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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Integration, Migration and Expulsion (Admission)
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Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing an EU Talent pool - revised compilation of Member States' comments

Following the request for written contribution on the Presidency compromise text (doc. 7860/24) at the Working Party IMEX (Admissions) meeting on 8 April 2024, delegations will find in Annex a revised compilation of the replies as received by the General Secretariat.

ANNEX

Written replies submitted by the Member States

CROATIA (new)

Articles 1-6, recital 6

Article 3 - Withdrawal from the EU Talent Pool

As regards the finantial aspects of withdrawal of Member State from EU Talent Pool, we would aprecirate additional information and explanations as regards the finantial repercutions on Member State (what could be financed and what costs should be recovered (IT, human capacities, ect…)).

As regards the time frame of 2 years relevant for recovery of funding, we would appreciate additional information on why is this period regarded as proportionate?

Even when participating in the first two years, the MS had certain real costs for the establishment and functioning of the National Contact Point (technical and human capacities), which should be taken into account.

Articles 7-10

Article 10, paragraph 1 (National contact point)

Article 10 now (as a shall) provision puts an obligation to have an ***entity*** act as National Contact Point. We believe that this is a good approach, as it would guarantee that there is one single entity that would be responsible for all actions as in paragraph 2.

However, the situation could get complicated because of the obligation to name two experts from national authorities coming from the field of employment and immigration to the composition of National Contact Point.

The National Contact Point is expected to provide various information, that lies within the competences of various national stakeholders, such as information related to the working conditions, social benefits and health assistance, recognition of qualifications….

As regards the role of immigration authorities in National Contact Point, the referent articles are Article 10 para 1 points f) an g) that refer to Article 17 para 1 and 2 (inform on immigration procedures and specific information on national immigration procedures to obtain visas and residence permit for work purposes; as well as specific guidance and information on family reunification).

In practice, there would be several different competent bodies responsible for providing information from Article 17.

Because of wording of Article 10 as regards the obligatory composition of National Contact Point for which two different state bodies will be responsible (e.g. Ministries or other competent bodies), we could imagine situation if e.g. Public employment service (because of similarities to functioning of EURES) would be the entity acting as National contact point, it is unclear does immigration expert needs only to be appointed in addition to this entity (usually immigration experts will not be employees of PES) and does not need to be employed in entity serving as NCP?

From this example, it is not clear how would **NCP be composed** of two experts from immigration and employment (working within two different public bodies) and also an **entity should be appointed as NCP?**

This also raises concern as regards the possibility of funding and the division of tasks as from Article 17.

As we see the text, the only provisions concerning the immigration experts are the one in Article 17 Paragraph 2 Points a) and b).

Articles 11-16

Article 11 (registration of third country national in EU Talent Pool)

Regarding Article 11 point 2) we are still concerned on administrative burden of having large number of profiles of third country nationals that might not fulfill the conditions for entry into EU.

If there will only be a declaratory statement form third country national that he/she does not have a measure of refusal to refuse entry or stay in the EU; how would this administrative burden be addressed (NCP still needs to provide various information on various aspects, and on some points also some specific support and information).

What is the consequence if a person has an entry ban (and falsely presents that he does not have one), which in practice will be revealed only during the immigration procedure. Could this profiles be removed from Eu Talent Pool?

Article 17-19

Article 17

As regards the obligation to provide certain information to third country nationals who wish to move to Member State, if they have been selected for a job vacancy, we can agree that certain information should be provided to third country nationals.

However, **it would be important to avoid any excessive administrative burden**, especially in providing information on national immigration procedures and family reunification and to **avoid for the competent authorities to be obliged to give specific personalised information for each individual that will be selected for job vacancy.**

Article 19

Having in mind that it is emphasized that the EU Talent Pool does not affect immigration procedures, we consider this article redundant, even as a may provision. Member States may, without this being stated in this article, establish such procedures in their national law anyway.

CYPRUS

Recital 6 and Article 4.1.3b:

Recital 6 :

> **The concept of participating employer means an employer whose job vacancies have been transferred to the EU Talent Pool IT Platform by the National Contact Point of the Member State where it is established. The concept of other participating entity means a temporary work agency or a labour market intermediary whose job vacancies may have been transferred, as allowed or subject to/according to ~~by~~ national legislation, to the EU Talent Pool IT Platform by the National Contact Point of the Member State where it is established.**

Article 4.1.3b:

> **"other participating entity" means a temporary work agency or a labour market intermediary whose job vacancies may have been transferred, as allowed or subject to/according to ~~by~~ national legislation, to the EU Talent Pool IT Platform by the National Contact Point of the Member State where it is established.**

Explanation: Our experts suggest the additions marked in red, as they believe make it more precise and attribute in a clearer way what we want to state. These additions are important to Cyprus.

THE CZECH REPUBLIC (new)

The Czech Republic sends the following written comments:

1. Preamble point 23 a:

   The meaning of the second sentence is not clear here, if the regulation applies to employers and other entities defined in (6) and if it provides that services are to be provided to employers as well as to agencies and intermediary entities.

2. Preamble point 16:

   We find it insufficient for the applicant to submit only an affidavit to allow access to the database. Such an applicant will be registered, and the employer may start a recruitment process with him which he will not be able to complete because the applicant will not obtain a visa. Also, in relation to Article 11, we would like to ask the presidency to consider the possibility of preliminary screening of jobseekers in the pre-registration phase – in the phase before the profile is made visible on the platform.

   Although employers face similar uncertainties under many current migration mechanisms, we believe that employers will expect a certain level of screening of applicants from the EU-guaranteed Talent Pool. And if these expectations are not met, we believe that the risk of unknowingly breaking the rules will increase. For this reason, We believe there should be some pre-screening before jobseeker is accepted into database.

3. Article 1:

   Not all countries are or will be involved in the Talent Partnership. We are concerned that uninvolved, smaller states may subsequently be overlooked in other collaborations. Again, we draw attention to the diversity in the area of notification and recognition of qualifications.

4. Article 4:

The Czech Republic like other Member States, we welcome the change in the definition of employer. However, we are concerned, as other Member States are, about the potential abuse of posting workers across the EU. We understand that posting is dealt with in a different directive, but we would welcome a more detailed description.

5. Article 17:

We would welcome a more detailed description of what all the specific information contains. Which will have to be provided by the National Contact Point.

FRANCE

La France remercie la Présidence pour ce second texte de compromis, qui prend en compte plusieurs remarques formulées lors de la dernière réunion du groupe IMEX admission et par voie de commentaires écrits.

Elle salue des avancées très positives, dont des clarifications répondant à nos préoccupations sur plusieurs enjeux, comme la possibilité de retrait de la plateforme (article 3), les modifications introduites sur les définitions (article 4), les reformulations apportées à la composition et aux missions des points de contacts nationaux (articles 10 et 17) ou encore la prise en compte des besoins spécifiques au niveau national ou régional dans la mise à jour des métiers en tension (article 15).

Afin de compléter ces évolutions, nous souhaitons faire part des positions et des propositions d'amendements suivants :

- **Champ d'application (article 2) et définitions (article 4)**

Nous accueillons favorablement l'introduction de la définition d'« employeur participant », à la place de celle d'employeur. Dans la mesure où le règlement relatif à EURES ne contient pas de définition du terme « employeur », il nous semble cohérent qu'il en soit de même pour le règlement EU Talent Pool.

De même, le regroupement des agences d'emploi privées et des intermédiaires du marché du travail dans la définition d'« autre entité participante », distincte de la catégorie d'« employeur participant », apporte une clarification bienvenue.

Néanmoins, la participation des « autres entités participantes » à la plateforme EU Talent Pool demeure un point d'attention pour la France, en particulier pour les agences d'emploi privé et intermédiaires du marché du travail autres que les agences de travail temporaire (intérim).

Le recrutement par des intermédiaires et des agences pour l'emploi conduit régulièrement à des situations d'exploitation et d'abus à l'encontre des travailleurs migrants, notamment, mais pas uniquement, lors du détachement transfrontalier de travailleurs.

En effet, le recours abusif au détachement de ressortissants de pays tiers place ces derniers dans une position vulnérable conduisant à l'exploitation par le travail, crée une concurrence déloyale et un nivellement par le bas en matière de conditions de travail et contourne les politiques nationales de migration. Nous devons prévenir ces risques autant que possible et veiller à ce que la plateforme EU Talent Pool ne soit pas un instrument facilitant ces situations abusives.

A cet égard, la France souhaiterait que soit réintroduite dans le texte la possibilité pour un Etat membre de contrôler la participation des employeurs, qui a été supprimée de la version antérieure.

Comme d'autres Etats membres l'ont exprimé pendant la réunion du groupe IMEX du 8 avril 2024, nous avons des doutes sur le fait que le paragraphe 5a de l'article 4 permette de prévenir ces abus et nous avons encore besoin d'analyser ce point avant de nous prononcer.

Par ailleurs, à l'article 4, paragraphe 1, point 5a, l'introduction de la définition d'« offre d'emploi » ne nous pose pas de difficultés. Néanmoins, la France s'interroge sur la notion de « successful applicant » introduite dans cette définition : recouvre-t-elle l'expression « jobseeker who has been selected » présente dans de nombreux passages du règlement ? Si tel est le cas, ne faudrait-il pas aligner les deux expressions dans le texte ? La France avait suggéré et réitère son souhait que la notion de « jobseeker who has been selected » (ou de « successful applicant ») soit explicitée par l'ajout d'une condition de fourniture d'un document attestant de la sélection du candidat.

