

BRIEFING
PAPER
#104

ATTRACTING SKILLS AND TALENT TO THE EU

EUROPEAN COMMISSION'S PROPOSAL FOR AN EU "LEGAL" MIGRATION POLICY

The European Commission released a proposal for regular migration initiatives on 27th April 2022, called Attracting Skills and Talent to the EU. The legislative pillar foresees the revision of the Long-term Residents directive and the Single-Permit directive, while an operational pillar proposes to step up cooperation between Member States and with third countries, around voluntary-basis programmes. Eventually, the Commission also announces its intention to think forward and explore new avenues for "legal" migration.

This paper aims at unpacking these initiatives, highlighting positive developments and identifying ways to correct the course where needed. It will do so, for each proposal, by retracing the political context and policy shortcomings leading to them, present their main features with a critical lense and offering policy and practical recommendations to guide the process.





INTRODUCTION

This paper aims at unpacking the Skills and Talents package, highlighting positive developments and identifying ways to correct the course where needed. It will do so, drawing on institutional and legal documents, political analyses, and views exchanged during a consultation meeting with representatives of civil society organized by the European Commission's Directorate General for Migration and Home Affairs on new "legal" migration initiatives¹.

It seems the only migration the EU is willing to deal with is indeed that of highly skilled workers, of "talents". Beyond the accusations of jeopardizing the fundamental rights, integrity, and wellbeing of people on the move, the EU Pact on Migration and Asylum has come under stark criticism for its lack of inspiration in imagining and proposing new "legal" pathways to migrate to the EU. The exception is the initiatives regarding facilitating access and entry of "talent" to the EU as exemplified in the chapter "Attracting skills and talent to the EU" of the Pact. The main highlights in that chapter are the swift conclusion of negotiations on the EU Blue Card Directive, which was eventually adopted in October 2021; the EU Talent Partnerships, launched in June 2021, on which SOLIDAR wrote a briefing paper² and also touched on in this paper; and a "Skills and Talent package", whose eventual adoption by the Parliament and the Council will mark the achievement of the Pact's roadmap's objectives regarding labour migration.

The Commission seems both unable and unwilling to act more proactively to table structural and long term solutions regarding "legal" pathways that would have a material effect on the continued death toll on our borders and access to rights of migrants. SOLIDAR regrets this and the lack of political support currently in the EU for a constructive and progressive vision of migration management. However, the package still offers some important advances when it comes to current labour and other "legal" migration schemes, as well as remaining important deficiencies that should be changed.

¹ European Commission DG Home Unit C.2 Legal Pathways and Integration (2021). Consultation with representatives of the Civil Society.

² Julie Martinaud, Carlos Roldán (2021). The EU Talent Partnerships, Briefing Paper #101, SOLIDAR: <https://www.solidar.org/en/publications/briefing-paper-101-the-eu-talent-partnerships>



THE “SKILLS AND TALENT” PACKAGE

The European Commission released a proposal for regular³ migration initiatives on 27th April 2022⁴. Initially foreseen for the second half of 2021, this initiative comprises three pillars. The legislative pillar foresees the revisions of two existing Directives, the Long-term Residents directive and the Single-Permit directive. The operational pillar proposes to step up cooperation between Member States at EU level, and with third countries, around two innovations that are EU Talent Partnerships and an EU Talent Pool. Eventually, in a so called “forward-looking pillar” the Commission will continue to explore avenues for “legal” migration related to three areas: care, youth, and innovation.

THE LEGISLATIVE PILLAR: SIMPLIFYING PROCEDURES, PROMOTING INTRA-EU MOBILITY AND ENHANCING RIGHTS

1. Proposed recast of the Single-Permit directive

The proposal for a recast of the **Single Permit directive** shows very encouraging progress, aiming at making the process easier, both for applicant workers and employers, and enhancing provisions regarding equal treatment of workers and protection from labour exploitation.

