



Position paper

on the proposal for a regulation of the European Parliament and of the Council establishing an EU Talent Pool (COM(2023) 716 final)

1. General remarks

The German Trade Union Confederation (DGB) and its member unions believe that planned, fair and rights-based immigration of skilled workers can help to alleviate the shortage of skilled workers. It can and must be used in harmony with domestic potential, which can be activated by improving working conditions and qualifications. The recruitment and hiring of third-country nationals must be into good jobs to ensure it does not contribute to undermining domestic labour and social standards. To protect migrant workers and ensure fair competition, the principle of equal treatment must apply. The current version of the European Commission's proposal for a Talent Pool does not meet those requirements.

Ensure placement in good jobs that match jobseekers' qualifications.

Third-country nationals, whose residence permit is often linked to their employment – unlike in the case of EU citizens – are particularly vulnerable. In the opinion of DGB and its member unions, placement in good jobs that match jobseekers' qualifications must therefore have the highest priority. According to the European Commission, the Talent Pool is aimed not only at recruiting highly qualified specialists, but also explicitly at recruiting workers with medium and low qualification levels. This list of shortage occupations includes many professions in which there are established structures of exploitation, as we know from the experiences of trade union-related advice centres. Whether truck drivers, workers in various jobs in the construction sector, cleaning staff or care assistants, they often live in unacceptable accommodation, have to hand in their passports when entering the country and are paid their wages too late or not at all – to name just a few examples.

The structure of the Talent Pool provides for only very inadequate measures to protect employees. The provision of general information (Article 17) and the establishment of state complaints mechanisms (Article 18) are not suitable for providing effective protection to third-country nationals against abusive practices. Furthermore, the national contact points (in Germany, the national contact point is the Federal Employment Agency) are not in a position to offer individual advice and support.

As long as no effective control mechanisms are integrated into the design of the Talent Pool, there are considerable risks for the individuals placed in employment. Employers or private agents whose business model is based on exploitative and precarious employment could use the portal specifically to find suitable workers. Direct matching processes between interested parties and

25 September 2024

Contact person:

Dr Anne Karrass
Head of Division European Labour
Market and Social Policy
Labour Market Department

**German Trade Union
Confederation**
Keithstraße 1
10787 Berlin
Tel.: +49 30 24060-772

anne.karrass@dgb.de

employers/intermediaries without quality control of the job vacancies or the employers/intermediaries harbour great potential for abuse and should therefore be rejected.

If the recruitment of third-country nationals to the EU is to be facilitated, it is imperative that **effective structures for advising and supporting migrant workers are created in parallel with that**. In the opinion of DGB and its member unions, there is a need for trade union-related structures to support mobile and migrant workers all over Europe. Assuming the corresponding responsibility towards employees and promoting fair competition is a public task and must therefore be permanently funded at European level.

In the opinion of DGB and its member unions, the growing importance of the **posting** of third-country nationals is problematic. It means that the recruitment of third-country nationals in one Member State can always have an impact on other Member States and workers can be systematically recruited with the aim of posting them on to another Member State. As a result, the alleged voluntary nature of participation in the Talent Pool is not really guaranteed for the Member States. In addition, the Talent Pool is also intended to be open to private recruitment agencies, which further increases the potential for abuse, because subcontracting chains make it utterly unclear who employs the third-country nationals and vis-à-vis whom they should exercise their rights.

2. Details

Art. 1 – Subject matter

It should be added here that the regulation not only aims to support recruitment of jobseekers but also to protect third-country nationals against exploitation. In addition, the interests of the countries of origin (brain drain) should also be taken into account, which is why the relevant guidelines of the International Labour Organization (ILO) and the International Organization for Migration (IOM) on fair recruitment should be supplemented.

(1) This Regulation establishes an EU Talent Pool available to all Member States to facilitate recruitment of jobseekers from third countries residing outside the Union **and promote fair recruitment as set out in the ILO General Principles and Operational Guidelines on Fair Recruitment¹ and the IRIS Standard of the IOM.²**

¹ International Labour Organisation: General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs (https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_protect/@protrav/@migrant/documents/publication/wcms_703485.pdf)

² International Organization for Migration: IRIS Standard on Ethical Recruitment (<https://iris.iom.int/sites/g/files/tmzbdl201/files/documents/IRIS%20Standard%20Report%20.pdf>)

(2e new): the protection of jobseekers recruited through the EU Talent Pool and the application of the principle of equal treatment.