- **<u>Contrôles sécuritaires (considérant 16)</u>**

La France considère que, dans la rédaction actuelle, la mention de la conduite, à l'occasion des procédures d'immigration, de contrôles sécuritaires dans les bases européennes, dont le SIS, pourrait être source de confusion pour les employeurs. En effet, elle pourrait laisser penser aux entreprises participantes que tous les profils inscrits ont fait l'objet de telles vérifications sécuritaires. Or, ces contrôles, appelés à s'enrichir lorsque le VIS Recast et l'interopérabilité seront en place, sont opérés au moment des demandes de visa ou de titre de séjour, soit postérieurement à l'inscription sur la plateforme.

La France propose d'ajouter une information à l'attention des recruteurs afin qu'ils aient conscience que la plateforme n'est qu'un outil de rapprochement entre les demandeurs et les employeurs et que les contrôles habituels seront opérés au moment des procédures d'immigration.

Proposition d'amendement :

(16) The EU Talent Pool should contribute to the objective of discouraging irregular migration including by facilitating access to existing legal pathways. Jobseekers from third countries who are subject to a judicial or administrative decision refusing the entry or stay in a Member State or an entry ban in accordance with Directive 2008/115/EC of the European Parliament and of the Council[1], should not be allowed to register their profiles in the EU Talent Pool IT platform, given that they will not be permitted to enter and stay in the Union. To this end, jobseekers from third countries should be required, before registering their profiles in the EU Talent Pool, to declare that they are not currently subject to a refusal of entry or stay in a Member State or an entry ban to the territory of the Union. Information should also be provided on the consequences for making a false declaration in this respect. In addition, during the immigration ***procedures carried out by Member States****, necessary checks in relevant EU databases such as the Schengen Information System, which contains alerts on third country nationals who are not entitled to enter of stay in the schengen area may be conducted.* ***Participating employers shall be informed that the job seeker's registration in the EU Talent Pool does not entail that security checks have been carried out during national procedures and is no guarantee that a visa and a residence permit will be granted following the selection process.***

- **<u>Caractère optionnel de la mise en œuvre d'une procédure accélérée en matière migratoire (article 9 et titre du chapitre V)</u>**

La France souhaiterait que soit rappelé le caractère optionnel de la mise en œuvre d'une procédure accélérée en matière migratoire dans l'article 9, point 1(d) :

(d) <u>exchanging practices regarding</u> ~~discussing~~ the implementation of ***optional*** *accelerated immigration procedures to facilitate the recruitment of registered jobseekers from third countries pursuant to Article 19.*

[1] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98, ELI: http://data.europa.eu/eli/dir/2008/115/oj).

La France propose de modifier également le titre du chapitre V en ce sens :

CHAPTER V

*INFORMATION PROVISION, ~~SUPPORT SERVICES~~ FACILITATION OF COMPLAINTS AND **OPTIONAL** ACCELERATED IMMIGRATION PROCEDURES*

- **Composition et missions des points de contacts nationaux (articles 10 et 17)**

La France apprécie la clarification à l'article 10 sur la composition des points de contacts nationaux, avec l'ajout du terme « entité » (article 10(1)).

Nous saluons tout particulièrement la clarification apportée sur les missions des points de contacts, à l'article 10, avec la suppression des termes « support » et « assistance » et le recentrage sur des missions d'« information » (article 10(2)g et considérant 18).

A l'article 10(2)g, nous regrettons toutefois que la référence à un document ou une procédure attestant la sélection du demandeur d'emploi n'ait pas été retenue.

A l'article 17 et aux considérant 30 et 30a, la France salue la suppression des termes qui pouvaient laisser supposer que les points de contacts devaient fournir des prestations et informations individualisées aux demandeurs d'emploi sélectionnés. En particulier, nous remercions la Présidence pour la suppression des termes « support », « assistance », « guidance », « tailored » et « upon request ».

Les modalités pratiques selon lesquelles les points de contacts nationaux doivent assurer leurs missions de communication doivent toutefois être précisées selon nous. L'article 17 semble définir deux niveaux d'informations qui doivent être apportées par les points de contacts nationaux : i) au paragraphe 1, les informations d'ordre général communiquées via la plateforme ; ii) au paragraphe 2, les informations plus précises à fournir aux demandeurs d'emploi sélectionnés.

Pour l'information relevant du paragraphe 1, il serait opportun de définir une périodicité d'un an pour la mise à jour de ces informations, comme c'est le cas sur le portail EURES.

Pour l'information relevant du paragraphe 2, nous nous interrogeons sur ce que la Présidence entend par « specific information ». L'ajout de « who have been selected for a job vacancy in the EU Talent Pool » laisse supposer qu'une information dédiée en lien avec le travail obtenu par le ressortissant de pays tiers sera fournie. Cela semble revenir à fournir des informations individualisées à chaque étranger en fonction du travail pour lequel aura été sélectionné, ce qui ne nous semble pas possible à mettre en place. Une reformulation permettant de clarifier ce point serait souhaitée.

Proposition d'amendement de l'article 17, point 2 :

2. *Registered jobseekers from third countries who have been selected for a job vacancy in the EU Talent Pool and participating employers […]* ***shall have access to specific information, provided by the EU Talent Pool National Contact Points,*** *in particular with regard to: […]*

Par ailleurs, le mode de transmission de l'information aux candidats retenus sur une offre n'est pas défini. Une section dédiée et accessible aux seuls demandeurs d'emploi sélectionnés pourrait être une possibilité à explorer, qui permettrait également de répondre à nos préoccupations concernant la reconnaissance de ces derniers.

- **Création d'un « pass partenariats de talents » (article 12)**

La France conserve de nombreuses interrogations quant à la création d'un « pass partenariats de talent » dans le cadre de la plateforme talents.

Ainsi, nous estimons toujours que l'articulation opérationnelle entre la réserve de talents de l'UE et les partenariats de talent doit être clarifiée.

En effet, ces partenariats peuvent prendre de nombreuses formes, y compris des programmes impliquant l'engagement du ressortissant de pays tiers de retourner dans son pays d'origine à l'issue d'une période de travail dans un Etat membre de l'Union européenne. Dès lors, il semble prématuré de créer un dispositif tel que le « pass partenariats de talents UE » et d'envisager une articulation aussi étroite avec l'« EU Talent Pool ».

Par ailleurs, la France s'interroge sur le choix du terme « pass » qui peut prêter à confusion, laissant entendre la création d'un titre qui pourrait être porteur de droits pour ses détenteurs. De même, la

mise en avant par un demandeur d'emploi enregistré sur la plateforme d'une participation éventuelle à un partenariat de talents nécessiterait d'être plus précisément encadrée. En particulier, nous souhaiterions savoir comment ce « pass » serait obtenu et par qui il serait délivré, ce qu'il signifie exactement, et être certains que les employeurs seraient informés à son sujet. De même, nous nous interrogeons sur le temps de validité d'une telle certification et sur la possibilité envisagée ou non de certifier les entreprises ayant participé à un partenariat de talents.

Il nous semble en effet essentiel i) d'éviter toute confusion de la part des employeurs entre des mécanismes de reconnaissance de qualifications et compétences et des mécanismes de vérification en lien avec les procédures migratoires ; ii) d'éviter toute confusion entre un label « UE » et un label délivré dans un cadre bilatéral.

- **Ajustements à la liste des métiers en tension (article 15)**

La France salue la prise en compte de la politique migratoire et des besoins spécifiques au niveau national ou régional dans la mise à jour des métiers en tension.

Nous regrettons cependant que la procédure et les règles relatives aux adaptations de la liste des professions en pénurie à l'échelle de l'UE ne soient pas suffisamment précises. Ainsi, nous réitérons notre demande que les adaptations nationales et régionales de la liste soient effectives dans un délai de 3 mois à partir de la notification au secrétariat de la plateforme.

Nous souhaiterions également avoir des précisions sur :

- L'impact des adaptations nationales et régionales de la liste sur les offres d'emploi déjà publiées sur la plateforme et qui porteraient sur un métier qui est retiré de la liste des métiers en tension ;

- L'impact des mises à jour de la liste commune : lorsqu'une mise à jour de la liste commune est effectuée, les Etats membres doivent-ils renouveler leur demande d'adaptation aux contextes nationaux et régionaux ? En particulier, si un métier est retiré de la liste commune, est-ce que les offres d'emploi en rapport avec ce métier sont supprimées pour tous les Etats membres ?

La France remercie par avance la Présidence de ses éclaircissements.

GERMANY

We thank the BEL Presidency for this compromise proposal.

Preliminary Remarks:

The amendments and new compromise proposals, submitted on short notice, are very extensive and complex in terms of their impact. For this reason, GER has unfortunately only been able to conduct a **cursory examination** so far, which is why we have a **general scrutiny reservation**.

Recitals

Recital 16

GER agrees.

