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Delegations will find attached document SWD(2023) 716 final.

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Brussels, 15.11.2023
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COMMISSION STAFF WORKING DOCUMENT

SUBSIDIARITY GRID

Accompanying the document

Proposal for a Regulation of the European Parliament and of the Council

establishing an EU Talent Pool

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{SWD(2023) 718 final}

1. Can the Union act? What is the legal basis and competence of the Unions' intended action?

1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?

The legal basis for Union action is Article 79(2) (a) TFEU. This provision gives the power to the European Parliament and the Council, acting in accordance with the ordinary legislative procedure to adopt measures in the area of the conditions of entry and residence of third country nationals.

The EU Talent Pool aims at facilitating international recruitment of third country nationals residing abroad and wishing to work in the EU. As finding a job and obtaining a job offer is in most cases a pre-condition for third country nationals to acquire a right of entry and residence in a Member State for employment reasons, the action of the Union legislator which makes it easier for a third country national to receive a job offer from an employer in a Member State, as is the case of the EU Talent Pool, allows third country nationals to fulfil this condition. The envisaged action of the Union legislator therefore falls within the area of the conditions of entry and residence of third country nationals.

1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?

Legal migration is an area of shared competence between the EU and the Member States in accordance with Article 4 TFEU. Article 79 of the TFEU explicitly empowers the EU to develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings. The Treaty also reserves explicitly to the Member States the right to set volumes of admission for labour migrants they admit. The principle of subsidiarity applies since this is an area of shared competence.

2. Subsidiarity Principle: Why should the EU act?

2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2¹:

- Has there been a wide consultation before proposing the act?
- Is there a detailed statement with qualitative and, where possible, quantitative indicators allowing an appraisal of whether the action can best be achieved at Union level?

Between March and June 2023, the Commission organised extensive targeted consultations to inform the Impact Assessment on the EU Talent Pool. These consultations involved a wide range of stakeholders including EU institutions and agencies, international organisations, competent authorities in the Member States, non-governmental organisations, economic and social partners, trade unions, and employers' associations.

The EU Talent Pool proposal also builds on the input collected during previous consultations, in particular the Public Consultation on legal migration conducted in 2020 in the framework of the New Pact on Migration and Asylum². This public consultation aimed to identify areas where the framework on legal migration could be strengthened, including through the EU Talent Pool initiative.

In addition, in the context of the OECD Feasibility Study on the development of a Talent Pool³ in 2022, extensive consultations were conducted with relevant stakeholders, including relevant public and private sector actors, academics, and experts. In the framework of the preparation of the Skills

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN>

² <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12594-Public-consultation-on-legal>

³ [OECD feasibility study on the Talent Pool](#).

and Talent Package⁴, targeted consultations, including on the EU Talent Pool, were also organised with Member States, including Public Employment Services, and expert groups working on migration related aspects.

The Commission published on its website ‘Have your Say’⁵ a Call for Evidence which provided a detailed explanation of the planned initiative. A total of 45 stakeholders, including networks, non-governmental organisations, economic and social partners, local and regional authorities in the Member States as well as EU citizens, provided their feedback.

The preparation of an Impact Assessment on the establishment an EU Talent Pool was supported by a study carried out by an external contractor and it was based on desk research, interviews, and surveys.

The Impact Assessment report provides detailed assessment of the subsidiarity principle with regard to the necessity of EU action and its added value in Sections 3.2 and 3.3. This information is also provided in Section 2 of the explanatory memorandum accompanying the legislative proposal.

2.2 Does the explanatory memorandum (and any impact assessment) accompanying the Commission’s proposal contain an adequate justification regarding the conformity with the principle of subsidiarity?

Yes. As mentioned above, the conformity with the principle of subsidiarity is duly assessed in the explanatory memorandum and in the Impact Assessment accompanying the legislative proposal.

According to the principle of subsidiarity, EU action may only be taken if the envisaged aims cannot be achieved by Member States alone but can be better achieved at Union level. The TFEU explicitly empowers the Union to develop a common immigration policy, so this is a clear objective to be pursued at EU level. At the same time, legal migration is an area of shared competence between the EU and the Member States, and the Treaty also reserves explicitly to the Member States the right to set volumes of admission for labour migrants they admit. The principle of subsidiarity applies since this is an area of shared competence⁶.