Art. 3 – Participation

The participation of Member States in the Talent Pool must be and remain voluntary. That also includes stipulating that Member States may leave the Talent Pool after they have joined it.

(1a new) 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 6 months before the date from which it intends to withdraw.

Art. 4 – Definitions

Paragraph 1, 3 – Employer

Due to the high risk of abuse and lack of regulation, temporary employment agencies and private employment agencies should be excluded from the Talent Pool as a general rule. Their involvement weakens the link between employers and employees and longer subcontracting chains mean that abuse is easier to commit, harder to detect and more difficult to combat. In order to create clear responsibilities, it is also desirable for employees to be employed directly by the employer in the host Member State and not posted to another Member State.

Since work in private households is particularly difficult to monitor, but is also where a lot of abuse takes place, these households should also be excluded from participation.

(1) 3. ‘employer’ means any natural person, or any legal entity, *genuinely performing substantial activities (other than purely internal management and/or administrative activities), in the territory of* established in a participating Member State *in which it is established, where the third-country national is employed and* under the direction or supervision of whom the employment is undertaken. *For the purpose of this Regulation*, temporary work agencies (as defined in **Article 3.1 (b) of Directive 2008/104/EC), ~~as well as private employment agencies and labour market intermediaries as well as private households~~ *shall be excluded.***

Paragraph 1, 5a new – Job vacancy

The posting of third-country nationals recruited via the Talent Pool to other Member States should be made as difficult as possible so as not to blur transparency and responsibilities, thereby limiting exploitation. The changes in the definition of employer (see above) serve that purpose; in addition, a definition of job vacancy that specifies the place of work should be added. Furthermore, a reference to the Minimum Wage Directive and the criteria for decent work in the UN Sustainable Development Goals should make it clear that the job vacancies must not involve precarious work. Finally – through the definition of employment adopted from the Transparency Directive – placement in self-employment should be prevented because it very often turns out to be pseudo-self-employment.

(1) 5a new ‘job vacancy’ means an offer of employment (an employment contract or employment relationship as defined by law, collective agreements or practice in force in each Member State with consideration to the case-law of the Court of Justice) which would allow the jobseeker to enter into an employment relationship in the participating Member State where the participating employer is established and where the jobseeker will normally work. The employment offered shall not be of a marginal or fixed-term nature and shall meet the criteria of adequate minimum wages laid down in Directive 2022/2041 as well as the criteria of decent work according to Goal 8 of the UN Agenda 2030;

Art. 9 – Steering Group

The social partners – including the national and sectoral confederations – should be more closely involved in the Talent Pool Steering Group. They should be allowed to participate not solely as observers, but should also be given a total of four full seats in the Steering Group.

(4) Four representatives of the cross-industry social partners organisations at Union level, **appointed by those organisations, with an equal representation of trade union and employer organisations**, shall **be members** ~~have the right to participate as observers in~~ **of the meetings of the EU Talent Pool Steering Group.** ~~Representation of two participants from trade union and two participants from employer organisations shall be ensured by the EU Talent Pool Steering Group.~~ **Representatives of the sectoral social partners at Union level have the right to participate in the meetings of the EU Talent Pool Steering Group as observers.** Those representatives shall sign a written statement declaring that they are not in a situation of conflict of interest.

Art. 10 – National contact points

The national contact points should not only be responsible for IT and organisational tasks, but also and especially for monitoring job vacancies and employers, as that is the only way to prevent abuse and exploitation. Appropriate funding (from EU and national sources) is essential for that. When providing support services, cooperation with the social partners as experts in the world of work is important. That should also be added here.

(2) Tasks of the national contact points

- d) **verifying compliance with requirements for registration and participation as well as** keeping a registry of employers participating in the EU Talent Pool **and overseeing the quality of job vacancies;**
- e) **banning** 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 applicable labour standards resulting from collective agreements national or EU** 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 **as well as by national social partners;**
- g) providing information and support services to registered jobseekers from third countries and employers participating in the EU Talent Pool, in accordance with Article **17(2) of this Regulation and in cooperation with social partners.**

Art. 13 – Employer participation in the EU Talent Pool

In order to ensure placement in good jobs, extensive changes need to be made to this article: participating employers should register with the Talent Pool, providing a range of information (para. 1), national contact points should carry out a check on employers (para. 2) and employers should comply not only with relevant legislation but also with collective agreements and the ILO principles and guidelines (para. 3). Job vacancies should contain additional information on the habitual place of work, working hours etc. (para. 4) and the ban on fees should be strengthened (para. 3).

