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Proposal for a Regulation establishing an EU Talent Pool

KEY MESSAGES

- 1** BusinessEurope welcomes the proposal to setup an EU Talent Pool with an automated matching function to facilitate the targeted recruitment of third country nationals of all skills levels. Orienting the Talent Pool in a way that addresses those occupations in the EU where there are the most pronounced shortages is a good way to respond to employers' specific needs in the current context of labour and skills shortages. In the medium term, the Talent Pool should be broadened and opened to all occupations.
- 2** It is important that the Talent Pool ensures that Member States retain control over the number of admissions and enables them to further utilise EU migration policy in a way that complements other national policies and initiatives.
- 3** While labour market tests can play a role within the national context, the Council Resolution of 1994, on which they are based, is formulated in a way that first seeks to restrict the possibility for employers to hire third country nationals. Member States are encouraged to revisit and improve, as appropriate, the approach to, and role of, labour market tests relative to their legal basis and to avoid placing unjustified administrative burdens on EU employers when hiring third country nationals through the Talent Pool.

WHAT WE AIM FOR

- An EU Talent Pool that supports employers in helping to address their labour and skills needs in an effective and unbureaucratic way, while developing, as appropriate, synergies with existing national initiatives



EU Talent Pool

Introduction

1. On 15 November 2023, the European Commission published its proposal for a Regulation on establishing an EU Talent Pool, as part of the wider Skills and Talent Mobility Package. This follows several years of preparatory discussions in which BusinessEurope has been an active voice to try to shape the Commission proposal in a way that will ultimately help employers to use the Talent Pool as a complementary pathway to addressing their labour and skills needs. This is particularly important in the current context of labour and skills shortages. This paper constitutes BusinessEurope's position on the draft proposal.

General comments

2. Employers across all Member States and sectors are experiencing significant labour and skills shortages. There are a combination of factors resulting in these shortages. One reason for tighter labour markets is demographic change, with around 1 million working age people a year currently leaving our labour markets and the projected loss of up to around 30 million working age people by 2050 from 265 million in 2022 to 236 million in 2050.
3. Another aspect contributing to labour and skills shortages is persisting levels of inactivity and unemployment, especially among women, the lower educated and some portions of the migrant population, namely those arriving for reasons of family reunification. 74.4 million people were inactive in 2022, which corresponds to around one fourth of the EU's working age population.
4. Structural skills mismatches also remain a concern and are a third pillar contributing to labour and skills shortages.
5. Consequently, there is significant potential for economic migration to play a greater role in helping to address the ongoing labour and skills shortages faced by employers across sectors throughout the EU. In this respect, economic migration should be seen as a complementary approach to the up and re-skilling of workers in the EU and efforts to foster labour market participation, especially of the unemployed and inactive, including those third country nationals already legally resident in an EU Member State.
6. The proposal for an EU Talent Pool is a very welcome initiative in the context of the EU's economic migration policy and something that employers see good potential in. Taking into account the acute labour and skills shortages felt by employers, the proposed orientation of the Talent Pool around shortage occupation lists at national and EU level is a relevant starting point for the launch of the Pool. At the same time a medium to longer-term perspective could see the opening up of the Pool to all occupations.



7. At present not all Member States create shortage occupation lists or have defined methodologies for identifying shortage occupations. Furthermore, in some Member States these lists are updated every 6 months every year or every few years. To be credible and accurate, information needs to be gathered on a regular basis at the national and sectoral level in order to feed into the EU shortage occupation list. Therefore, it is relevant that the Commission identifies opportunities for mutual learning and peer reviews on this topic as part of the preparation for, and implementation of, the Talent Pool.

Specific comments

Article 2: Scope

1. European Commission proposal: The scope of the proposal is defined as applying to “jobseekers from third countries residing outside the Union and employers established in the participating Member States.”
2. BusinessEurope position: The European Commission has rightly chosen the legal form of an EU-wide regulation, which at the same time leaves the decision on participation in the talent pool to the individual Member States. In view of the extensive labour and skills shortages that are being experienced across the Member States, it should be added to the scope of the regulation that the Talent Pool is open to job seekers of all qualification levels.

Article 3: Participation

3. European Commission proposal: Participation is open to all Member States on a voluntary basis. Member States wishing to join the Talent Pool should give at least 9 months notice. From the first day of participation, job vacancies of employers established in that Member State may be transferred to the EU Talent Pool IT platform.
4. BusinessEurope position: The voluntary nature of Member State participation is an important element. Once a Member State decides to join the Talent Pool, the process for their participation should be completed as quickly as possible.
5. It is noted that vacancies “may” be transferred to the Talent Pool platform by employers from participating countries and concerning job vacancies in the list of occupations. The fact that the transfer of job vacancies to the platform does not take place directly via the employers, but via the national contact points reflects the current national practice in many Member States as concerns job vacancies published on the EURES portal. However, the Talent Pool regulation should add that employers can easily indicate within the existing national job posting processes (“add-on” function) whether their job vacancies should also be published in the Talent Pool.