Recital 23a

We request clarification regarding recital 23a in light of the fact that, as understood here, it specifies measures that go beyond article 13, thus not being found in the regulatory section of the Regulation. Consequently, the intended effect of recital 23a is unclear. Additionally, it is not clear how Member States are to assess and ensure the fair recruitment obligations described in sentence 1. The meaning and purpose of sentence 2 remain equally vague.

Recital 24a

We welcome the inclusion of the principles of fair recruitment.

Recital 27

GER agrees.

Recital 30a

We would like to clarify how the distribution of standardised specific information through electronic means to registered jobseekers who have been selected for a job vacancy should be carried out concretely.

Question: What information is supposed to be included?

We expressly welcome the possibility to refer to other sources of information and/or competent authorities.

Recital 31

GER agrees.

From our perspective, it is important to emphasize once again that national residence law and national law on the access to the national labour market remain unaffected by this Regulation.

Articles

In general: Art. 1 (2)(c), Art. 2(1), Art. 3(1), Art. 5(2)(d) and (f), Art. 6, Art. 11(3), Art. 20

We welcome that by specifying and defining "participating employers and other participating entities," the meaning of employer is being differentiated and does not necessarily include labour market intermediaries and temporary work agencies.

Art. 4 para. 1 lit. 3a and 3b

We generally welcome the compromise proposal, which strengthens a uniform term of employer.

However, we still have concerns:

- In Germany, temporary work agencies are simultaneously the employers of temporary workers, thus fulfilling both no. 3a and 3b. Therefore, no. 3b **should be supplemented** to distinguish it from no. 3a **by adding the phrase** "regardless of whether they become the employer of the temporary worker."
- We request clarification in no. 3b to make it clearer that offers from temporary work agencies and labour market intermediaries can only be included in the EU Talent Pool to the extent that temporary workers have access to the labour market or there is no prohibition on employment placements for labour market intermediaries. It should also be **added** that this Regulation does not affect such provisions.

- We support that under no. 3b Member States still have the option to decide whether labour market intermediaries and temporary work agencies may be included into the scope of this Regulation.

Art. 4 para. 1 lit. 4

We request clarification on whether existing data formats and standards from the transmission of applicant and job data in the EURES context should or can be used and are transferable from an IT perspective.

Art. 4 para. 1 lit. 5a (Recital 23)

We see a general need for discussion and action regarding posting of workers and welcome discussions on this matter, although not necessarily in the context of this Regulation. We would like to point out that difficulties in practical application may arise if protection depends on whether third-country nationals are recruited via the EU Talent Pool. Therefore, we welcome the clarification on the applicability of the posting rules in recital 23, stating that recruitment conditions must be complied with.

Question: Could the addition of a territorial dimension to the definition have an impact on the application of posting rules?

The definition needs to be questioned regarding job vacancies from labour market intermediaries because jobseekers do not enter into an employment relationship with the labour market intermediary, but rather conclude a contract of employment with a third party. We understand the provision to encompass such job vacancies.

Question: Does this understanding align with that of other Member States?

This would also mean that, unlike in the case where the employer directly searches, it does not matter where the registered office is. We ask to confirm the COM statement that the registered office should matter.

Art. 10 para. 1 (Recital 29a)

We welcome that the insertion of the term "entity" gives more flexibility to the Member States in designating a National Contact Point.

Art. 10 para. 2 (Recitals 18, 30, 30a)

We welcome the limitation of the scope of the National Contact Points' responsibilities through the adjustments under (b), (c), and (g). Due to the limited allocated personnel resources for the National Contact Points, we particularly support the removal of support services and post-selection assistance as well as the restriction of the information obligation to registered jobseekers who have been selected for a job vacancy in the EU Talent Pool.

Art. 12

Scrutiny reservation.

Art. 13

We would like to point out that in the EURES context, inquiries from employers wishing to register on EURES are evaluated at the EU level. It is not the public employment agency that decides. If in this Regulation the national employment agencies had to decide, there would be a new review effort for the national agencies compared to the EURES case.

Art. 15 para. 1 (Recital 25)

We welcome that Member States can decide that adjustments to the list of EU-wide shortage occupations can only be made if they take into account specific national or regional labour market needs.

Art. 17 (Recitals 27, 30a)

We welcome, as already stated under Article 10(2), the reduction of administrative burden for the National Contact Points - firstly, through the removal of "support services," "post-selection assistance," and "tailored information," and secondly, through the possibility to refer to other competent authorities. The Pres. confirmed that individual case management is not intended and that the distribution of standardised specific information through electronic means to registered jobseekers or to refer to the competent authorities and/or appropriate sources of information would be sufficient.

Art. 18

We request to examine whether it would be beneficial to establish helpdesks for the receipt of complaints, similar to the EURES Helpdesk, in addition to the National Contact Points. Employees can complain about bad experiences with employers via the EURES helpdesk. The respective NCO then receives a message about the facts of the case and the employer concerned and is asked to follow up accordingly, remove job offers from the national database, etc. It would make sense to set up a helpdesk for the talent pool in addition to the NCP for each MS.

Art. 20 (see Art. 12)

GER agrees.

IRELAND

General Comments:

Ireland welcomes efforts to build linkages between the Talent Pool and Talent Partnership approaches to skills mobility to ensure coherence and maximise the potential of both approaches to skills and talent mobility.

On Individual Recitals and Articles:

Article 1 (d) & Article 12 concerning the proposed Talent Partnership Pass

- Article 1 (d): "the facilitation of recruitment of jobseekers from third countries benefitting from a framework that creates a ~~pass~~ (**certificate of skills validation) or (a document that certifies or validates skills)** ~~that certified or validates skills~~, such as a Talent Partnership"

- Article 12.1: "The EU Talent Pool shall be open to jobseekers from third countries residing outside the Union whose skills were developed or validated in the framework of a Talent Partnership and certified by an 'EU Talent Partnership **certificate/document** ~~Pass~~', provided that Member States participating in the EU Talent Pool decide to rely on a Talent Partnership"

- Article 12.2 " Pursuant to paragraph 1, jobseekers from third countries who have received an 'EU Talent Partnership **certificate/document** ~~Pass~~' certifying the skills developed or validated in the context of a Talent Partnership may register their profile in the EU Talent Pool IT platform linking their profiles to the 'EU Talent Partnership **certificate/document** ~~Pass~~'

- Articles 12.3-5: Ireland supports these articles, particularly the detail provided on what information will be contained on the EU Talent Partnership IT Platform.

Ireland is supportive of the facilitation of a form of skills validation/certification for third country nationals who have participated in a Talent Partnership. Ireland suggests some small revisions to language which may more clearly convey the intent of the 'pass'.

It appears from the wording of the above articles that acceptance of the Talent Partnership 'Pass' remains within the purview of the Member State and/or individual employers. Ireland would support assertion of the optional nature of acceptance of these certificates while noting that such skills validation would undoubtedly be to the benefit of employers seeking to recruit from outside the EU. As a Member State, the verification of training and skills in Ireland falls under the responsibility of employers and this framework would provide an additional attestation and form of security to employers seeking to ascertain the validity of an applicant's skills.

It appears that such certification, would not provide any additional rights to third country job seekers, being simply of a nature akin to a certified job reference or skills certificate, albeit one certified under an EU scheme. This would appear in concept not to be dissimilar to, for example, the European Computer Driving Licence certification. In operation, Ireland would support the capacity of employers to check the validity of such documents with a relevant employer or training provider and for the certification to be issued and hostable on the Talent Partnership IT platform. As noted, the onus for ensuring potential employees possess the relevant skills and qualifications remains under the purview of employers in Ireland. Ireland further notes the fact that while the Talent Pool will facilitate the advertisement of vacancies by employers to jobseekers, applicants who are in receipt of a job offer, will remain subject to the national immigration processes of the Member State.

Ireland also welcomes efforts to build coherence via the provision of a framework for skills validation between the Talent Pool, Talent Partnerships and any similar schemes which may develop.

Article 3.1

"…The withdrawal of a Member State in the first two years of operation of the EU Talent Pool IT platform or in the ~~two first years~~ **first two years** of participation shall result in the net cancellation or recovery of all Union funding provided up to the withdrawal date..."

Ireland recommends the above minor edit to the English language version for language syntax purposes.

Additionally, Ireland wishes to note its support for the financial elements of the withdrawal provisions. Noting the voluntary nature of participation in the Talent Pool, and of the institutional financial investment required to build and maintain the IT architecture and the supporting structures as well as the importance of reasonably sustained engagement with the Talent Pool, the repayment of funding provided for those who withdraw prior to two years of operation or participation and the repayment of unspent funds provided for those who withdraw after the second year of participation appears reasonable. Ireland also notes the 9-month withdrawal process, in alignment with the timeframe for the joining process, and notes the importance that any final timeframe for withdrawal considers the importance of maintaining trust in the platform and provides adequate security for employers and jobseekers utilising the platform at the time of notification of withdrawal.

Article 13

While it is the responsibility of the EU Talent Pool National Contact Points to transfer only those vacancies that correspond to the EU-wide list of shortage occupations, clarification of the procedure is sought for the situation where vacancies have been listed for an occupation, previously on the list of shortage occupations but have since been removed. Of particular concern would be where country-specific adjustments have been made as the occupation is no longer eligible for employment permits for Third Country Nationals in a Member State, however vacancies have already been transferred by the National Contact Point to the platform prior to this adjustment.

