating labour mobility; calls, therefore, for the strengthening of the European Qualifications Framework with a view to achieving the adequate recognition of skills, competences, and qualifications obtained outside European borders; calls, furthermore, on the Member States to
recognise, validate and certify existing skills, and formal and non-formal competences, talents and know-how, of legal migrants from third countries; underlines the importance of guaranteeing to all TCNs, and in particular, girls and women, young people and persons from a disadvantaged background, access to formal, informal and non-formal education and life-long quality training; emphasises the need for continuous support for life-long learning for both EU citizens and TCNs residing in the European Union in order to encourage the acquisition of the needed skills to function in the labour market and therefore calls on the Commission to encourage the financing of skills partnership projects that focus on labour migration and inclusion under the umbrella of the European Social Fund Plus (ESF+) and the Asylum, Migration and Integration Fund; calls on the Commission and the Member States to increase their efforts in order to retain foreign students after graduating from EU universities; stresses that granting graduates access to intra-EU mobility and valid jobseekers visa could increase the attractiveness of the EU as a whole; recalls the importance of using integration funds for real integration measures, and that the objective of labour market integration of TCNs must be reflected in greater importance being given to the ESF+; stresses that insufficient sums have been allocated to this fund while acknowledging the big challenges and the number of key initiatives that are to be financed by the fund, and calls for investment and additional resources;

34. Recalls the protective standards for TCNs that are laid down in the Seasonal Workers Directive; highlights the need to improve the monitoring of working conditions; calls on the Commission and the Member States to protect seasonal workers, who are essential for strategic economic sectors in the EU and to establish clear rules as regards their rights and underlines that they should be guaranteed equal treatment and protection with their local counterparts; calls on the Commission to undertake urgent actions regarding the general situation of the employment and health and safety conditions of posted TCNs and seasonal workers, including the role of temporary work agencies, recruiting agencies, other intermediaries, and subcontractors, and to identify protection gaps and the possible need to revise the existing legislative framework, such as the legislative framework for health and safety at work, the Seasonal Workers Directive and Directive 2008/104/EC on temporary agency work17, as well as pandemic-proofing; stresses that not only are the lessons learned valid concerning the COVID-19 crisis, they should also strengthen evidence-based policy-making to address the shortcomings of EU and national legislation in times of crises and normality;

## INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

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### FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

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