All Member States face skills and labour shortages that are expected to worsen in view of the demographic challenges and requirements of the twin transition (green and digital). They are already overstretched in addressing these challenges, including via legal migration. The insufficient recruitment of skilled job seekers from third countries through existing labour migration channels to address labour and skills shortages has a strong cross-border component. The EU labour market operates in the context of the single market, which is cross-border in nature.

While some Member States already recognised the key role of legal migration and have developed talent attraction policies, national initiatives and policies to improve international recruitment of jobseekers from third countries are widely fragmented and vary across Member States with regard to their focus and scale of intervention. Only a few Member States have digital platforms and talent attraction tools at national level that specifically target job seekers from third countries by offering job-search support and information relevant for international recruitment. However, they often have limited functionalities and are limited in scope as they are mostly targeted to highly skilled workers (while shortages facing the EU labour market concern all skill levels). In addition, those tools are focused on the national labour markets, hence not addressing the EU dimension of the issue and using the economies of scale EU cooperation can offer in attracting jobseekers from third countries.

⁴ [COM/2022/657 final](#).

⁵ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13716-EU-Talent-Pool_en

⁶ However, any measure proposed in the area of legal migration “shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed” (Article 79(5) TFEU).

Therefore, the insufficient recruitment of jobseekers from third countries cannot be addressed sufficiently by individual Member States. Member States acting alone, especially smaller Member States with less visibility worldwide, may not be able to attract potential workers from third countries. Initiatives at national level would not effectively address labour shortages across the EU, whereas a single EU platform could help connect and bridge the gap between the supply of potential labour from third countries and EU demand, thus attracting foreign talent to a greater extent to what Member States acting alone would achieve. Furthermore, there is a lack of coordination and fragmentation when considering the different national or private platforms that exist, which could only be overcome by an EU-level platform providing a comprehensive and streamlined approach.

The EU as a whole is more attractive for third country nationals interested in migration than the sum of its Member States individually. The EU Talent Pool, as a single EU-wide job matching platform offering also transparent information on immigration and recruitment processes as well as support services would improve the overall efficiency of labour migration management at EU level and promote the EU as a destination for foreign workers. Thanks to the economies of scale that can be achieved, the EU would be better equipped to compete on the global stage in attracting foreign talent. This will ensure that a greater number of potential candidates with the right skills are encompassed, and the labour needs of employers in each Member State are better addressed. It would send a clear message to job seekers from third countries that the EU welcomes them in its labour market, while providing protection against unfair recruitment.

2.3 Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?

As measures to activate the inactive EU population and intra-EU mobility are not sufficient to address labour and skills shortages in the EU, the increasing ageing and shrinking of the labour force has become a common concern across the Union, particularly in the context of the twin transition, where green and digital skills are crucial to achieving the Union's objectives. Member States acting alone, especially smaller Member States with less visibility worldwide, may not be able to attract third country nationals from abroad. Although some digital platforms and talent attraction tools have been set up at national level, they exist in only a few Member States and are limited in scope (e.g. focusing mainly on highly-skilled workers), while shortages the EU labour market is facing concern all skill levels. The development of an EU Talent Pool would therefore have a number of positive effects that could not be realised by Member States acting alone.

(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?

The insufficient recruitment of jobseekers from third countries through existing labour migration channels to address labour and skills shortages has a strong cross-border component. The EU labour market operates in the context of the single market, which is cross-border in nature. The insufficient recruitment of third country nationals cannot be addressed sufficiently by individual Member States.

(b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty⁷ or significantly damage the interests of other Member States?

The Union and the Member States need skilled workers in order to achieve the digital and green transition. Nonetheless, EU employers are facing structural labour and skills shortages in various sectors (e.g., IT, health, tourism) and the EU twin transition creates a high demand for specific skills. In addition, the EU has an ageing and shrinking working-age population. These trends increase pressure on the labour markets, undermining the overall competitiveness and economic growth of

⁷ https://europa.eu/european-union/about-eu/eu-in-brief_en

the EU. Action at the EU level would complement and reinforce activities to attract talent from abroad taken by the Member States.