Clarity is sought over whether such listings would remain visible for up to one year in line with Article 13(4) and, if so, Ireland suggests this may be addressed by an additional case being added to this section whereby the National Contact Point can notify the Commission of the decision to remove vacancies transferred to the EU Talent Pool Platform by that National Contact Point, in accordance with Article 15(1) country-specific adjustments.

LITHUANIA

Lithuania thanks the Commission for the proposal to establish EU Talent Pool and the Presidency for the possibility to send written comments on it. Lithuania is reviewing the proposal and has entered scrutiny reserve on the whole text. Therefore, our comments are preliminary.

Art. 1 Definitions and 3 constituent part

(3b) "other participating entity" means a temporary work agency or a labour market intermediary whose job vacancies have been transferred, as allowed by national legislation ***of implementation of the EU Talent Pool****, to the EU Talent Pool IT Platform by the National Contact Point of the Member State where it is established****.***

(3) In order to facilitate international recruitment and provide opportunities for third-country nationals to work in EU-wide shortage occupations, an EU Talent Pool should be established in the form of a Union-wide platform that brings together and supports the matching of profiles of registered jobseekers from third countries residing outside the Union and job vacancies of participating employers and other participating entities established in the participating Member States. ***Member States may decide to apply the provisions of participation referring to employers also to temporary work agencies and labour market intermediaries established in the participating Member States.***

We are grateful for the compromised suggestion for definitions. However, current wording of particular article is not accurate and misses main aim to provide option for member state to choose whether to allow or not the participation of temporary work agencies and labour market intermediaries in the EU Talent Pool.

Art. 3 Participation and withdrawal

1. *Any Member State may decide, at any time, to participate in the EU Talent Pool. It shall notify its decision to the Commission* ***at the latest ~~9~~ 6 months*** *before the date from which it intends to participate. From the first day of participation, job vacancies of participating employers and other participating entities established in that Member State may be transferred to the EU Talent Pool IT platform.*

1a. *A participating Member State may withdraw its participation from the EU Talent Pool at any time. It shall notify its decision to the Commission* ***at the latest ~~9~~ 6 months*** *before the date from which it intends to withdraw. From the date of notification, job vacancies of participating employers and other participating entities established in that Member State shall no longer be transferred to the EU Talent Pool IT Platform. The withdrawal of a Member State in the two first years of operation of the EU Talent Pool IT platform or in the two first years of participation shall result in the net cancellation or recovery of all Union funding provided up to the withdrawal date. After the second year of participation, the withdrawal of a Member State shall result in the net cancellation or recovery of any Union funding already paid for any period after the withdrawal date in accordance with the applicable rules.*

We consider that 9 months period for notification is too long and should be shorten to at least 6 aiming for efficient and reasonable period for both parties.

Art. 11(2) Registration and access of jobseekers from third countries

The opportunity to register on the platform is granted to a jobseeker from third countries based on the declaration. We propose to create an interface of the platform with the Schengen Information System (SIS) so that jobseekers who want to register on the platform are immediately checked through the SIS. In addition, we propose to determine that if a jobseeker is already registered in the Talent Pool, and later the MS decides not to permit the entry, the profile of such a foreigner would be automatically deleted from the platform.

Art. 15 Adjustments to the list of EU-wide shortage occupations

Art. 15(1) fourth paragraph Regarding Article 15(1)(4) of the Regulation, which defines the frequency of updating the list of shortage occupations, we suggest having clear dates, twice a year, so that both parties, jobseekers, and employers, could make timely decisions and ensure stability in the program.

We also have a question about cases taking place on the threshold of changing the list of shortage occupations. If the selection procedure has been started but not ended on the date when the list of shortage occupations is updated and the occupation is removed from the list, will the selection process be continued?

Art. 20 Monitoring activities

> The implementation of this Article must not create an additional burden for MS to collect and provide additional statistics. Can the Presidency and the Commission confirm that statistical date will be collected only from the portal and no additional sources?

LUXEMBOURG

Article 4 point 3b

We find it challenging for a temporary work agency to recruit jobseekers from third countries through the EU Talent Pool for short-term contracts. These contracts typically last only a few weeks, and even if they are extended, they are usually for just 1 or 2 weeks.

The risk of these individuals not reintegrating into the labor market is significant. Despite possessing skills that are scarce or unattainable within LU, there's a considerable chance of them remaining unemployed and consequently being registered as jobseekers in a Member State.

Article 4 point 5

The presidency pointed out that vacancies in the EU Talent Pool partly overlap with those in EURES. Specifically, for LU, we'd have three distinct sets of vacancies, each with varying information. Firstly, there's the standard vacancy requested by LU PES. Secondly, there's the information pushed to the EURES network, which differs yet again. Lastly, there's a third set for the EU Talent Pool, which may have even less information or different details. This fragmentation implies that the matching process may not achieve its highest potential because we lose information at each stage.

Article 12

We suggest changing “EU Talent Partnership Pass” to the “EU Talent Pool Skillspass”. This adjustment ensures clarity and avoids any potential misinterpretations or false expectations for both jobseekers and employers.

Article 15

The Member States notify modifications to the EU-wide shortage list using ISCO codes because they are commonly used for categorizing occupations. However, Recital 11 mentions that the format of jobseekers' profiles and job vacancies should be established using the ESCO classification. ESCO is a more detailed and comprehensive classification system designed specifically for matching skills and jobs within the European context.

The concern about translating every ISCO 4-digit code into an ESCO code is valid. It can indeed lead to interpretation problems, especially when the EU-wide list is updated. This discrepancy in classification systems may cause difficulties in accurately matching jobseekers' skills with available vacancies, highlighting the need for harmonization or a clear mapping process between ISCO and ESCO codes to avoid such issues.

Article 16

One point that hasn't been discussed is whether each Member State can choose specific criteria to achieve more precise matching within their own region.

THE NETHERLANDS (updated)

The attached comment is divided in a section where we deal with recitals and articles related to the posting of third country nationals (text identical to previous comments, but more elaborate explanation) and a section where we deal with other recitals and articles.

While this Regulation is not the primary place where issues concerning the posting of third country nationals should be addressed, safeguards against improper posting of third country nationals should be built in especially considering the high likelihood that without safeguards the EU Talent Pool will open the door for third country nationals who will be posted to other (participating and non-participating) Member States. In our view, the posting of third country nationals recruited for one specific member state to another member state is contrary to the very purpose of the EU Talent Pool, and we need to build in safeguards in the Regulation.

General remarks

- We would like to thank the Belgian Presidency for the second compromise proposal and adopting a significant number of our text proposals. We believe the compromise proposal is another step in the right direction.
- In the context of creating a well-functioning instrument for Member States that choose to participate, with extensive attention to fair recruitment and the prevention of abuse and exploitation of migrant workers and better protection of posted third-country nationals, we will make a number of additional proposals on the second compromise proposal.
- Our input is divided in a section where we deal with recitals and articles related to the posting of third country nationals and a section where we deal with other recitals and articles.
- We remain available to think constructively about solutions.

Posting of third country nationals

Specific comments/ suggestions Articles

Article 2

Scope

1. This Regulation applies to jobseekers from third countries residing outside the Union and employers established in the participating Member States.

1a. ~~Member States may decide to apply the provisions of this Regulation referring to employers also to temporary work agencies and labour market intermediaries established in the participating Member States.~~

Justification for suggested changes and comments

As previously stated, the Netherlands is committed to making the EU Talent Pool a well-functioning tool for those Member States that will decide to participate. We are strongly in favour of the voluntary nature of the Talent Pool. Member States must retain responsibility for their own labour markets. Since all Member States face similar challenges concerning shortages on their labour markets, the proposed EU matching tool can facilitate the national processes of finding qualified third country nationals where there is no national of European workforce available.

We welcome the change the Presidency made to the definition of 'employer' in article 4. Private employment agencies, temporary work agencies and labour market intermediaries should indeed not be included in this definition. However, allowing Member States to apply the provisions of this Regulation referring to employers also to these parties (article 2.1a), does not, in our opinion, contribute to reducing the risks of exploitation and abuse of migrant workers. When introducing this new facilitating tool, we should prevent those risks as much as possible. An employer knows best what kind of personnel is needed for their own business. The Talent Pool provides employers with a practical tool to find staff themselves. In practice, it has become apparent that recruitment by intermediaries and employment agencies has regularly led to situations of exploitation and abuse of migrant

workers. Moreover, it is more likely that, because of the free movement of services, people from outside the EU can end up on the labour markets of Member States that do not participate in the Talent Pool when intermediaries and employment agencies are allowed access to recruitment through the Talent Pool. We therefore propose to delete article 2(1a).