Heading

„Registration and participation of employers in the EU Talent Pool “

Paragraph 1 – Information regarding the employer

(1) Employers interested in participating in the EU Talent Pool may request the EU Talent Pool National Contact Point in the Member State where they are established to transfer their job vacancies to the EU Talent Pool IT platform **registered in the EU Talent Pool shall include the name, surname, contact details, company registration number, sector of activity and a description of the employer’s operations.**

Paragraph 2 – Verification of employers by national contact points

(2) The EU Talent Pool National Contact Points shall:

a) coordinate with the relevant national authorities as appropriate to screen and vet the registered employers before their profile is activated and repeat this process every two years after successful registration. This should include checking for salary, social security and tax payments arrears, complaints made against the employer, as well as sufficient funds to meet obligations to employees in case of insolvency, as well as a criminal record check of the natural person(s) in charge of the company.

Paragraph 3 – Obligations of participating employers

Compliance with collective agreements and the principles and guidelines laid down by the International Labour Organization should apply generally and not just when individual Member States introduce them.

Furthermore, it must be made clear that employers who do not comply with those rules will be excluded from the Talent Pool. Article 10 para. 2 e is insufficient for that, as this is a provision defining competence, but does not represent a mandatory obligation for the national contact points to exclude employers. The exclusion must be enshrined in EU law as a mandatory consequence.

(3) Employers participating in the EU Talent Pool shall comply with the relevant Union and national law and practice, ***including applicable collective agreements, as well as the ILO General Principles and Operational Guidelines on Fair Recruitment*** to ensure third-country nationals' protection against unfair recruitment, inadequate working conditions ***and*** discrimination ***as well as the right to freedom of association including collective bargaining and action***. Participating Member States ~~may introduce additional conditions for the~~ ***shall ensure that*** employers' participation in the EU Talent Pool ***complies with the principle of equal treatment for all workers*** ~~to ensure compliance with other relevant national practices, and the principles and guidelines set out by the International Labour Organisation, in compliance with Union law.~~

NEW Employers that have been sanctioned for criminal activities or violation of applicable labour standards resulting from collective bargaining agreements, relevant Union law or national law and practice shall be denied access to or be removed from the EU Talent Pool. Re-applications shall not to be accepted for a span of 5 years.

Paragraph 3, 2 – Fees for jobseekers

"Fees" should be interpreted broadly here, so that contractual penalties, repayment clauses and the transfer of costs incurred for the purpose of or in connection with recruitment (travel expenses, necessary language courses, etc.) are also included and must be paid by the employer.

Employers participating in the EU Talent Pool shall **cover all recruitment** ~~not charge fees~~ **and related costs for the recruitment of** registered jobseekers **and workers** from third countries ~~for the purpose of the recruitment~~. **The use of the EU Talent Pool shall be free of charge for jobseekers from third countries.**

Paragraph 4 – Job vacancies

In the case of job vacancies, it is not only their visibility that is crucial, but above all the information provided, so that applicants know what they are getting into and can rely on that information when concluding a contract.

(4) Job vacancies of employers participating in the EU Talent Pool shall be visible to registered jobseekers from third countries in the EU Talent Pool IT platform. **Each job vacancy shall at least include information on remuneration, the habitual place and the type of work, qualification requirements, main tasks, type and duration of the contract, working time, including information on normal working hours, possible work on Sundays and public holidays as well as shift work, the amount of any paid leave, the requested language profile as well as other applicable working and employment conditions.**

Paragraph 6 – List of employers in violation of the rules

It is important that information about employers who violate the rules is reported not only to the national contact points, but also to the Secretariat. The Secretariat should collect the information and make it accessible via a list. Knowledge of breaches of the law by branches of the same company can be used to check employers and identify professions/industries prone to abuse, as well as for the analyses and work of the European Labour Authority.