Article 4: Definitions

6. European Commission proposal: Included among the definitions is an attempt at defining an employer, which includes private employment agencies, temporary employment agencies and other labour market intermediaries.
7. As a matter of principle, BusinessEurope considers that the definition of an employer is something that is best left to the national level. Beyond this, it is important to distinguish between companies that are employers and which can include private and temporary employment agencies and the distinct role of private employment agencies as labour market intermediaries. In this context, it can be appropriate to enable the participation in the Talent Pool of private and temporary agencies so as to allow a broader and flexible search possibility for applicants by companies. In this respect, it is essential to ensure that public and private employment services work hand in hand to make sure that the applicable rules apply in practice, which will be critical in order to generate trust in the talent pool operations by all actors.

Article 5: EU Talent Pool IT platform

8. European Commission proposal: There will be a single coordinated channel enabling participating Member States to transfer job vacancies to the EU Talent Pool database as well as the necessary supporting infrastructure to enable the submission and searching of job profiles and the matching of candidates with vacancies.
9. BusinessEurope position: It is welcome that an IT platform is being created with the EU Talent Pool, which enables the transfer of national job vacancies through a "Single Coordinated Channel". Technical interoperability between national systems and the Talent Pool IT platform will be essential for the effective functioning of the Pool and to reduce administrative work and costs. It is crucial that the National Contact Points are able to reply on, or adapt, as needed, existing structures.
10. Notably, the existing IT interfaces and standards for the publication of job vacancies between national systems and the EURES network should be used for the programming of the Talent Pool interface. Interfaces to other relevant EU instruments and services, such as ESCO and Europass should also be ensured.

Article 6: processing of personal data

11. European Commission proposal: Profiles of registered jobseekers from third countries shall include the name, surname, contact details, date of birth and nationality, information on academic and professional qualifications, work experience, other skills and language knowledge. Job vacancies of employers participating in the EU Talent Pool shall include the name, surname and contact details.
12. BusinessEurope position: The information that third country national will be required to provide to establish their profile on the Talent Pool can be viewed as



the necessary information that is required to facilitate a match with employers in the EU.

Article 8: EU Talent Pool secretariat

13. European Commission proposal: The Commission will provide the secretariat for the Talent Pool, including the overall management and coordination of the Talent Pool and the preparation of the Steering Group meetings.
14. BusinessEurope position: It is appropriate that the secretariat is housed within the European Commission to deliver the overall management of the Pool and in order to ensure good coordination with the national contact points as well as other EU policies and initiatives, including the provisions of the Commission Recommendation on the recognition of third country skills and qualifications.
15. The national social partners of the participating Member States should be closely involved in the work of the national contact points, which are to be coordinated by the Talent Pool secretariat, via the respective structures. The Talent Pool Secretariat should liaise with the European Labour Authority (ELA) and vice-versa as concerns ELA's information provision tasks. The ELA already has information on the applicable rights and working conditions in the Member States as well as data that can feed into the job matching process, building on ELA's experience of managing a similar process through the EURES portal. Therefore, synergies between ELA and the Talent Pool secretariat should be explored. Ultimately, looking beyond the initial start-up phase of the Talent Pool, an assessment could also be made on the relevance of transferring the Talent Pool secretariat to ELA, taking into account the nature and competences of ELA in the years to come.

Article 9: EU Talent Pool Steering Group

16. European Commission proposal: Two representatives of the cross-industry employers and trade unions at EU shall have the right to participate as observers in the meetings of the EU Talent Pool Steering Group.
17. BusinessEurope position: It is welcome that EU cross-industry social partners will have the possibility to participate in the Steering Group although we consider that it would be more appropriate to have European social partners as full and permanent members and not only as observers. This is particularly relevant in terms of feeding into discussion around shortage occupations and to reflect the employers' views on the functioning of the Pool. Furthermore, given that there are 3 EU cross-industry employers' organisations, we would suggest that the Commission enables the participation of 3 employer (BusinessEurope, SGI Europe and SMEunited) and 3 trade union representatives.
18. Consideration should also be given on an ad-hoc basis to the involvement of relevant EU sectoral social partners in the Steering Group, notably in relation to discussions around shortage occupations and the updating of the EU list.