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(6) The EU Talent Pool aims at providing services to employers that are established in the participating Member States. **For the specific purpose of this Regulation, the concept of employer should be defined and such definition should be used only for the purposes of this Regulation.** ~~, including private employment agencies, temporary work agencies and~~ **L**abour market intermediaries **including private empoyment agencies** as defined by the International Labour Organisation Convention 181 from 1997 and temporary work agencies ~~**may**~~ **are** ~~**not also be included**~~ **excluded from participating in the EU Talent Pool.**

Justification for suggested changes and comments

In our view, the step taken in the compromise proposal is insufficient to counteract situations of exploitation and abuse of migrant workers that regularly occur through recruitment by intermediaries and temporary employment agencies. After all, the free movement of services means that non-EU jobseekers can still end up on the labour markets of Member States that do not participate in the Talent Pool, thus negating the voluntary nature of the instrument. Also with a view to providing a level playing field in the Union, we therefore still advocate that all private intermediaries and employment agencies should be excluded from the EU Talent Pool at the front end.

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(23) The International Labour Organisation (ILO) in its 'General principles and operational guidelines for fair recruitment' sets out a number of standards on adequate protection of jobseekers from third countries against unfair recruitment. Employers should comply with applicable Union law and practice. Equal treatment of jobseekers from third countries with respect to nationals of the participating Member States should also be ensured by the employers in accordance with Directive 2011/98 , Directive 2014/36/EU , Directive 2021/1883/EU , and Directive 2016/801/EU . In accordance with Directive 2019/1152/EU , employers participating in the EU Talent Pool should provide to registered jobseekers from third countries information in writing and in an understandable language on their rights and

obligations resulting from the employment relationship at the start of the employment. This information should at least include the place and the type of work, the duration of employment, the remuneration, the working hours, the amount of any paid leave and, where applicable other relevant working conditions. An employer should neither charge any recruitment fee nor prohibit a worker from taking up employment with other employers, outside the work schedule established with that employer, nor subject a worker to adverse treatment for doing so. Employers participating in the EU Talent Pool should comply with Directive 96/71/EC as amended by Directive 2018/957 when posting workers in the framework of the provision of services, in particular with regard to the terms and conditions of employment thereby established such as the obligation that third country workers can only be posted to a Member State if they are legally and habitually employed in another Member State. ~~**Employers participating in the EU Talent Pool should comply with Directive 96/71/EC[2] as amended by Directive 2018/957 when posting workers in the framework of the provision of services, in particular with regard to the terms and conditions of employment thereby established such as the obligation that third country workers can only be posted to a Member State if they are legally and habitually employed in another Member State.**~~

(23a) Employers participating in the EU Talent Pool should not post recruited third country nationals to non-participating Member States. As these third country nationals are recruited to address existing and future skills and labour shortages in participating Member States, it would be contrary to the purpose of this Regulation if these third country nationals are posted to non-participating Member States. Besides, it would circumvent migration policies of these Member States.

[2] **Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1, ELI: http://data.europa.eu/eli/dir/1996/71/oj).**

(23b) Employers participating in the EU Talent Pool should only post recruited third country nationals to another participating Member State in a sector where there is a labour shortage in the receiving Member State. They should comply with Directive 96/71/EC as amended by Directive 2018/957, and Directive 2020/1057 when posting recruited third country nationals in the framework of the provision of services, in particular with regard to the terms and conditions of employment thereby established such as the obligation that third country workers can only be posted to a Member State if they are legally and habitually employed in the Member State of entrance. These third country nationals must be legally employed for a minimum period of five months in the Member State of entrance before they can be posted to another participating Member State.

Justification for suggested changes and comments

We propose to move the last part of recital 23 to a new recital 23a and 23b with further clarification on third-country nationals. When third-country nationals have been successfully matched with an employer and can legally reside in a participating Member State, they should not be posted to non-participating member states in the framework of the provision of services of Directive 96/71/EC as amended by Directive 2018/957, and Directive 2020/1057, and they should only be posted to participating member states when there is a labour shortage in the receiving member state and when they are legally and habitually employed in the sending member state.

In order to prevent brain drain and protect participating Member States from losing freshly recruited talent to Member States through posting of workers in the framework of the provision of services, we suggest to create a new recital 23b containing safeguards to prevent this from happening.

While this Regulation is not the primary place where issues concerning the posting of third country nationals should be addressed, safeguards against improper posting of third country nationals should be built in especially considering the high likelihood that without safeguards the EU Talent Pool will open the door for third country nationals who will be posted to other (participating and non-participating) Member States. In our view, the posting of third country nationals recruited for one specific member state to another member state is contrary to the very purpose of the EU Talent Pool, and we need to build in safeguards in the Regulation.

It is important to address issues concerning the posting of third country nationals with clear and enforceable clauses. Although we welcome the change of the Presidency to add a definition of 'job vacancy', we do not think it is sufficient to prevent the improper posting of third country nationals. We are concerned that this clause can be interpreted in various ways and will still leave ample room for third country nationals to be posted immediately after arriving in a host Member State despite the conditions of the job vacancy.

It is not our intention to forbid the posting of third country nationals. We highly value the free movement of services. We do, however, want to uphold the caselaw of the ECJ, which, among other things, states that third country nationals can only be posted to other Member States if they are legally and habitually employed in the sending Member States (C-43/93). This condition is null and void without an enforceable and harmonized operationalization. The ECJ has also rejected certain operationalizations, such as the requirement of a work permit for the receiving member state (C-43/93, C-445/03) or a prior employment period of one year or six months (C-445/03, C-168/04). However, the ECJ has not rejected the condition or the idea of operationalizing the condition mentioned, and we are therefore of the opinion that there should not be any legal issues.

Article 4

Definitions

1. For the purposes of this Regulation, the following definitions shall apply:

   (1) 'participating Member States' means Member States participating in the EU Talent Pool;

   (2) 'jobseeker from a third country' means a person residing outside the Union who is not a citizen of the Union within the meaning of Article 20(1) TFEU and to seek employment in the Union;

(3) 'employer' means any natural person, or any legal entity, established in a participating Member State under the direction or supervision of whom the employment is undertaken, **excluding private employment agencies, temporary work agencies and labour market intermediaries;** ~~**as well as private employment agencies, temporary work agencies and labour market intermediaries;**~~

Justification for suggested changes and comments

We specifically added that we would like to exclude private employment agencies, temporary work agencies and labour market intermediaries for reasons we explained earlier.

Article 13

Participation of employers in the EU Talent Pool

4. a. Employers participating in the EU Talent Pool must not recruit registered jobseekers from third countries with the aim of posting them to another Member State.

b. Employers participating in the EU Talent Pool must not post recruited third country nationals to non-participating Member States.

c. Employers participating in the EU Talent Pool are only allowed to post recruited third country nationals to another participating Member State on the condition that there is a labour shortage in the sector in the receiving Member State where the third country national will be posted. Employers must comply with Directive 96/71/EC as amended by Directive 2018/957, and Directive 2020/1057 when posting recruited third country nationals in the framework of the provision of services, in particular with regard to the terms and conditions of employment thereby established such as the obligation that third country workers can only be posted to a Member State if they are legally and habitually employed in another Member State. These third country nationals must be legally employed for a minimum period of five months before they can be posted to another participating Member State.

Justification for suggested changes and comments

We suggest to add a new paragraph 4 in line with our argument for recitals 23, 23a and 23b.

Other recitals and articles

Specific comments/ suggestions Articles

(3a) Facilitating legal migration through EU-initiatives such as the EU Talent Pool should take into account general welfare and major socio-economic issues, including integration and social cohesion. Increased legal migration may aggravate pressure on public facilities such as education, housing, healthcare and public order and security. In addition, access to labour migration may reduce incentives for employers to activate domestic potential, by improving terms and conditions of employment, and to invest in innovation, including automation and robotization. With regard to demographic challenges often faced in countries of origin, due attention should be paid to the risk of brain drain.

Justification for suggested changes and comments

We have added this paragraph as we believe it is important that due attention is paid to the effects of legal migration on other policy areas and to major social and socio-economic issues. So far NL is of the opinion that this notion is missing in the Regulation, hence our text suggestion. There are more shortages in low quality jobs. Therefore we believe it is important to emphasize that access to labour migration can reduce the incentive for employers to activate the domestic potential of the workforce and to be a good employer. This is something that should be taken into account in the context of the talent pool. We also believe it is important to promote brain circulation and prevent brain drain in the countries of origin.

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(14) Registered jobseekers from third countries should have the right ~~to choose from a number of technical options~~ to restrict the access to their personal data, for instance, by restricting access to their contact details. Profiles of registered jobseekers from third countries, participating employers and other participating entities in the EU Talent Pool IT platform that have not been used for a period of two years should be automatically removed. When profiles are removed, a limited set of anonymised data could continue to be stored for research and statistical purposes including for the purpose of production and quality of European statistics.

Justification for suggested changes and comments

Alignment with operative part.

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(16) The EU Talent Pool should contribute to the objective of discouraging irregular migration including by facilitating access to existing legal pathways. Jobseekers from third countries who are subject to a judicial or administrative decision refusing the entry or stay in a Member State or an entry ban in accordance with Directive 2008/115/EC of the European Parliament and of the Council11, should not be allowed to register their profiles in the EU Talent Pool IT platform, given that they will not be permitted to enter and stay in the Union. To this end, jobseekers from third countries should be required, before registering their profiles in the EU Talent Pool, to declare that they are not currently subject to a refusal of entry or stay in a Member State or an entry ban to the territory of the Union. Information should also be provided on the consequences for making a false declaration in this respect.
Technology security and preventing leakage of critical and emerging technologies in the EU, as addressed in the Joint Communication of the Commission and the High Representative of the Union for Foreign Affairs and Security Policy on European economic security strategy [3], should also be taken into account. In addition, during the immigration procedure, necessary checks in relevant EU databases such as the Schengen

[3] Joint Communication to the European Parliament, the European Council and the Council on "European economic security strategy", JOIN(2023) 20 (https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023JC0020)

Information System, which contains alerts on third country nationals who are not entitled to enter or stay in the Schengen area, ~~may~~ **should** be conducted.

