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DRAFT REPORT

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

Committee on Civil Liberties, Justice and Home Affairs

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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 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 migration¹,
- having regard to its working document of 15 January 2016 on developing adequate legal economic migration channels²,
 - 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:
 - Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (the Blue Card Directive)³,
 - Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 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 State⁴,
 - Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers⁵,

¹ OJ C 58, 15.2.2018, p. 9.

² PE573.223v01-00.

³ OJ L 155, 18.6.2009, p. 17.

⁴ OJ L 343, 23.12.2011, p. 1.

⁵ OJ L 94, 28.3.2014, p. 375.

- Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer⁶,
 - 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 pairing⁷,
 - 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 and on the status of third-country nationals (TCNs) who are long-term residents,
 - 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,
 - 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 (A9-0000/2020),
1. Starts from the principle that people are constantly on the move and that migration needs to be managed properly; believes that to address the issue of legal migration, it is best to start with the most obvious policy improvements and move towards more ambitious reforms;

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 the rights they enjoy once legally residing in the Union; acknowledges that Article 79(5) of the TFEU reserves the right for Member States to determine volumes of admission of

⁶ OJ L 157, 27.5.2014, p. 1. Intra-corporate transferees (ICTs) are seconded from an undertaking established outside the EU to an entity belonging to the same group of undertakings established in the EU.

⁷ OJ L 132, 21.5.2016, p. 21.

TCNs coming to their territory to seek work;

3. Underlines the positive effects of the EU framework on legal migration identified by the Commission in its Fitness Check, including a degree of harmonisation of conditions, procedures and rights, and increased legal certainty for TCNs, employers and administrations;
4. Recalls that the existing framework regulating legal migration to the Union is fragmented, focuses on specific categories of workers only, does not treat these categories in the same way and permits the existence of parallel national legislative frameworks, which puts those national legislative frameworks in competition with one another and the Union framework;
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;
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;

Adopting a simplified approach

7. 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 coordination, recognition of qualifications and family reunification; stresses that these inconsistencies also create difficulties for businesses that employ TCNs⁸;
8. Emphasises the added value of having a Union framework for legal migration as part of a holistic approach to migration, as it provides opportunities through legal pathways for those seeking work, encourages more orderly migration, attracts workers that the EU labour markets need, and ensures that TCN workers are treated in accordance with fundamental rights in the EU;
9. Reiterates that better and more consistent implementation of the current legislative framework, and better enforcement of the rights laid down in the existing directives, are the first practical steps that need to be taken;
10. Recommends that the legislative framework be simplified and harmonised by aligning provisions on application procedures, grounds for admission and refusal, procedural safeguards, equal treatment, access to the labour market, family unity and intra-EU mobility across the existing legal migration directives;
11. Calls on the Commission to propose appropriate legislative action to improve the

⁸ The Fitness Check identified the following main areas as having the most internal coherence issues: application procedures, admission and residence conditions (incl. grounds for rejection and withdrawal), equal treatment conditions, intra-EU mobility and family reunification.

existing directives by aligning them with the most favourable provisions;

Improving intra-EU mobility

12. 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;
13. Emphasises that more harmonised 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; stresses, moreover, that it would allow TCNs already in the EU to improve their integration prospects;
14. Notes that more recently adopted directives on students and researchers and ICTs grant more far-reaching mobility rights to TCNs than legal migration directives adopted earlier, such as the original Blue Card Directive;
15. 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

16. Underlines that new tools are needed to help match employers with prospective employees; 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;
17. Proposes, therefore, the development of an EU talent pool platform to serve as a one-stop shop for TCN workers, EU employers and national administrations; recommends that this should cover all sectors of employment, including those considered medium- or low-paid; notes that the involvement of public employment services in such a platform in both the EU and countries of origin could help to improve partnerships between them;
18. Recommends that the 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; 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 Recommendation⁹;

Strengthening relations with third countries and promoting legal pathways

19. Supports global and regional cooperation on migration in order to strengthen the availability and flexibility of pathways for regular migration; remains convinced that increasing the number of legal migration channels would help to reduce irregular

⁹ Council Recommendation of 20 December 2012 on the validation of non-formal and informal learning (OJ C 398, 22.12.2012, p. 1).

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 tempted to migrate irregularly into the Union;

20. 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;

Developing the EU’s legislative framework

21. Recalls that the EU is lagging behind in the global competition for talent; remains committed to seeking a meaningful 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;
22. Takes the view that EU policy on legal migration should respond to labour shortages; recommends that the Union develop its legislative framework to cover, to a greater extent, TCNs seeking work in low-skilled or medium-skilled employment¹⁰;
23. Notes, in that context, that TCNs are often employed in the home and domestic care sector¹¹; asks the Commission to present a draft directive laying down conditions for entry and residence for domestic carers;
24. Calls on the Commission to consider developing an EU-wide scheme to attract self-employed people and/or entrepreneurs, notably to facilitate their cross-border activities;
25. Recognises that sectoral directives are a panacea neither for the EU’s labour market needs, nor for the issue of legal migration more generally; 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;
26. Points out that such an overarching legislative instrument would remove the different requirements laid down across the Member States and would provide the needed simplification and harmonisation of rules without discriminating against any sector of employment or type of employee;

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

¹⁰ 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.

¹¹ See also: EPRS, *The cost of non-Europe in the area of legal migration*, European Parliament, Brussels, 2019, pp. 21-22.

EXPLANATORY STATEMENT

In her 2020 State of the Union speech¹, 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 Report², 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 report³ 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

¹ https://ec.europa.eu/info/sites/info/files/soteu_2020_en.pdf

² <https://ec.europa.eu/eurostat/documents/3217494/10166544/KS-02-19%E2%80%91EN-N.pdf/c701972f-6b4e-b432-57d2-91898ca94893>

³ <https://fra.europa.eu/en/news/2019/severe-labour-exploitation-migrant-workers-fra-report-calls-zero-tolerance-severe-labour>

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 said⁴ 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.

⁴ https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1196