The Single Permit Directive (2011/98/EU)⁵, adopted in 2011, had two main objectives:

- 1) **to facilitate the procedure for a third-country national’s admission for work in a Member State**, by introducing a single application procedure for a **single permit combining work and residence**, and to set a number of safeguards in the application procedure.
- 2) **to ensure equal treatment between third-country workers and nationals** of the Member State of destination, such as equal working conditions and equal access to social security benefits. It is one of the major labour migration directives composing the EU’s labour migration legislation.

a. Better protection of workers against labour exploitation

With the adoption of this new proposal, **the single permit would no longer be linked to one employer only**, thus enabling the holder to change employer during the permit’s validity period, without causing the loss of the permit. Voices from civil society and Trade Unions have been advocating for changes in the way work permits are issued for years. Indeed, currently some Member States automatically remove the permit with the loss of employment. As EFFAT explains: “Work permits that are available for low skilled occupations usually tie the migrant worker to a specific job with a particular employer and are only valid for a short period of time. As work permits are linked to that particular job,

³ SOLIDAR either refers to regular migration or to “legal” migration using quotation marks.

⁴ European Commission (2022). COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS Attracting skills and talent to the EU (COM/2022/657 final). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2022%3A657%3AFIN&qid=1651223944578>

⁵ Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32011L0098>



they are no longer valid if the job is lost.”⁶. Now, the new provisions should enable third country workers to remain on the Member State’s territory for at least three months after losing the job linked to the permit. The Commission’s proposal nonetheless foresees the possibility for the Member States to carry out a labour market check in case of change of employer, and therefore the possibility to oppose the change of employer; we strongly advise to repel this measure.

Allowing change of employer is a very welcome step forward as **it will not only promote and improve mobility within the labour market, but more importantly it will reduce migrant workers’ dependency on their employer, and therefore their vulnerability to labour exploitation.** While the focus of the Directive is not the protection of workers against labour exploitation, giving permit holders the possibility to change employer without jeopardizing the validity of their permit, would improve equal treatment and empower workers to feel supported to enforce their labour rights.

Going further in that direction, SOLIDAR, our members, together with other civil society organisations, underline that to guarantee labour rights and reduce labour abuse, stronger labour inspection, enforcement of firewall principles and making complaint mechanisms more accessible and effective⁷ are also needed as minimum.

b. Simplifying and streamlining the procedure

SOLIDAR, together with civil society, and Members of Parliament (MEPs) have continuously pointed out the need for harmonizing the Directive’s application. This was also further highlighted in a Fitness Check. For instance, **the legislation currently allows Member States to only accept applications for a single permit lodged within their territory.** Consequently, in a handful of Member States, applicants first have to obtain an entry visa before they can apply for a single permit, which defeats the primary purpose of facilitating the procedure. Encouragingly, in contrast, the recast proposal suggests that Member States allow applications to be lodged from third countries as well as the Member State of destination.

Another positive development concerning the reduction of the bureaucratic burden on applicants in the recast proposal is that **Member States will now be required to issue a visa when the conditions of the Single permit are fulfilled.** While Directive 2011/98/EU foresaw that the visa procedure and the Single-permit application were completely separated, this will no longer be the case in order to avoid delays or a first rejection of the visa application when conditions for the Single permit are fulfilled.

⁶ European Federation of Food, Agriculture and Tourism Trade Unions (2021). *Towards inclusion and equal treatment for all mobile and migrant workers: EFFAT Demands for action*: https://effat.org/wp-content/uploads/2021/11/EFFAT-Demands-for-action_Towards-inclusion-and-equal-treatment-for-all-mobile-and-migrant-workers_EN.pdf

⁷ These insights were exchanged during the consultation with Civil society organized by DG Home C.2 on 20th April 2021.



2. Proposed recast of the Long-term residents directive

The Long-term residents Directive (2003/109/EC)⁸, adopted in 2003, defines the conditions of acquisition of the status of “EU long-term resident”. The possibility to be granted this status exists for third-country nationals who have “legally” and continuously resided in an EU Member State for an uninterrupted period of at least five years. The objective of the Directive is threefold:

- 1) granting a permanent, secure residence status for third-country nationals who have lived in an EU Member State for 5 years;
- 2) ensuring **equal treatment between EU long-term residents and nationals** of the Member State of residence in a number of areas such as work, education, social security, access to goods, and services;
- 3) giving long-term **residents in one Member State the possibility to move and reside in other Member States** to work and study.

In two implementation reports (2011 and 2019) and a Fitness Check, issues have been identified with each of the objectives of the Directive, hence the announcement of its revision process in the 2020 Communication on the New Pact on Migration and Asylum⁹.

