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**COMMISSION STAFF WORKING DOCUMENT**

*Accompanying document to the*

Proposal for a

**COUNCIL DIRECTIVE**

**on the conditions for entry and residence of third-country nationals for the purposes of highly qualified employment**

**SUMMARY OF THE IMPACT ASSESSMENT**

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## **1. INTRODUCTION**

The EU labour markets increasingly need highly qualified workers: attraction of highly qualified immigrants will be more and more vital for the EU development, as in the future it will not be possible to rely only on EU workers. This document is a summary of an impact assessment report that examines policy options for increasing the EU capacity to attract and efficiently allocate these immigrant workers by setting up common rules for their entry and residence.

The report is based on consultations with Member States and other stakeholders. The data were mainly collected from consultation, case studies and literature review undertaken by an external study ordered by the Commission. The study and report were drafted with input from the Directorate-General Employment, Social Affairs and Equal Opportunities and from an inter-service steering group convened by the Directorate-General for Justice, Freedom and Security.

## **2. PROBLEM DEFINITION**

Demographic forecasts foresee that the size of the working-age population in the EU will decrease by 48 millions by 2050 and that the dependency ration is set to double and reach 51% by 2050, even though not all Member States will be affected to the same degree. Although the revised Lisbon Strategy focused on growth and jobs has started to deliver, many of its measures require time and investments to deliver. The demographic ageing could therefore call – as a complementary measure – for the attraction of more immigrants in the future in order to compensate these trends, at all levels of skills and qualifications. In particular, the growing importance of a knowledge-based economy, the structural economic change and the growth of service sector, the delocalization of labour intensive production, the outflows of EU nationals all contribute to conclude that the attraction and better utilization of highly qualified resources from third countries will remain a crucial challenge for the EU development perspective. At the same time, the mobility of workers between occupations (job mobility) and across borders (geographical mobility) should be recognized as a primary mechanism for improving labour market efficiency, preventing skills shortages and offsetting regional imbalances.

A common, flexible instrument on immigration of highly skilled workers (hereafter: HSW) – providing for attractive entry and residence conditions and encouraging job and geographical mobility linked to concrete needs of the EU labour market – would not in itself solve all these present and future challenges, but, as a part of a comprehensive package of measures addressing different areas of action, should constitute an important contribution. In this context, the Hague Programme of 4-5 November 2004 clearly recognised that «legal migration will play an important role in enhancing the knowledge-based economy in Europe, in advancing economic development and thus contributing to the implementation of the Lisbon Strategy».

The legislative proposal will not affect EU workers from the EU-12 who, under transitional arrangements contained in the Acts of Accession of 2003 and 2005, do not yet enjoy the full freedom of movement provided for in the EC Treaty and the *acquis*. It is important to recall that the preferential treatment clause in the transitional arrangements is primary EC law and

as such it prevails over secondary legislation: this means that Member States shall implement a possible future directive on economic immigration in such a way that it complies with the clauses of the Accession Treaties as long as they maintain the transitional arrangements, i.e. giving preference to workers from these Member States.

The legislative proposal also contains provisions to ensure consistency with other EC policies, *in primis* the development policy. Additional measures will be enacted in parallel to address important elements that cannot be dealt with in the proposal. In particular, enhanced discussions with the Member States and with developing countries – and possibly mobility partnership – are crucial to avoid that active recruitment policies aggravate the situation of countries of origin already experiencing lack of qualified human resources, especially in Sub-Saharan Africa and the Caribbean.

## **2.1. The size and nature of the problem**

EU enterprises are confronted with increasing vacancy rates, especially for highly skilled workers. The recent and current rates and patterns of employment in the EU show a greater employment growth in high education sectors (3% per year in respect of 1% in other sectors), a change in the occupational structure of the employed population in favour of highly-skilled non-manual workers and, for these workers, high employment rates coupled with low unemployment rates. Moreover, the incidence of third-country HSW on total employment is growing at a higher rate if compared to the trend of EU HSW: this can be explained as the combined effect of the growing demand for HSW and of the high employment rates of EU highly skilled nationals, close to full employment. However, the incidence of third-country HSW on the total of those employed is still quite low, revealing a substantial difficulty for the EU in attracting – and in certain cases, valorizing – HSW from third countries: the EU (with 1.72% third-country HSW) definitely lags behind all the other main immigration countries, such as Australia (9.9%), Canada (7.3%), US (3.2%) and Switzerland (5.3%).

Determining the size of the problem is difficult: presently, data on the admission of third-country HSW in the Member States are not homogeneous and estimations vary from 34 000 to 74 000 (in 16 Member States) according to the definition used. The definition and the availability of data are different among Member States, depending on whether they have specific schemes and to their content. As admission of HSW will continue to depend from actual labour market gaps and Member States will maintain full competence as concerns the volumes of immigrants admitted to the EU for employment, the numbers of those who might benefit from this proposal will depend from several factors: the future developments of the EU economy and especially of its highly qualified sectors, the reception capacities of the Member States, the educational and professional choices of the EU citizens, etc.