(c) To what extent do Member States have the ability or possibility to enact appropriate measures?

Some Member States already recognised the key role of legal migration and developed talent attraction policies which include specific schemes to streamline migration processes, the exclusion from the labour market test for certain shortage occupations and, in few instances, international job matching platforms. Overall, the lack of a harmonised approach together with the potentially limited visibility of existing national platforms at the global level reduce the Member States' ability to achieve economies of scale when developing talent attraction policies individually. This initiative would not replace national initiatives and platforms in the context of international recruitment nor define Member States' talent attraction policies. As a voluntary tool to facilitate international recruitment, the EU Talent Pool would offer additional support at EU level. Hence, Member States would be able to maintain their tools in place and complement them with the new platform.

(d) How does the problem and its causes (e.g. negative externalities, spill-over effects) vary across the national, regional and local levels of the EU?

The prospect of an ageing population and a shrinking working-age population together with other inefficiencies linked to the functioning of the labour market pose significant challenges for the EU and its Member States. EU employers are facing structural labour and skills shortages in many professions. While some Member States are already addressing these shortages by re-activating the domestic workforce and improving intra-EU mobility, these efforts might be insufficient to fully address existing and future shortages given the magnitude of this challenge. Therefore, attracting talent and skills from outside the EU is a way to contribute to addressing existing and future labour and skills shortages. However, the current level of international recruitment of third country nationals from outside the EU through legal migration pathways to address EU labour and skills shortages is still insufficient. This is linked to several challenges employers and third country nationals face in international recruitment.

(e) Is the problem widespread across the EU or limited to a few Member States?

The increase of the ageing and shrinking working-age population is a common concern across the Member States. Similarly, all Member States experience labour and skills shortages, and this concerns all skills levels. Sectors where the shortages are the most concentrated in the Member States are: healthcare, construction, manufacturing and services, transportation and information and communication technology. Therefore, the need to help EU employers to find the talents they cannot find in the EU labour markets is therefore shared across the Union.

(f) Are Member States overstretched in achieving the objectives of the planned measure?

Member States are overstretched in addressing skills and labour shortages that are expected to worsen in view of the demographic challenges and requirements of the green and digital transition. As mentioned above, activation of EU domestic workforce and intra-EU mobility is expected to be insufficient to fully address current and future shortages.

(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?

Member States were widely consulted in the preparation of the EU Talent Pool proposal. The added value of the EU Talent Pool in supporting Member States to address labour and skills shortages was widely acknowledged by the Member States during the targeted consultations. In particular, also Member States having similar platforms already in place, welcomed the initiative as a way to complement their current efforts on international recruitment. The development of a voluntary tool

to which only interested Member States may decide to participate in was largely welcomed and considered be preferred option. In addition, Member States welcomed the option of a demand driven tool based on actual labour needs and open to all skills levels whilst targeted to certain occupations of EU and national relevance in a first stage with the possibility to expand its scope over time. It was acknowledged that EU Talent Pool should also address actual national and regional shortages and ensure interoperability with existing national systems.

2.4 Based on the answer to the questions below, can the objectives of the proposed action be better achieved at Union level by reason of scale or effects of that action (EU added value)?

Although some digital platforms and talent attraction tools have been set up at national level, they exist in only a few Member States and are limited in scope (e.g. focusing mainly on highly-skilled workers), while the EU shortages concern all skill levels, thus not addressing the EU dimension of the issue. Overall, the lack of a harmonised approach together with the potentially limited visibility of existing national platforms at the global level reduce the Member States' ability to achieve economies of scale when developing talent attraction policies individually. The proposed EU action would allow to better support international recruitment of third-country nationals via legal pathways to address EU labour and skills shortages. Hence, it would contribute to the Union's competitiveness and economic growth by enhancing the visibility of the EU and Member States' legal migration policies at global level and by attracting more third-country nationals from abroad.

(a) Are there clear benefits from EU level action?