The Long-Term Residents Directive does not only target workers, but it contains essential provisions on social rights and access to the labour market, hence why it is usually treated as a labour migration initiative.

a. Expanded scope and eligibility criteria

The revision of the **Long-term Residents directive** features positive developments. SOLIDAR is happy that one of its recommendations has been taken onboard regarding simplifying the eligibility conditions to the status. This is achieved notably **by allowing periods of residence in different Member States to be counted together towards the five-year continuous residence period to be eligible, provided that at least two years of continuous residence have been spent in the MS of application.** This will promote the intra-EU mobility and sense of EU belonging.

The fact that with the new proposal **any period of regular residence counts**, such study or Vocational Education and Training (VET) periods, or residence on temporary grounds, is also positive. We only regret that the **residence period in the EU must still be continuous as this will exclude third country nationals who may temporarily return to their country of origin and may struggle to reach 5 years of uninterrupted residence in the EU.**

SOLIDAR recognizes the main goal to limit the risk of abuse of the status to third country nationals granted some form of residence permit based on an investment while not actually residing in the EU, but supports the Members of European Parliament’s proposal **to reduce the period to three years for all third-country nationals, as a way to enhance intra-Union mobility**¹⁰.

⁸ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32003L0109>

⁹ European Commission (2020). Communication from the Commission on the New Pact on Migration and Asylum (COM(2020) 609 final): https://eur-lex.europa.eu/resource.html?uri=cellar:85ff8b4f-ff13-11ea-b44f-01aa75ed71a1.0002.02/DOC_3&format=PDF

¹⁰ European Parliament (2021). European Parliament resolution of 25 November 2021 with recommendations to the Commission on legal migration policy and law (2020/2255(INL)): https://www.europarl.europa.eu/doceo/document/TA-9-2021-0472_EN.pdf



Eventually, circular migration should be encouraged by allowing (longer) periods of absence from the EU without risking losing the status. In this sense, it is welcome that the recast proposes the period of absence be extended from 12 to 24 months, but again,

for the purpose of harmonization, the Directive should establish the procedure for the re-acquisition of the status, instead of leaving its modalities to the discretion of Member States.

b. Enhancement and harmonization of rights attached to the status

Another important part of this recast was to make the status more attractive, by enhancing the rights of long-term residents and their family members, notably with regards to family reunification criteria and facilitated intra-EU mobility.

SOLIDAR believes the Long-term Resident (LTR) status could better contribute to the integration of third-country nationals by ensuring equality of treatment, or at least extending some rights of EU citizens to a LTR.

The existence of EU long-term residence could be an integrated element of European identity, but currently it is not as the rights attached to it are very limited.

With this new proposal, the Commission sought to give a much-welcome clarification of rights to which EU long-term residents are rightly entitled. LTR should have the **same right as nationals**

when acquiring private housing. What is more, the proposal features two novelties regarding family members of a LTR. Member States will be prevented from applying preconditions of integration for the purpose of family reunification, or a time limit to labour market access of family members, assuming instead that family members of a LTR will be integrated in European societies. Eventually, children of LTR born or adopted in the MS having issued the status, will in turn automatically acquire the status.

Concerning intra-EU mobility of LTRs, **new social security provisions** include the portability of pensions and family benefits, in line with the most recent “legal” migration directives. This is a welcome improvement as currently, in some countries, the conditions for mobility to be fulfilled by EU long-term residents are similar to the ones other third-country nationals have to fulfil for a first-time application. As the aim of the Directive is to promote the freedom of third-country national workers who are already long-term residents in an EU country by creating a legal status like that of EU citizens, it would be counterproductive to restrict this freedom of movement by treating LTRs like “temporary” third country nationals.

SOLIDAR calls for equal treatment between EU Long-term residents and EU workers in as many areas of socio-economic rights as possible. There are no arguments to limit the access of LTRs to any of the principles under the European Pillar of Social Rights¹¹ and they should therefore apply without unnecessary restrictions to EU LTRs.