Justification for suggested changes and comments

We think it is important to add this notion on technology security and preventing leakage of critical and emerging technologies. It could also help address MS' security related concerns.

Concerning the second suggestions, we understand this alteration is problematic not because of its content, but because of Ireland's opt-in. Perhaps another solution could be found by keeping 'may', but making clearer, elsewhere in the text, the existing safeguards and checks conducted as part of immigration procedures. Also in light of comments made during the last working group, including calls for 'pre-screening'.

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(30) In addition, to make the recruitment of jobseekers from third countries residing outside the Union easier and faster for participating employers and other participating entities, participating Member States ~~may~~ **could** put in place accelerated immigration procedures in particular as regards the ~~obtention~~ **issuance** of visas and residence permits for work purposes and the exemption from the principle of preference for Union citizens and/or the requirements for checking the labour market situation. The Practices regarding the implementation of accelerated immigration procedures among the Member States could be discussed exchanged in the context of the EU Talent Pool Steering Group.

Justification

Member States may already choose to put in place accelerated procedures.

Article 10

EU Talent Pool National Contact Points

2. The EU Talent Pool National Contact Point shall be responsible for:

(d) keeping a registry of employers participating in the EU Talent Pool**. Each participating Member State shall set up an admission system for employers who want to participate in the EU talent pool.**

(e) refusing, suspending or withdrawing the access of employers participating in the EU Talent Pool and removing their job vacancies from the EU Talent Pool IT platform in case of a breach of the relevant law and practice pursuant to Article 13(3) is notified to the EU Talent Pool National Contact Points by the relevant national authorities responsible for enforcing the relevant law and practice;

Justification for suggested changes and comments

It is desirable that participating MSs should also check and if necessary be able to refuse participation of employers beforehand. It is an option to include the following in the recitals (for example recital 9 or a new recital after recital 12): The EURES admission system can be used to design this admission system with criteria in the field of fair mobility, transparency, equality, non- discrimination and sustainability.

Furthermore, it is desirable that participating MSs should also check and if necessary be able to refuse participation of employers before their participation in the Talent Pool.

NL - <u>Additional text suggestions (received on 24.04.24)</u>

In line with the suggestions that we have already provided we send you a new and slimmed down version of our suggestions for recital 23b, article 4 and article 13. Our new suggestions are highlighted in yellow.

We propose to move the last part of recital 23 to a new recital 23b with further clarification on third-country nationals. To enable the Talent Pool to function effectively, third country nationals should only be posted to member states if they are legally and habitually employed in the sending member state, adhering to case law of the EU Court of Justice.

(23b) Employers should comply with Directive 96/71/EC as amended by Directive 2018/957, and Directive 2020/1057 when posting recruited third country nationals in the framework of the provision of services, in particular with regard to the terms and conditions of employment thereby established. Employers should also apply the legal framework set out in relevant case law, such as the obligation that third country workers can only be posted to a Member State if they are legally and habitually employed in the Member State of entrance. To ensure a common interpretation and application of this rule, third country nationals must be legally employed for a minimum period of **three months** in the Member State of entrance before they can be posted to another Member State. This Regulation is without prejudice to the tasks and competences of the European Labour Authority as conferred to it by REGULATION (EU) 2019/1149 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 June 2019 establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344 in particular with regard to the strenghtening of the cooperation between Member States concerning cross border enforcement. When posting third country nationals the recommendations of ELA in its Report on the cooperation practices, possibilities and challenges between Member States – specifically in relation to the posting of third-country nationals (Final Report ELA/2022/RS/027/ELA.306-2021/TITLE 3/2.2) should be taken into account, in particular the guidelines following from that report.

Justification for suggested changes and comments

The aim of the Talent Pool is to address skills and labour shortages in participating Member States. To ensure the effective functioning of the Talent Pool, it is important to provide safeguards that prevent recruited workers to immediately be posted to another member state. This would be directly contrary to the aim of addressing shortages in the member state of entry. It is not our intention to forbid the posting of third country nationals, but only to address potential improper use of posting.

It is important to address posting of third country nationals with clear and enforceable clauses. We welcome the change of the Presidency to the definition of 'job vacancy' and below we suggest additional changes. But we do not think it is sufficient to prevent the improper posting of third country nationals. We are concerned that this clause can be interpreted in many different ways and that it still leaves ample room for the third country national to be posted immediately after arriving in the host member state despite the conditions of the job vacancy.

We therefore want to suggest an operationalization of 'habitually' using a prior employment period of three months in recital 23b and corresponding to it, in article 13.4. We want to uphold the caselaw of the ECJ which states that posting of third country nationals is allowed, but which also states that third country nationals can only be posted if they are legally and habitually employed in the sending Member State (C-43/93). The ECJ has rejected certain operationalizations of this definition, such as the requirement of a work permit for the receiving member state (C-43/93, C-445/03) or a prior employment period of one year, or six months in combination with an employment contract of indefinite duration (C-445/03, C-168/04). We therefore want to suggest an operationalization of three months of prior employment.[4]

[4] https://www.ela.europa.eu/en/news/cooperation-posting-third-country-nationals-ela-releases-new-report, for relevant case law see pages 16-22.

Article 4

Definitions

(5.a) 'job vacancy' means an offer of employment which would allow the successful applicant to enter into an employment relationship in a participating Member State where the participating employer or the other participating entity is established and where the work should be performed for at least three months prior to a potential posting to another Member State;

Justification for suggested changes and comments

In line with the arguments above, we suggest to include a safeguard against the direct posting of third country nationals. We suggest to do this by requiring job vacancies to fulfil the requirement of a minimum period of work in the member state of recruitment of three months prior to a potential posting to another member state.

Article 13

Participation of employers in the EU Talent Pool

(4) Participating employers must comply with Directive 96/71/EC as amended by Directive 2018/957, and Directive 2020/1057 when posting recruited third country nationals in the framework of the provision of services, in particular with regard to the terms and conditions of employment thereby established. Recruited third country nationals must be legally employed for a minimum period of three months before they can be posted to another Member State.

Justification for suggested changes and comments

We suggest to add a new paragraph 4 line with our argument for recital 23b.

Posting of workers

The aim of the EU Talent Pool is to address existing and future labour and skills shortages via the recruitment of third country nationals. This aim cannot be achieved if the third country nationals recruited by and specifically for a member state participating in the EU Talent Pool are subsequently posted to another member state. The EU Talent Pool can only be effective in addressing labour and skills shortages if recruited third country nationals will actually work in the member state of recruitment. Additionally, the improper posting of recruited third country nationals to another member state contributes to the risk of exploitation, unfair competition and circumvention of national migration policies.

This point is also made by Enrico Letta in his report "More than a single market", in which he explicitly recommends to: "Clarify the legal framework for the posting of third-country nationals, including those working through temporary agencies or recruited via intermediaries. Third country nationals are exposed to higher vulnerability to social fraud also because of the lack of a clear legal framework at EU level linking labour and migration law. Understanding and reviewing the enforcement and legislative gaps with respect to posted third country nationals, also with the support of ELA, will highlight the need for possible legislative interventions and common enforcement initiatives at EU level." (Page 104 of the Report)

We highly value the free movement of services and the posting of third country nationals is a logical outflow of this. It is therefore not our intention to forbid the posting of third country nationals. We are, however, concerned about the potential use of the Talent Pool for the improper use of posting of third country nationals. And while the Regulation of the EU Talent Pool is still in progress, it seems wise to ensure its effective functioning by preventing the improper posting of third country nationals. In doing so, we want to uphold the caselaw of the ECJ which among other things, states that third country nationals can only be posted to other member states if they are legally and habitually employed in the sending member states (C-43/93). This condition is null and void without an enforceable and harmonized operationalization. The ECJ has rejected certain operationalizations, such as the requirement of a work permit for the receiving member state (C-43/93, C-445/03) or a prior employment period of one year or six months (C-445/03, C-168/04). However, the ECJ has not rejected the condition or the idea of operationalizing the condition. A prior employment period will prevent brain drain and protect participating Member States from losing recently recruited talent to other Member States through the posting of workers in the framework of the provision of services.