(6) The national authorities responsible for the relevant law and practice in the participating Member States shall immediately inform the EU Talent Pool National Contact Points **and the EU Talent Pool Secretariat** on any breaches of the provisions of the relevant law and practice set out in paragraph 3 for the purposes of Article 10(2), point (e). **The Secretariat shall keep a register of those employers, accessible to all national contact points and the European Labour Authority, to prevent repetitions.**

Art. 14 – Shortage occupations

Art. 15 – National adjustments to the list of EU-wide shortage occupations

Annex

The Member States have different needs for skilled workers, which is why the list of shortage occupations provided by the European Commission, which can be supplemented individually by the Member States, would quickly lead to a very confusing situation. Moreover, due to the possibility of posting to other Member States, any additions made to the list by one Member State always have an impact on other Member States and the planned option by which Member States may remove individual professions from the list does not have the desired effect. However, professions or sectors in which there is an above-average level of abuse and exploitation must be excluded from the Talent Pool in order to protect employees. Article 14, Article 15 and the Annex should therefore be deleted. Amendments to Article 9 are necessary in order to entrust the Steering Group with the task of determining the professions/sectors to be excluded, which it should do after consulting the social partners and the European Labour Authority.

~~Article 14 List of EU-wide shortage occupations~~

~~Article 15 National adjustments to the list of EU-wide shortage occupations~~

~~ANNEX~~

Art. 9, (1) providing – ***after consultation with social partners at Union level and with the European Labour Authority*** – support to the EU Talent Pool Secretariat in the preparation of the a list of shortage occupations pursuant to Article 14 ***that are excluded from the Talent Pool due to a high rate of labour exploitation;***

Art. 17 – Information provision and support services

As third-country nationals are a particularly vulnerable group on the European labour market, they not only need information, but also individual advice and support. Due to their expertise and their special access to such employees, trade union-related advice centres are pivotal here and should therefore be explicitly mentioned.

3) Where relevant, the EU Talent Pool National Contact Points shall refer requests for information, guidance and support to other national competent authorities and, if applicable, other appropriate bodies at national level, **including transnational support networks for mobile workers by social partner organisations**, supporting the integration of third country nationals into the labour market

Art. 18 – Facilitation of complaints

It must be possible to lodge complaints through social partners or advice centres. It is also important that employees do not face any negative consequences, including with respect to their residence permit.

(1) Participating Member States shall ensure that there are **accessible, timely and effective mechanisms** through which registered jobseekers **and workers** from third countries may lodge complaints, **directly, through third parties which have, in accordance with the criteria laid down in their national law, a legitimate interest in ensuring compliance with this Regulation, or through a competent authority of the participating Member State when provided for by national law** in case of breach by the employers participating in the EU Talent Pool of the obligations and conditions laid down in Article 13(3) **or other relevant provisions. Registered jobseekers and workers lodging a complaint shall be protected from any retaliation or any other adverse consequences as a result of a complaint.**
(1b new) **Participating Member States shall grant, on a case-by-case basis in accordance with the criteria laid down by their national law, a permit of limited duration to a third-country worker if he or she has experienced a violation of their employee's rights laid down in Article 13 (3).**
(2) Participating Member States shall make information concerning available **complaints and** redress mechanisms easily accessible **and in a language the third-country national can understand or reasonably be expected to understand.**

Art. 19 – Accelerated immigration procedures

There is no need to give preference to placement via the Talent Pool over other national procedures. In addition, Member States are in any case responsible for visa issues. The principle of equal treatment should apply here. This article should therefore be deleted.

Accelerated immigration procedures

- ~~1. Participating Member States may decide to put in place accelerated immigration procedures to allow for a faster recruitment of registered jobseekers from third countries who have been selected for a job vacancy in the EU Talent Pool.~~
- ~~2. The procedure referred to paragraph 1 may cover:
(a) the obtention of visas and residence permits for work purposes;
(b) the exemption from the principle of preference for Union citizens for job vacancies transferred to the EU Talent Pool IT platform.~~

Art. 20 – Monitoring activities

The Secretariat of the Talent Pool should also record how many complaints there were against registered employers and how many employers were excluded from the Talent Pool.

- (1 fa new) the number of complaints lodged against registered employers;***
- (1 fb new) the number of registered employers removed from the EU Talent Pool due to violations against this Regulation;***

Art. 23 – Reporting

It would be desirable for there to be not only reporting, but also a real evaluation of the regulation with regard to its effectiveness in terms of overcoming skills shortages and compliance with fair and just working conditions, which could also lead to a revision of the regulation.

Reporting *Evaluation and review*

By 31.12.2031 and every ~~five~~ **three** years thereafter, the Commission shall submit a ~~report~~ ***an evaluation*** to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the application of this Regulation. ***The evaluation shall assess the effectiveness of the Regulation in addressing the skills shortage and ensuring fair and equitable working conditions. The Commission shall propose, where appropriate, necessary amendments and modifications.***