¹¹ European Commission website (year unknown). *The European Pillar of Social Rights in 20 principles:* https://ec.europa.eu/info/strategy/priorities-2019-2024/economy-works-people/jobs-growth-and-investment/european-pillar-social-rights/european-pillar-social-rights-20-principles_en



c. An underused status due to improper access to information and unattractive set of rights

As underlined by the Fitness Check¹² and the Implementation report¹³ and confirmed by SOLIDAR members working on the ground, **the EU long-term resident status is currently underused.** This means that despite being eligible for it, millions of third-country nationals miss the opportunity to enjoy the benefits of this status.

The main reason is that few know about it, and few, therefore, apply. Third-country nationals generally lack information about the EU long-term residence status and the many rights attached to it. Member States' migration authorities themselves sometimes are not well-informed of the existence and conditions of this status.

Migration authorities at local, regional, and national level should be fully informed about the existence and conditions of the LTR status so they can raise awareness, provide adequate information, and act proactively to support its implementation. The information could be actively shared with third country nationals who reach four years of steady residence in a EU Member State, for example.

d. A missed opportunity to boost civic and political rights

In SOLIDAR's view, the LTR Directive should also be an **opportunity to provide a higher level of civic and political rights to EU long term residents.** The participation of third country nationals in the civic and political life of the host country is paramount for their integration and sense of belonging, as well as for the representativeness of policy-makers and in the end, of policies. The acquisition of the LTR status could be an enabling pathway to the (later) acquisition of citizenship. **We, therefore, would like to see a Directive that provides for the right of LTR to vote and stand in local and municipal elections, as well as the right to participate in European Citizens Initiatives.**

¹² European Commission, Migration and Home Affairs (year unknown). Legal migration fitness check:

https://home-affairs.ec.europa.eu/policies/migration-and-asylum/legal-migration-and-integration/legal-migration-fitness-check_en

¹³ European Commission (2019). REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the implementation of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents (COM/2019/161 final): <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1567069007318&uri=CELEX:52019DC0161>



OPERATIONAL PILLAR: TAILOR-MADE APPROACHES TO FILL EU LABOUR MARKET NEEDS

1. The proposal for EU Talent partnerships

The EU Talents Partnerships were launched by the Commission on 11th June 2021, with the aim to address skills shortages in EU labour markets and promote “legal” pathways while strengthening migration partnerships with third countries¹⁴. The initiative would build on experience and lessons learnt from several EU-funded pilot projects implemented in partnership with countries from Eastern Europe and Africa in the past years. The launch of a first partnership is foreseen by the end of 2022 with either Morocco, Tunisia or Egypt¹⁵.

SOLIDAR, along with Trade Unions and civil society, has concerns about the fact these Talents Partnerships further the trend of using bilateral labour migration agreements with third countries as tools of (labour) migration governance. Those bilateral labour migration agreements work as “a reward for countries that cooperate with deportations of their nationals, and others who may have transited through”, as the Platform for International Cooperation on Undocumented Migrants (PICUM) explains¹⁶. Conversely, other countries, seen as less cooperative on readmissions and returns, see reduced “legal” pathways for their nationals to

migrate to the EU, as a form of “punishment”. This conditionality was made very clear in the Commission’s communication on Attracting skills and talent to the EU¹⁷. In addition to this unfair conditionality, the fact that bilateral labour migration agreements coexist with general labour migration legislation complicates mobility by multiplying the procedures, regulations and statuses that must be steered through by parties.

Furthermore, **SOLIDAR** appreciates that **promoting temporary migration programmes, as well as circular migration, can be beneficial to counter the possibility of brain drain, but warns that these programmes must not be used as a pretense for kicking workers out of these schemes and Europe as soon as they are no longer needed or wanted.** Such schemes should come with pathways for continuation of a career in the EU if the participants aspire to it.

Talent Partnerships should ensure equal treatment between third-country workers and EU workers in the country of destination. All principles under the European Pillar of Social Rights should also apply for this category without restrictions.

In particular, clarification is needed on:

- Safeguards to ensure these workers do not fall victim to social dumping, by doing the same work, but lower-remunerated than their EU citizens counterparts

¹⁴ European Commission (2021). Press release: Talent Partnerships: Commission launches new initiative to address EU skills shortages and improve migration cooperation with partner countries https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2921

¹⁵ European Commission (2022). COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS Attracting skills and talent to the EU (COM/2022/657 final). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2022%3A657%3AFIN&qid=1651223944578>

¹⁶ PICUM (2021). Designing labour migration policies to promote decent work: <https://picum.org/wp-content/uploads/2021/03/Designing-labour-migration-policies-to-promote-decent-work-EN.pdf>

¹⁷ European Commission (2022). Ibid.



