

Response from the Netherlands regarding the public consultation on the future of EU legal migration

Introduction

This paper gives the Dutch view in response to the public consultation on the future of EU legal migration launched by the European Commission. Through this consultation, the Commission wants to identify further areas where the existing EU framework could be improved in the longer term and gather new ideas to boost the EU's attractiveness, facilitate skills matching, and better protect labour migrants from exploitation.

Legal migration is one of the six pillars of the Dutch comprehensive agenda on migration. The majority of the migrants who enter and reside in the Netherlands have a regular residence permit for study, employment or family reunification.

The Netherlands aims to promote legal migration to strengthen the Dutch knowledge economy, its innovative strength and its competitiveness. This type of labour migration is facilitated through flexible admission procedures for specific groups, such as highly skilled migrants and foreign start-ups. The general admission regime for labour migrants from third countries aims to match the supply of labour from countries of origin to the needs of Dutch employers. Priority is given to workers at national or European level to fill vacancies on the Dutch labour market.

Besides opportunities, legal migration also poses challenges, which need to be addressed, such as substitution effects on the labour market and unequal treatment of migrant workers. The Netherlands is strongly committed to combat unfair work and labour exploitation on the Dutch labor market.

Furthermore, illegal labour needs to be prevented. The Netherlands endorses the Commission's analysis that the many possibilities for finding employment in the EU without the required legal status is one of the drivers for migrant smuggling to the EU. Therefore, the Netherlands looks forward to the assessment of the Commission on how to strengthen the effectiveness of the Employers Sanctions Directive (EU 2009/52) and the evaluation of the need for further action.

Against this backdrop, the Netherlands proposes the following priorities and recommendations for the future of EU legal migration.

Improving coordination, while respecting national competences

Legal migration is a shared competence between the European Union and its Member States. There are major differences between the Member States with respect to their economic performances, their labour markets and their demographic situations. For this reason, the Netherlands believes that EU legislation needs to allow Member States to maintain and develop a legal migration policy that is tailor-made for the national labour market needs. This is a key principle for the Netherlands. Therefore, the current division of competences between the EU and its Member States should remain unchanged.

At the same time, legal migration policies in one Member State can have consequences for other Member States. For this reason, the Netherlands believes that *coordination* between Member States should be further improved and would welcome EU initiatives in this regard. However, any new EU initiatives in the field of legal migration should be without prejudice to national laws relating to the entry, residence and access to employment of third-country workers.

Addressing the challenges related to posting of third-country workers

The number of third-country workers who are posted in the Netherlands from another Member State under the freedom of services has strongly increased in recent years. Differences in work permit requirements among Member States allow third country nationals to enter the EU in Member States with flexible admission requirements, from where they are posted to other EU Member States with more stringent admission requirements (such as the Netherlands). Although this is legal, it does create a loophole in the system.

These workers are vulnerable for precarious living and working conditions and labour contracts with limited social security coverage. It puts national labour market policies regarding access of third-

country nationals under pressure and can contribute to a race to the bottom on labour conditions. As a first step towards solving this challenge, the Netherlands calls on the European Commission to study this phenomenon to get a clear picture of the numbers of third-country nationals posted in the EU and their employment conditions.

Improving information on legal migration

The Netherlands believes it is important to provide up-to-date and accurate information about existing legal migration opportunities for labour migration and possibilities for international students. Therefore, the Netherlands welcomes an EU non-legislative initiative on improving information on legal migration. In this respect, a platform that provides information about admission policies for third-country workers in the Member States and includes links to national websites could be considered.

The Netherlands recently undertook several initiatives to improve the provision of information at a national level. The Immigration and Naturalization Service has an English-language website where one can find the various residence permits and all associated requirements and procedures. Furthermore, the Ministry of Economic Affairs and Climate is developing an information and landing page for highly skilled migrants. This page will be launched at the beginning of 2021. In addition, the Netherlands has launched a website (workinnl.nl) where migrants can find information about their rights and obligations as long as they live and work in the Netherlands. This website primarily targets EU nationals, but also provides additional, valuable information for third-country nationals, besides the aforementioned websites.

Attracting talent and skills

The Commission's approach to attracting talent and knowledge as set out in its Pact on Migration and Asylum is generally in line with the Dutch policy to attract highly skilled migrants. The Commission has proposed to simplify the recruitment of talent from third countries through the creation of an 'EU Talent Pool'. This could be an important instrument to boost the EU's attractiveness, especially when aimed at highly skilled migrants. The Netherlands wants to emphasise that social partners and employers should be involved in the development of an EU talent pool, to ensure that labour market needs are well reflected.

The Commission also announced that it will launch 'Talent Partnerships' in the form of an enhanced commitment to support legal migration and mobility with key partners. The Netherlands believes that these Talent Partnerships should be deployed strategically as part of the Dutch comprehensive agenda on migration, to combat irregular migration and to promote cooperation on return.

Strengthening the protection of labour migrants

The Netherlands wants to take this opportunity to inform the Commission about the measures that have been taken on a national level to protect labour migrants. The Netherlands considers decent work for all workers, including EU-mobile workers and third-country workers essential for the Dutch society. The Netherlands has strongly invested in the Labour Inspectorate of the Ministry of Social Affairs and Employment. More than half of the resources targets decent work, underpayment and exploitation of workers.

Nevertheless, there are still some specific sectors like agriculture, the meat sector and the distribution sector, in which labour migrants are particularly vulnerable and need more adequate protection, e.g. with regard to decent work or housing. This became even more visible during the COVID-19 pandemic. Therefore, the Netherlands has established a special Taskforce for the Protection of Labour Migrants. This taskforce made recommendations to improve the position of labour migrants in the short and mid-long term in the Netherlands. These recommendations primarily focus on EU mobile workers, but apply in some cases also to third-country workers, in particular those who are posted from one Member State to another, under the freedom of services. The Dutch government will start implementing many of these recommendations over the course of the next years.

On a European level, the Netherlands foresees an important role for the European Labour Authority (ELA) regarding the promotion of effective labour inspections.