## **2.2. Current legal framework in the Member States**

All Member States have special schemes in place that cover specific categories of highly qualified third-country nationals, but only ten<sup>1</sup> go further than scientists, artists, intra-corporate transferees, university professors, etc. Definitions, entry and residence conditions differ, even though it was possible to identify some common grounds, notably that practically all systems are demand-driven.

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<sup>1</sup> AT, BE, DE, DK, FR, GR IE, NL, PT, UK. CZ has set up in 2003 a pilot project on the admission of HSW.

This different approach has several consequences:

- The segmented approach of Member States does not convey the message that third-country HSW are needed to sustain the EU economy and competitiveness.
- The vast differences in the definition and admission criteria for HSW clearly limit their mobility throughout the EU, affecting the efficient re-allocation of human resources already legally resident and hampering the overcoming of regional imbalances.
- With the few exceptions, no Member State seems to have procedures promoting circular and return migration of third-country HSW. Such schemes could help to maximize benefits for all interested parties, i.e. responding to labour needs in Member States, while contributing, through eventual return, to the development of their countries of origin.
- The length and complexity of admission procedures could play a fundamental role in limiting EU attraction.
- The full social and economic integration of HSW is capital for retaining needed HSW.

### **3. OBJECTIVES**

The global objectives are:

- (1) to improve EU ability to attract and retain third-country HSW as one of the conditions for increasing the contribution of economic immigration within the set of policies and measures aimed at enhancing the competitiveness of the EU economy and addressing the consequences of demographic ageing;
- (2) to effectively and promptly respond to existing and arising demands for highly qualified labour, and to offset skill shortages, by enhancing the inflows and circulation of third-countries HSW between jobs and Member States and promoting their efficient allocation and re-allocation on the EU labour market.

The specific objectives – to be pursued without prejudice to EU nationals – are:

- (1) to develop a coherent approach and common immigration policy on third-country HSW;
- (2) to increase the numbers of third-country HSW immigrating to the EU on a needs-based approach;
- (3) to simplify and harmonize admission procedures for third-country HSW;
- (4) to promote third-country HSW's social and economic integration;
- (5) to foster intra-EU mobility, remove unnecessary barriers and allow a more efficient allocation of third country HSW through the EU.

#### 4. POLICY OPTIONS

The following options were considered:

Option A - status quo. Member States' immigration policies widely differ on admission of highly qualified workers. Such workers are increasingly needed to fill existing and arising gaps on the labour market, but the EU substantially fails in attracting them. In the absence of common action in this field, the situation might not change substantially.

Option B - to establish a basic common policy for the admission of highly qualified workers. A minimum set of entry conditions would be proposed, leaving to Member States broad autonomy in defining the distinctive elements of their national legislation. Residence and work conditions would not be tackled. This option would have only a limited effect in attracting these workers or in improving the efficiency of the EU labour market: the overall impact on the macroeconomic environment would be quite limited.

Option C – to simplify the admission system, by setting up an EU point-system and a fast-track admission procedure, allowing immediate family reunification and creating a skill-matching database. This option could strongly promote and facilitate the migration of third-country highly qualified workers to the EU. However, unless the points are set at EU level (which could be in contrast with subsidiarity for the time being), immigrants would continue to face very different admission conditions.

Option D - to establish a set of common criteria and a fast-track procedure for entry plus favourable residence conditions (working and residence rights, immediate family reunification, quicker acquisition of EC long-term status, etc.). The effective integration of third-country highly qualified workers into the labour market and society would be the best way to maximise their contribution to economic growth and competitiveness, and it would really improve the EU's ability to deal with the present and expected challenges. However, the effects of such a policy would be limited to single Member States.

Option E1 – to foster intra-EU mobility through coordination of national priority lists and by creating an EU Blue Card and a database for Blue Card holders. Intra-EU mobility would be a strong incentive for third-country highly qualified workers to enter the EU labour market, and could play a primary role in relieving the labour shortages in certain areas/sectors. Further tools could help in matching labour supply and demand (i.e. the EU Blue Card Database). This option could achieve notable and positive effects on labour market efficiency and on the EU macroeconomic environment.

Option E2 - to extend to highly qualified workers the provisions on intra-EU mobility contained in Directive 2003/109/EC. This option also includes the point system under Option C. However, the intra-EU mobility under this option could be more limited than under Option E1. Therefore, the whole relevance and effectiveness of this option could be more limited.

Option F - communication, coordination and cooperation. The envisaged actions could support, to a certain degree, the establishment of a basic common ground facilitating attraction of highly qualified workers and more their efficient allocation in the EU labour market. However, it would have limited effectiveness.