- safeguards to limit the risk of labour exploitation (which, as explained earlier, is heightened when the residence permit is linked to the pursuance of a particular job with a particular employer, which seems to be the case with Talent Partnerships).

Trade Unions and Civil Society should be closely involved in these partnerships, in the phases of design, implementation, and monitoring, especially when it comes to being allowed a position to monitor the actions of private actors and private recruitment agencies, both in the country of origin and of destination.

For more information read SOLIDAR's position on EU Talent Partnerships¹⁸.

2. The proposal for an EU Talent Pool

The Commission plans to set up the first **EU-wide platform and matching tool**, to help match EU employers “with the talent they are unable to find in the EU’s labour market”. The Pool will work as an EU-wide pool of candidates from third countries, which will be selected on the basis of specific skills levels, criteria and migration requirements. A first pilot was launched in summer 2022 for people fleeing the war in Ukraine, with the voluntary participation of a few Member States and the setting up of National contact points and a web portal. The general initiative targeting all third country nationals is scheduled for launch by mid-2023.

While appreciating the constructive ambition of the proposal, SOLIDAR would like to warn that the platform reinforces the significant power imbalance between large companies fishing for

employees and individual applicants from third countries aspiring to work in the EU. The Talent Pool therefore needs to come with safeguards installed, with the most important thing being access to support, mentorship, and guidance for migrants included in the programme, as well as guaranteeing transparent procedures and access to full and reliable information. CSOs and Trade Unions should be made part of the process to be able to support in monitoring efforts to make sure non-discriminatory procedures are deployed, report on the practices of employers and National Contact Points to prevent abuse, as well as invited to the support participants. The European Commission also has an important role in coordinating the National Contact Points to ensure equal treatment between different countries.

Here again the European Pillar of Social Rights and especially its first chapter “Equal opportunities and access to the labour market” should be used as a benchmark to ensure equal treatment of applicants.

¹⁸ Julie Martinaud, Carlos Roldán (2021). *Ibid.*



FORWARD-LOOKING PILLAR: NEW AVENUES FOR REGULAR LABOUR MIGRATION

The Commission will continue to explore avenues for “legal” migration related to three areas: care, youth, and innovation. An important thing to note is the mention that the Commission will “look at how to better attract low and medium skilled workers needed in the EU labour market”. This is much welcome and something SOLIDAR, in line with Trade Unions¹⁹ and progressive civil society, has long advocated for.

It is paramount that the Commission now acknowledges **the essential role migrants play in the care sector**, especially long-term care and elderly care, but also opening specific avenues for migration to specific sectors of EU economies should come with safeguards, as this often contributes to putting migrants in more or less permanent boxes. This is particularly true within the care sector, already significantly composed by migrants, and especially migrant women.

Prudence should be applied and safeguards in place to the EU Talent Partnerships, the EU Talent Pool and any initiative foreseeing specific migration pathways for nationals of certain countries, for a certain occupation or sector.

¹⁹ European Trade Unions Confederation (ETUC) (2021). Resolution on Fair Labour Mobility and Migration: <https://www.etuc.org/en/document/etuc-resolution-fair-labour-mobility-and-migration>

solidar

50 Avenue Des Arts.
Box 5, 2nd floor.
B1000 - Brussels
Belgium

Twitter: @SOLIDAR_EU
Facebook: SOLIDAR
www.solidar.org
solidar@solidar.org

Responsible editor:

Mikael Leyi

Authors:

Julie Martinaud

Carlos Roldán Mejías

Designer:

Dagmar Bleyová

SOLIDAR is a European network of membership based Civil Society Organisations who gather several millions of citizens throughout Europe and worldwide. SOLIDAR voices the values of its member organisations to the EU and international institutions across three main policy sectors: social affairs, lifelong learning and international cooperation.



**Co-funded by
the European Union**

This document was funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the European Commission. Neither the European Union nor the granting authority can be held responsible for them.