The European Labour Authority has published a report on the posting of third country nationals: www.ela.europa.eu. It concludes that legal concepts are interpreted differently by the various national authorities (page 8). "The first set of challenges identified relate to the need for enhancing the application of the legal framework. Of these, the first challenge identified concerns diverging interpretations and application of EU law and CJEU caselaw. The interpretation and application of the current EU legal framework on posting of third-country national workers must consider the caselaw of the CJEU. However, almost thirty years after the decision in Vander Elst was issued, the CJEU's interpretation of the rules applicable to third-country national posted workers in light of the Treaties continue to raise questions and issues of interpretation and practical application impacting on the work of Member States' authorities dealing with third-country national posted workers. Moreover, not only does the interpretation and application of the CJEU caselaw possibly differ between the national authorities in the different Member States, also authorities in the same Member State may have different interpretations. This has an impact on the enforcement of the applicable rules and creates more space for abuse and circumvention, thus affecting the posting of third-country national workers." The conclusion of the ELA report leads us to conclude that in designing the Talent Pool, which could potentially open up a new avenue for the improper posting of third country nationals, it is worth taking steps to ensure a uniform interpretation of the existing legal framework.

On pages 17-19 the ELA report discusses the ruling *Commission v. Luxembourg*. In this case, a regulation was at stake whereby all service providers deploying non-EU personnel in Luxembourg should have their personnel obtain an individual working permit or, alternatively, have a collective working permit issued for them. This permit was conditional on the existence of an employment relationship of unlimited duration for at least six months before the posting. This arrangement only concerned the right to work and applied in addition to any entry requirements to which workers were already subject. It is therefore clear from CJEU case-law that third-country nationals may work in a Member State without having the required working permit, as long as such work is provided in the framework of an employment contract with an undertaking based in any other Member State. There is no specific harmonising legislation at EU level on the requirements that Member States can impose for the posting of third-country nationals *specifically.* In subsequent caselaw, the CJEU clarified that legislation imposing a requirement of prior existence of an employment contract of indefinite duration for at least six months, at least one year's prior employment or an employment contract of indefinite duration is disproportionate to the objectives sought (*17 CJEU,* Judgment of the Court (First Chamber) 21 October 2004, *Commission of the European Communities v Grand Duchy of Luxemburg*, C-445/03, EU:C:2004:655). We therefore conclude that while the abovementioned durations have been dismissed, the idea of an operationalization in itself has not been dismissed by the Court. So, for the purposes of the Talent Pool, we would suggest a period of prior employment of three months.

POLAND

Poland welcomes the compromise proposal from the Presidency. We appreciate the work of the Belgium Presidency team done and the efforts to find the best solutions to the concerns addressed by MSs.

We are satisfied with the compromise proposal – it takes into account the main points of the Polish Government's position, including the need to reduce the administrative burdens, i.a. by a proper shaping of the information obligations. We believe that this is a well-balanced proposal. **It could be a good starting point for trilogues.**

Recital 16 and art. 11 (2)

We understand the intention behind the amendment to Recital 16, but we feel that it could be seen as contradicting to that intention. We believe that the amandement distorts the distinction between the Talent Pool-based recruitment system and the admission system. We believe that this distinction has to be sufficiently clear and such a provision detracts from that clarity.

We can show flexibility and agree to keep the amendment in recital 16, but we do not agree with the proposals to further tighten the wording of this recital (or art. 11 par. 2). The SIS checks are not the subject of the TP proposal. They are sufficiently regulated under Regulation (EU) 2018/1861 of the European Parliament and of the Council of 28 November 2018.

We would like to point out that Member States that insist on the legitimacy of double checks (at the time of registration in the TP and then when the entry permit is issued) are wrong to assume that SIS entries are of static nature - the fact that a jobseeker's data do not appear in the system at the time of registration in the TP does not mean that this situation cannot change at any time, especially as a considerable amount of time can elapse between the time of registration and the time of finding an employer willing to take on a foreigner. In reality, therefore, a check at the time of registration would have little effect. In this context, we are closer to the EC's approach presented during the last IMEX meeting.

Dutch proposals on posted workers and Private employment agencies, temporary work agencies and labour market intermediaries

As for NL's proposed amandements, unfortunately we cannot endorse them. While the concern about adopting safeguards against abuses is entirely legitimate, and we support the Dutch delegation in this regard, we do not consider it appropriate to address the problems of the posting workers through the provisions of the Talent Pool regulation. In our view, this proposal is too far-reaching, as it goes significantly beyond the subject matter of the regulation we are working on.

We are of the opinion that Member States should be free to determine whether employment agencies or other entities providing job placement and personnel consultancy services should have access to submit offers under the EU Talent Pool. Nevertheless we understand proposals of Netherlands to limit possibility to submit job vacancies only for employers so we could consider agreement to eliminate from EU Talent Pool any entities which are not employers or temporary employment agencies (which in fact are employers).

PORTUGAL

PT welcomes the PCY compromise text, discussed at the WG meeting on 08.04.2024, which addresses many of the concerns expressed by the MS, and has accepted almost all of Portugal's contributions, at least partially. We appreciate all the effort and work of the PCY and we have a positive position on the proposed text, which meets our expectations.

That said, we welcome the proposed amendments and offer the following comments:

Articles 2 and 4

PT welcomes the proposed amendments, which clarify the concepts of *participating employer*, *other participating entity* (namely temporary-work agencies, other intermediary agencies in the labour market, such as private placement agencies), and in particular the *job vacancy* definition [article 4, (5a)], which reinforces the need for the associated job location to be coincident with the participating employer / entity's country location as well (in line with the one existing in the EURES Regulation). This change partly responds to some MS concerns regarding the posting of workers.

Under the Portuguese law a temporary employment agency is an employer, insofar as it establishes an employment contract with the employee, but we can accept, for the purposes of this Regulation, to consider this category of employers under "other participating entity".

Article 3, 1

We welcome the amendments, particularly with regard to the revision and simplification of the period of anticipation of the withdrawal notice, which are partly in line with one of Portugal's propositions.

Article 3, 1a

Regarding the financial consequences, as well as for ES, also for PT, the wording of this article is not very clear on this issue, so we would like to receive some clarifications.

For better readability, we suggest that the consequences for the availability of data on the platform (job vacancies, participating employers and other participating entities) and the financial consequences are provided in separate paragraphs or separate numbers.

Article 4, 1 (3a)

We welcome this new model, as we believe it will allow for a better screening by the National Contact Points and for a better, more integrated, service to employers. However, normally, the employer data required for creating accessing credentials in the platform is not usually associated to job vacancies' data scheme. They are autonomous. So, this may raise a few issues – also regarding the interoperability of "employers' personal data" and GDPR issues.

Having into account that the model for implementation of interoperability schemes will have differences regarding the EURES Portal implementation scheme, we would like to better understand how different it will be – as this will mean additional work in the implementation of the (new) Interoperability Single Coordinated Channels.

Article 4 and recital 23

Although we welcome the proposed change, it is worth to mention that, even though this concept of "job vacancy" is foreseen under the EURES Regulation, it is not always complied to in the effective implementation of the EURES Portal. This is easily checked by going through the Find a job section of this portal, where many of the jobs available are published by private employment agencies based in other EU countries than the country of location of the job positions.

This may as well motivate the concerns by some MS when it comes to the implementation of this Talent Pool. Some supervision and/or monitoring, plus enforcement and maybe sanctioning procedures, should be envisaged regarding this point, and could eventually be included under Recital 23 (or a new Recital 23a).

As for the proposals of some MS, such as NL, to exclude temporary employment agencies and other intermediaries from the labor market, we are not in favor, as: they would conflict with the principle of free movement of services, regulated by other normative documents of the EU; the elimination of "other participating entities" would not be effective in excluding some of these categories from the concept of employers (such as, for example, a temporary employment agency is considered an employer, at least under some national laws, including in PT) ; EU institutions would be sending inconsistent signals to the labor market, since this type of entities are included as Members or Partners in the EURES network and, at the same time, would be excluded within the scope of the Talent Pool.

We believe that illegal and abusive use of the posting of workers will be dealt with more effectively under the Postings Directive, including clearer monitoring and sanctioning possibilities in future reviews, and not as much within the framework of the Talent Pool Regulation. Having said this, we're not against reinforcing some of these concerns under Recitals (23 or a new one), trying to: further alert for the need to avoid the abusive use of the posting of workers' figure, particularly regarding non-EU nationals; introduce joint monitoring and follow-up procedures (both by the Technical Secretariat and the National Contact Points) in the platform implementation, regarding this matter, eventually under the regular meetings to be held; and/or reinforce the idea that no job vacancies should be validated in any way when there are clear signs that they will be used for the posting of workers (independently on whether the posting is to participating MS in the Talent Pool platform or not).

Article 10, 1

We support the amendments proposed by the PCY in paragraph 1, which confer more flexibility to the MS to decide which is the organizational solution better suiting its governance model and which competent authorities to engage, ensuring the effective representation by experts from relevant national authorities from the fields of employment and immigration.

We would prefer to see a clearer recommendation to the Member States, under Recital 29a, to include the public employment services in the National Contact Points' governance model. "May decide whether public employment services are part of" is not clear enough and casts some doubt as to whether PESs should be included or not. In practice, currently, it is the PESs to ensure the transferring of job vacancies to the EURES Portal via the single coordinated channel – and this is a central component of the Talent Pool functioning.

Article 10, 2 (e) and Recitals 23-23a

We welcome the proposed changes by the PCY, which reinforce compliance with the principles of ethical and fair recruitment and the adequacy of the entities involved in this context, as well as the credibility and good standing of participating employers and entities in the platform.