Article 10: EU Talent Pool National Contact Points

19. European Commission proposal: Each participating Member State shall designate an EU Talent Pool National Contact Point. Participating Member States shall ensure that relevant authorities from the field of employment and immigration are appointed as the EU Talent Pool National Contact Points. Among the tasks of the contact points shall be the transferring job vacancies to the EU Talent Pool IT platform; and notifying to the EU Talent Pool Secretariat the national list of shortage occupations once a year and any national adjustments to the list of EU-wide shortage occupations.
20. BusinessEurope position: It is very welcome that the National Contact Point will comprise relevant employment and immigration authorities. It is essential that there is good coordination between the relevant authorities at national level in these two fields for the effective functioning of the Talent Pool. This concerns not only the employment aspects of third country nationals coming to the EU, but also the issuing necessary permits and visas in a time-efficient way.
21. It is crucial that the updating of the national shortage occupation lists is not too burdensome and bureaucratic for the National Contact Points. It is essential to involve national and sectoral social partners, as appropriate, in this process.
22. It can be noted that in some Member States there are regional and sectoral shortage occupation lists and so the depth and breadth of such information, relative to national, regional and local labour market dynamics also needs to be taken into account. Therefore, it is important that there is a flexible approach to the definition of the EU level shortage occupation list, enabling such specificities to be taken into account. To support this process, the Commission should envisage organising mutual learning and peer review activities among Member States as concerns the identification of shortage occupations, having in mind that currently not all Member States have shortage occupation lists.
23. BusinessEurope's understanding is that many Member States do not have existing central contact and advisory centres for labour migration. Without such information and advice services to support employers and third country nationals in the visa application and work permit process, amongst others, any successful matching could be undermined.
24. For Member States, which already have differentiated advisory structures, it must also be possible to use these for the task. This includes in particular the possibility of referral advice, which is also provided for in the proposed regulation (Article 17). It must be sufficient for the contact points to be able to refer inquiries to existing advice services in order to avoid creating duplicate structures.

Article 11: Registration and access of job seekers from third countries

25. European Commission proposal: Job seekers will need to create their profiles via the Europass profile builder in order to register on the EU Talent Pool IT platform.



26. BusinessEurope position: While in principle supporting the Europass platform and the common CV template, we are cautious about the extent to which employers value and benefit from such a common format and template when looking to recruit people within the EU. However, utilising the Europass format is the most relevant approach in the context of the Talent Pool in order to introduce some uniformity to the process of recruiting third country nationals, whose qualifications, skills and prior work experience may be harder for employers within the EU to relate to.
27. It follows that whereas employers will have the primary role of assessing the suitability of candidates that are identified through the automated matching process to see if they meet the requirements of a vacancy notice, it is important that, as much as possible, this is a facilitated process for employers. Employers can, to the extent possible, assess the skills and qualifications of applicants through their usual practices and processes. At the same time, it would be important that the recognition and understanding of qualifications and skills is facilitated through the various proposals outlined in the Commission recommendation on the recognition of third country qualifications. Whereas employers can judge the suitability of a candidate for the job they have advertised, employers cannot be expected to assess the overall suitability of third country profiles for access to the Pool itself.

Article 12: Profile registration and access of jobseekers from third countries in the context of Talent Partnerships

28. European Commission proposal: Participating Member States taking part in a Talent Partnership may decide to rely on the EU Talent Pool to facilitate the recruitment of jobseekers from that third country whose skills were developed or validated in the framework of that Talent Partnership and certified by an 'EU Talent Partnership pass'.
29. BusinessEurope position: BusinessEurope recognises and welcomes the relevance of an integrated approach with the Talent Partnerships initiative, especially when there are Member States that are involved in both a Talent Partnership and in the Talent Pool, and particularly when it comes to recognising the skills and qualifications that a third country national has obtained in a Member State in the framework of a Talent Partnership.
30. The idea of an EU Talent Partnership pass is a good way to help display a third country nationals' skills and qualifications obtained in this context. In developing this pass, it would be relevant to consult with employers that have participated in the Talent Partnerships initiative in order to devise the pass and template in a way that not only sufficiently presents the skills and qualifications obtained, but which does so in a way that is easily understandable for other employers.
31. Consideration should also be given to using the Talent Partnership pass model in the context of other existing and future bilateral placement agreements between the employment services of Member States and third countries.