The EU Talent Pool will allow the EU and Member States' legal migration policies to be more visible on the global stage. This is particularly relevant for smaller Member States. By providing an EU-wide platform with a wider range of tools and services to facilitate international recruitment, the EU Talent Pool would ensure more visibility of EU employers' job vacancies at global level as well as a making a wider pool of potential candidates available to EU businesses. The EU Talent Pool would offer additional support at EU level. Hence, Member States would be able to maintain their tools in place and complement them with the new platform. Hence, this initiative would have the added value of supporting Member States that are already developing talent attraction policies. Member States that do not have a similar tool in place would be able to use the EU Talent Pool instead of setting up their own. In addition, the proposed initiative would indirectly contribute to the overall management of migration by incentivising cooperation with third countries in the area of migration.

(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the internal market be improved?

Yes.

(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?

Member States would be able to maintain their tools in place and complement them with the EU Talent Pool. The new platform would offer additional support at EU level with the aim to facilitate international recruitment for EU employers, provide opportunities to job seekers from third countries including by improving their access to migration rules and procedures, and therefore enable the EU to attract skilled workers from abroad to address labour and skills shortages.

(d) Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, regional and local levels)?

Yes.

(e) Will there be improved legal clarity for those having to implement the legislation?
Yes, there will be an implementing act.
3. Proportionality: How the EU should act
3.1 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of proportionality?
<p>Yes. As mentioned above, the conformity with the principle of subsidiarity is duly assessed in the explanatory memorandum and in the Impact Assessment accompanying the legislative proposal (Sections 2.3 and 3.3, respectively).</p> <p>This initiative would not replace national initiatives and platforms in the context of international recruitment nor define Member States' talent attraction policies. In addition, as the EU Talent Pool does not constitute a new legal migration pathway, it would not affect the right of Member States to determine volumes of admission of third country nationals to their territory nor their discretion in introducing labour market tests at national level. As a voluntary tool to facilitate international recruitment, the EU Talent Pool would offer additional support at EU level. The initiative is limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union is in a better position to act in view of achieving economies of scale. Hence, Member States would be able to maintain their tools in place and complement them with the new platform. This initiative would have the added-value of supporting Member States that are already developing talent attraction policies. Member States that do not have a similar tool in place would be able to use the EU Talent Pool instead of setting up their own. Overall, the EU Talent Pool would allow to attract third country nationals' workers from abroad where labour and skills shortages in the Member States cannot be sufficiently filled otherwise. In addition, by providing an EU-wide platform with a wider range of tools and services to facilitate international recruitment, the EU Talent Pool would ensure more visibility of EU employers' job vacancies at global level as well as a making a wider pool of potential candidates available to EU businesses.</p> <p>In the light of the above, the proposal does not go beyond what is necessary in order to achieve the stated objectives.</p>
3.2 Based on the answers to the questions below and information available from any impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?
The proposed action is based on a voluntary approach, and therefore does not aim at imposing any obligation on Member States nor their talent attraction policies. The objective is to offer additional support at EU level as this would not be achieved effectively by the Member States alone.
(a) Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?
Yes.
(b) Is the form of Union action (choice of instrument) justified, as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-legislation, etc.)?
The establishment of an EU-wide platform requires directly applicable rules. Such rules, which are sufficiently detailed and should be applied in a uniform manner in all MS, do not require particular

transposition measures. Therefore, a Regulation is the most appropriate instrument to achieve the objectives of the proposal.

(c) Does the Union action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit the European action to minimum standards or use a less stringent policy instrument or approach?)

Yes, the EU Talent Pool is a voluntary tool for interested Member States.

(d) Does the initiative create financial or administrative cost for the Union, national governments, regional or local authorities, economic operators or citizens? Are these costs commensurate with the objective to be achieved?

Yes, as assessed in the impact assessment, the EU Talent Pool will generate additional costs for the Union and national authorities. However, these would be reduced by re-using some of the existing EURES IT components. For EU employers, the EU Talent Pool would imply cost savings related to the time and effort saved throughout the entire recruitment process.

(e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account?

No, as there are no such special circumstances in the aspects addressed by the proposal.