Articles 12 and 13 and recitals 19-21

We welcome the proposed changes, particularly those related to the non-limitation of visibility for those profiles with a Talent Partnership Pass (as an eventual limitation would create an incentive for the non-EU national jobseeker not to use the Pass when registering in the platform).

These amendments are in line with our contributions in the previous round of discussions and, due to its more generic writing, give greater scope for flexibility and leave room to consider other skills certification, recognition, and validation tools – equally important in this platform's future developments.

They also cater for the alignment with equal opportunities and fair recruitment principles, and they highlight the need to invest in clearer procedures aimed at facilitating skills validation. This investment should follow its own course, not within the framework of this Regulation – and should as well be revisited as one of the most significant remaining obstacles to the free movement of workers within the EU (under the EURES scope for intervention).

Article 15 and recital 25

We welcome the new writing of the article. We're comfortable with: the possibility to include shortage occupations at the regional (e.g., NUTS II) level – it already exists under the EURES portal (and, in this case, not as an option); considering national immigration policies as a guidance criterium to the national adjustments to the list of EU-wide shortages; clarifying that this will be a MS responsibility (and not the Technical Secretariat) - indeed, the National Contact Points are in a much better position to proceed to this regional level screening.

Article 17 and Recitals 18, 27, 30 and 30a

We're comfortable with the proposed changes. By limiting the mandatory character of more personalized ("individual case management") support and post-selection assistance services, this Regulation grants MS more flexibility to define the level of service they can provide, according to the means and resources at their reach. It still highlights the important role of specific information on rights (and duties) to jobseekers selected to concrete job vacancies, with a view to avoiding abuse situations in their labour market integration, as well as in their integration in the country of destination way of life.

We also welcome the explicit mention to the possibility to refer to already existing information sources.

Article 18

We're comfortable with the new writing of this article. However, besides referral to the competent national authorities, we would still see a room for National Contact Points to act when there are abuse reports directly by users of the platform (namely non-EU national jobseekers), as it happens under the EURES Portal, whenever deemed necessary, in line with what is foreseen under Articles 10,2(e) and 13, 3.

With regard to the NL proposal

We express our solidarity with the legitimate concerns of the Netherlands. Nevertheless, we believe that the compromise proposal submitted by the PCY BE allows in a satisfactory way to address this concerns within the scope of this Regulation. First of all, with the introduction of the concept of "job vacancy" (Article 4, 5(a)) which links the location of the jobs advertised to the country in which the employer or other entity is legally registered.

On the other hand, we tend to agree with the PCY that the NL proposals appear to contradict the principles of free movement of persons and services, when they propose the non-posting of third-country nationals recruited to MS not participating in the talent pool, and that the posting of workers should be limited to sectors where there is a shortage of labour in the host MS.

Still with regard to the posting of workers, we agree with the COM, and as mentioned above, also for us the fight against the misuse of the posting figure will be done more effectively within the framework of the Posting Directive, its successive revisions and implementation monitoring, which is the proper venue for this.

Finally, with regard to the NL proposal to exclude private employment agencies, temporary employment agencies and labour market intermediaries, we refer to the PT position previously expressed. For PT, as long as private placement agencies, temporary work companies or others are duly legalized, they are employers; and it is not understood how they can be excluded from recruitment, when at the heart of their corporate purpose, is exactly the placement of workers.

SPAIN

Article 3.

A specific chapter on the financing mechanism must be reflected or referenced in the proposal. If the financing rules and the applicable rules are not clear, the text should not be formulated in this way. An alternative proposal could be:

The withdrawal of a Member State in the two first years of operation of the EU Talent Pool IT platform or in the two first years of participation ~~***shall***~~ ***may*** *result in the* ***net or partial*** *cancellation or recovery of all Union funding provided up to the withdrawal date****, provided that the use of the funds has not entailed actions by the Member State concerning the initiative that can be duly justified****. After the second year of participation, the withdrawal of a Member State* ~~*shall*~~ ***may*** *result in the net* ***or partial*** *cancellation or recovery of any Union funding already paid for any period after the withdrawal date in accordance with the applicable rules,* ***provided that the use of the funds has not entailed actions by the Member State in the initiative that can be duly justified .”***

Article 4.

We have a scrutiny reservation on the definitions in order to assess the negative effects on working conditions and posting of workers. The new definitions of participating company, intermediary and vacancy-job offer are currently being analysed and a position will be adoptad in the coming weeks.

Article 11.

Regarding the mandatory use of Europass for the creation of the profile, we are not sure that all third country nationals have access and facility to create their profile through Europass. We understand that there will be some kind of detailed explanation for them to learn how to do this.

We reiterate the need that the tool used to match offers and applications should be open and evaluated to avoid discriminatory results.

SWEDEN

General remarks

SE welcomes the new compromise proposal from the Presidency. We believe that the changes that were made in this first and second compromise text is a step in the right direction and that many of the suggested changes are of a clarifying nature, which is appreciated. We are also very pleased to see that some of our comments and suggestions have been incorporated within the current text. This is much appreciated from our side.

However, SE needs more time to review the proposal properly but would like to highlight some of our concerns and suggestions below.

Article 3

SE welcomes the provision of withdrawal that was added to the text by the Presidency and that the Presidency has reduced the time period for withdrawal.

SE understands the Commissions comments on maintaining consistency within participating MS in the Talent Pool, and also towards the employers/entities. We understand the Commissions intention that the MS's participation in the tools should not be able to "switch on and off". However, SE believes that the time period (in both cases) should be reduced to one year.

Recital 3 and 6

The concept of participating entities is first mentioned in recital 3, but the explanation of the term appears first in recital 6. It would be preferable to move the explanation of the term to recital 3.

Article 4 (3a)

SE are pleased to see that the definition of employer has been deleted in the new compromise proposal and appreciates the efforts made by the Presidency to adapt the text to the MS's preferences in this article.

However, we have raised another important question in the Working Party and in writing before. Participation in the talent pool gives the employer access to the search of candidates.

It is insufficiently described in the definition as it only says "transferred". This definition does not include a continued relevance of the job vacancy. It might have been removed by different reasons as described in art.13. If the vacancy has been removed, how will it ensure that the employer does not continue to have access to the Talent Pool and access to search for candidates in the system, if the definition only states that a "participating employer means an employer whose job vacancies have been transferred". A transfer is something that has happened in one given time. It doesn't mean a continued validity.

Possible consequences if there is no clarification of the definition:

- Traceability can be affected in a continued national migration process if there is no available information published about the job and the working conditions.
- From a reciprocity perspective, there should be access to current and relevant job vacancies as well as candidates' CVs. If the candidates showcase what they offer, employers should do the same. The candidates need to know the conditions that apply to the vacant position. This will not happen if an interested employer makes contact with a job seeker and the employer has continued access to the candidates CV's even if the employer's job vacancy might have been removed according to art 13. p. 4.
- From a purpose perspective, the employer should only be able to use the Talent Pool to search for candidates based on a vacancy that is currently active, to avoid misuse of the system making it possible to look for third-country nationals based on an interest for other reasons.

SE therefore suggest the following rephrasing:

"'participating employer' means an employer whose job vacancies ***are available on*** ~~*have been transferred to*~~ *the EU Talent Pool IT Platform by National Contact Point of the Member State where it is established".*

Please note that this should also be applied to the text regarding the participating entities.

Article 9 (1d)

SE is pleased that the Commission has explained that this is a "may" clause. However, we believe that the voluntariness/option to participate in such discussions should be reflected in the regulation text. Please see suggestion below:

"*~~exchanging practices~~* ***facilitate the exchange*** ***of optional*** *discussi****ons on*** *the implementation of accelerated immigration procedures to facilitate the recruitment of registered jobseekers from third countries pursuant to Article 19".*

Article 9 (2)

SE believes that the reference to authorities needs to be deleted in this paragraph. It should be up to the Member States to determine if discussions should be conducted by responsible authorities or at policy level. SE are wondering if it is the Presidency's intention? We suggest the following rephrasing:

"Each participating Member States shall appoint two representatives **of the competent authority of the Member State for the purpose of the Steering Group**, one **expert** ~~from the~~**on** employment ~~authorities~~ and one ~~from~~ **expert on** ~~the~~ immigration ~~authorities~~."

Article 12

SE finds that the current phrasing in this article appears to make it mandatory to use the Talent Partnership Pass if an MS is participating in both the Talent Pool and a Talent Partnership. We believe that this article needs to be rephrased to match the wording in recital 19. It should not be mandatory for the MS to facilitate and use Talent Partnership passes.

Article 13 (4)

An MS can make changes to their national shortage occupations list twice a year, according to the current compromise proposal. Job vacancies are active for one year (if no matching occurs). This means that vacancies that no longer corresponds to the national list (and is no longer a shortage occupation) can continue to be active if this is not regulated in the regulation text. SE believes that all available and active vacancies need to correspond to the national list and therefore suggest adding the following paragraph in article 13:

f) An update of a country specific list of occupations, in accordance with Article 15.3, where the occupation of the job vacancy transferred from that country no longer correspond to the listed occupations.

Article 15 (1) and recital 25

SE welcomes the changes in the regulation text made by the Presidency and are pleased to see that our suggestions to add "migration policy objectives" have been incorporated within the compromise proposal (article and recital).