Article 13: Participation of employers in the EU Talent Pool

32. European Commission proposal: Employers' job vacancies are transferred to the EU Talent Pool IT platform by the EU Talent Pool National Contact Points. As the EU Talent Pool targets certain shortage occupations, only job vacancies falling within the list of EU-wide shortage occupations (Article 14), the national adjustments to this list (Article 15) and those relevant for a Talent Partnership are transferred to the platform. In order to be transferred to the platform those job vacancies shall also be open to the recruitment of jobseekers from third countries in accordance with the principle of preference for Union citizens. Employers participating in the EU Talent Pool shall comply with the relevant Union national law and practice. Jobseekers from third countries are thereby protected from discrimination, the risk of unfair recruitment and inadequate working conditions.
33. BusinessEurope position: BusinessEurope welcomes the focus of the Talent Pool on supporting a better match between third country nationals on the Pool and EU employers, noting that only employers from participating countries and job vacancies in the list of occupations valid for the Member State can publish their job vacancies. The fact that the transfer of job vacancies to the talent pool platform does not take place directly via the employers, but via the national contact points, also reflects the current national practice in many Member States, for example with regard to job vacancies published on the EURES portal. However, the Talent Pool regulation should specify that employers can easily indicate within the existing national job posting processes ("add-on" function) whether their job vacancies should also be published in the Talent Pool.
34. While access to the talent pool for jobseekers is clearly regulated (see Article 11), BusinessEurope considers that there are still uncertainties regarding access for employers: it is not clear how employers are to be registered in the Talent Pool system. An effective way to proceed could be that employers are given automatic access (e.g. via a code) to the Talent Pool to use the search and matching functions as soon as their vacancies have been transferred from the national contact points to the Talent Pool - without having to formally register.
35. If a formal registration process would be required, it would be important that, while ensuring that only bonafide employers are able to access the Pool, the registration process must not be overly bureaucratic for employers to the point that it deters them from using the Talent Pool. Any checks on employers should be conducted in line with the national procedures, such as in the context of the respective visa process and not as a requirement for accessing the Talent Pool per se. additional checks to enter the Talent Pool would duplicate existing structures and exceed the capacities of the national contact points. For instance, if necessary, employers could create a short profile on the Talent Pool, detailing their company name, contact information, company registration number, sector of activity and a brief description of the employer's operations.
36. It is also unclear whether employers or national contact points must indicate on the platform when a job has been successfully filled - with the consequence that the jobseeker's profile is then automatically deleted (Art. 13). This information



should be provided automatically by the national contact points that also published the job offer. The functions and conditions of application must be specified accordingly in the Regulation.

37. It is understandable that the national contact points may need to suspend employers from the Talent Pool in the event of corresponding violations. It is important to use the already well-functioning national regulations and structures and not to introduce any deviating EU regulations. The possibility of introducing additional conditions for employers to participate in the talent pool (Article 13:3) must be in line with the provisions of other national job placement platforms and not create additional work for the national contact points.
38. Related to the participation of employers in the Pool, but also as concerns attracting skilled third country nationals to apply for jobs in the EU via the Pool, it will be necessary to effectively promote and communicate the Talent Pool within the EU and with key third countries. Typically, North America is perceived as a more attractive destination for skilled third country nationals than Europe. If the Talent Pool is to play its role in attracting talent to Europe and in helping to reduce labour and skills shortages there needs to be comprehensive promotional and communication activities around the Pool, as in the case with the Canadian Talent Pool.

Article 14: List of EU-wide shortage occupations

39. European Commission proposal: This list is to be determined via a delegated act on the basis shortage occupations that are common to a significant number of participating Member States as notified to the EU Talent Pool Secretariat by the EU Talent Pool National Contact Points; and occupations which contribute directly to the EU green and digital transitions and which are likely to grow in importance.
40. BusinessEurope position: It is relevant to have an EU shortage occupation list for the Talent Pool in order to give a clear and accurate picture to third country nationals about the occupations in which job offers are available.
41. It is also welcome that there is the possibility of making nationally steered adjustments to the shortage occupation list as per Article 15. Member states should retain some flexibility to decide for themselves which shortage occupations they want to add or remove. In time a demand-led approach would also see Member States having the possibility to add any occupation - not just national shortage occupations. In response to their needs. This would give Member States the opportunity to utilise the Talent Pool in accordance with their national immigration laws. A medium-term approach to national adaptations would allow maximum leeway for the respective labour market needs and greater coordination with national legislation.

Article 19: Accelerated immigration procedures

42. European Commission proposal: Existing visa and residency procedures will apply with the draft regulation not including a new dedicated entry point for third country nationals arriving in the EU via a job advertised in the Talent Pool. However, there is the provision whereby participating Member States may decide to put in place accelerated immigration procedures to allow for a faster recruitment of registered jobseekers from third countries who have been selected for a job vacancy in the EU Talent Pool. The Commission's intention is to use the 4 months timeline appearing in the single permit directive as a benchmark here.
43. BusinessEurope position: The key issue from BusinessEurope's perspective is that once a successful match has been made, it will be important to undertake the necessary administrative processes and issuing of visas that enable individuals to take up residency and to begin work as soon as possible. This is particularly important in the context of third country migration when it concerns people moving to a Member State.

Article 22: Committee procedure

44. European Commission proposal: The Committee established by this Regulation will be responsible to update the shortage occupation lists taking into account the consultations with the steering group. The Commission would normally only involve the EU Member States in this committee.
45. BusinessEurope position: Given the important role this committee will play in the updating of EU and national shortage occupation lists, the Commission should consider opening this committee to representatives of the EU cross-industry social partners.