## 5. COMPARING THE OPTIONS

**Table 1 – Impacts**

		Option A	Option B	Option C	Option D	Option E 1	Option E 2	Option F
Relevance	Attract and retain third-countries HSW, enhancing the competitiveness of the EU economy, and addressing the consequences of demographic ageing	- / 0 or √	√√	√√√√	√√√	√√√√	√√√(√)	√√
	Respond to existing and arising demands for highly qualified labour, offset skill shortages, enhancing the inflows and circulation of third-countries HSW	- / 0	√	√√√	√√√	√√√√	√√√(√)	√√
	Develop an EU coherent approach and common immigration policy	-	√√	√√√√	√√√√	√√√√	√√√√	√√
	Lower barriers to entry	0	0/√	√√√√	√√√	√√√	√√√	√
	Promote HSW's social and economic integration	0	0	√√√	√√√√	√√√	√√√	√
	Foster intra-EU mobility	0	0	√(√)	√√(√)	√√√√	√√√	√
Feasibility	Difficulty/risks for transposition	N/A	√√	√√√(√)	√√√	√√√√	√√√√	N/A
	Financial and administrative costs	0	√	√√(√)	√√	√√√	√√√	√(√)
Impacts	Impact on EU competitiveness	- / 0 / √	√(√)	√√√√	√√√	√√√√	√√√(√)	√
	Impacts on third-countries		- and √	- and √√√	- and √	- and √√	- and √√	√
	Impact on national HSW	0	0	√√	√√	√√√	√√√	√
	Impact on third-country HSW	- / 0 / √	0 or √	√√(√)	√√√√	√√√√	√√(√)	√

		Option A	Option B	Option C	Option D	Option E 1	Option E 2	Option F
Fundamental Rights	Protection of personal data (art. 8)	0	0	-	0	-	-	0
	Respect for private and family life (art. 7)	0	0	√√	√√√	√√	√√	0
	Freedom of movement and of residence (art. 45(2))	0	0	0 or √	√	√√√	√√	0
	Non-discrimination (art. 21)	0	0	0 or √	√√√	√√	√	0

Comparing the options and their impacts, and in the light of Member State and stakeholder views, the preferred option is E1 plus some elements of C and D. Supporting measures could be information campaigns, measures to prevent and/or limit the brain drain, setting up the Blue Card Database.

**Table 2 – The preferred option**

Issue	Key Features
<b>Definition of HSW and admission conditions</b>	Admission system based on a set of common criteria (job contract, salary threshold, professional qualifications).
	Open definition (i.e. based on fulfilling the criteria)
	Derogations for young professionals
<b>Admission procedures</b>	Introduction of fast-track scheme for the admission (single procedure/single permit called "EU Blue Card")
	Definition of a maximum period of time for processing the applications (30 or 60 days)
	Initial validity of permit: 2 or 3 years, renewable, in case of work contracts of unlimited duration.
	Acceptance of in-country requests for categories established at EU level (plus others at MS level)
<b>Conditions of residence</b>	Mobility on the labour market of the Member State of residence after a “waiting period” (i.e. two years)
	Automatic withdrawal of the permit in case of unemployment only after a certain period of time (i.e. 3 months)
	Cumulating periods of residence in different EU MS in order to obtain EC long-term residence status after 5 years of legal residence in the EU
	Allowing family reunification within the shortest delays
	Equal treatment with nationals to HSW as in Directive 2005/71/EC
	Immediate access to the labour market for spouses
	Provisions to allow circular migration before and after the acquisition of EC long-term residence
<b>Intra-EU mobility</b>	Allowing intra-EU mobility after a minimum “waiting period” in the first MS (i.e. two years) under certain conditions, first of all a job offer in the second MS. The family would be allowed to follow the mobile HSW.



### *Main benefits of the preferred option*

- Common consistent approach to highly skilled migration across the EU so to facilitate and harmonise the admission of HSW, also by promoting their efficient allocation and re-allocation (job and geographical mobility).
- Positive impacts on attracting, retaining and responding to existing and arising demands of companies throughout the EU for highly skilled workers, on a needs-based approach.
- Positive impacts on the whole EU competitiveness in the short and long term.
- Strong message to potential highly skilled immigrants.
- Sufficient flexibility left to Member States to adapt the scheme to their labour market needs and policies.
- Progressively and efficiently integrating HSW and their families in the host labour market and society.
- EU firms would benefit for an increasingly mobile pool of HSW.
- Measures to support circular migration would be introduced at EU level.
- Complementary measures such as the "EU Blue Card database" could be a tool to effectively implement the scheme and to support matching of demand and offer of highly skilled labour.

### *Main disadvantages of the preferred option*

- This option could affect the competitive position of EU HSW on the labour market. However, as a salary criterion is required and job and geographical mobility is not immediate or unconditioned, the possible negative effects should be limited. And Member States may continue to apply national measures to check the respect of the general principle of Community preference (as stated in Council Decision of 20.6.1994).
- The possible negative impact of the proposal on developing countries suffering from lack of human resources in certain sectors/occupations. Measures to counterbalance or possibly prevent such effects should be foreseen.
- A demand-based approach is not as attractive as a supply-based one: it might show its limits in the long term, if the demand for this category of workers becomes important and generalized.