



POLICY BRIEF

Intra-corporate Transferees (ICTs): The benefits for the EU and the opportunity cost

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There is a demand for high-skilled labour in the EU and positions are currently going unfilled.

EXECUTIVE SUMMARY

Despite the issue of refugees and illegal migration grabbing the headlines across Europe, the EU requires high-skilled labour and this demand cannot be met from within its own borders. European economic growth, business competitiveness and labour markets all suffer as a result. The Directive on Intra-Corporate Transferees (ICTs) was adopted in order to address this shortfall, given the clear shortages in sectors like computer programming and engineering.

The full range of simplifications and options available in the ICT Directive are still not offered across the EU. The current patchwork means that arbitrary quota systems exist in some countries; approval/rejection processes are different across the EU; some countries do not have a fast track system; and intra-EU mobility as well as the ability of ICTs to work at customer sites is limited in certain EU Member States. Moreover, the entire process is often slow and administratively heavy too, meaning that businesses cannot get the skills they need, when they need them. The result is that companies and the economy as a whole lose out. In this paper we make recommendations for each of these areas and highlight some best practice.



High-skilled migration is becoming more difficult at a time when the need for it is rising.

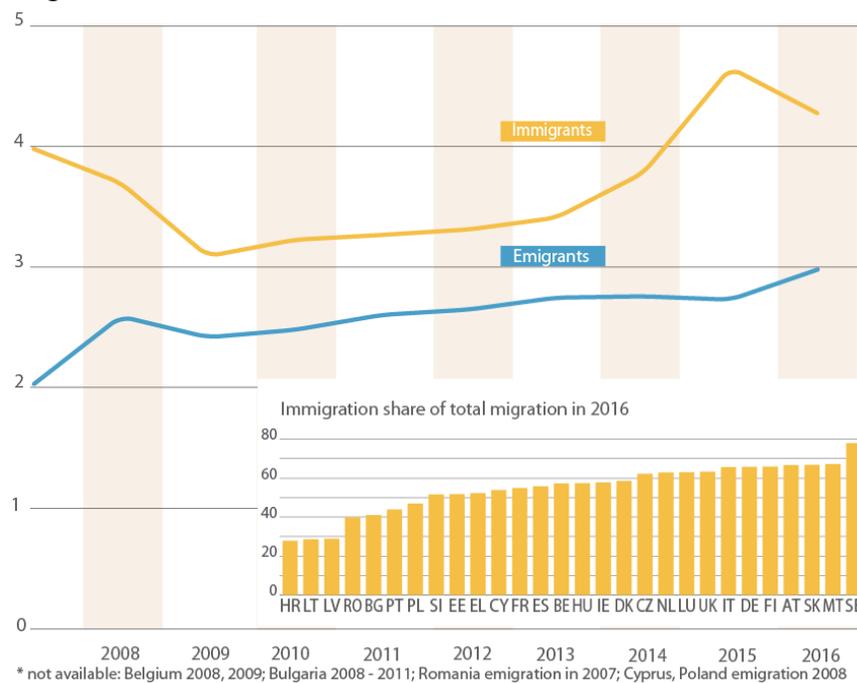
CURRENT CONTEXT

Proper management of migration is an important tool when it comes to enhancing the sustainability of EU countries' economies, welfare systems and continued sustainable growth. The changing nature of the economy - resulting in the need for new skills and specialisations - along with demographic ageing in many parts of the EU and lower birth rates means the migration issue is vitally important.

The reality is that EU Member States have in fact made migration more difficult at a time when the need for it is rising. This may appear counter-intuitive, but this reality is based on recent history and events.

The European Union amended its approach to both legal and illegal migration in response to the migration crisis of 2015. This was a period marked by high numbers of refugees arriving in the EU via South East Europe and across the Mediterranean Sea. Although arrivals have now fallen over the intervening years, the effects are still being felt in national policies, the rhetoric of politicians and public opinion across the EU. This is a trend that is likely to remain for many years to come.

Migrants in the EU (in millions)



Source: Eurostat

The EU institutions have been forced to amend Europe's asylum policies and reinforce external borders. The negative effect of this is that irregular, legal and high-skilled migration have been mixed together. The need for high-skilled labour in Europe and the positive impact this has on the economy has been lost among the scaremongering headlines and the desire of politicians to appear tougher on migration and have the issue under control.

The migration crisis hit at a time when populist sentiment was rising in Europe and EU citizens were already worrying about labour market instability. The feeling that migration was responsible for local jobs being stolen was spread across traditional and social media,

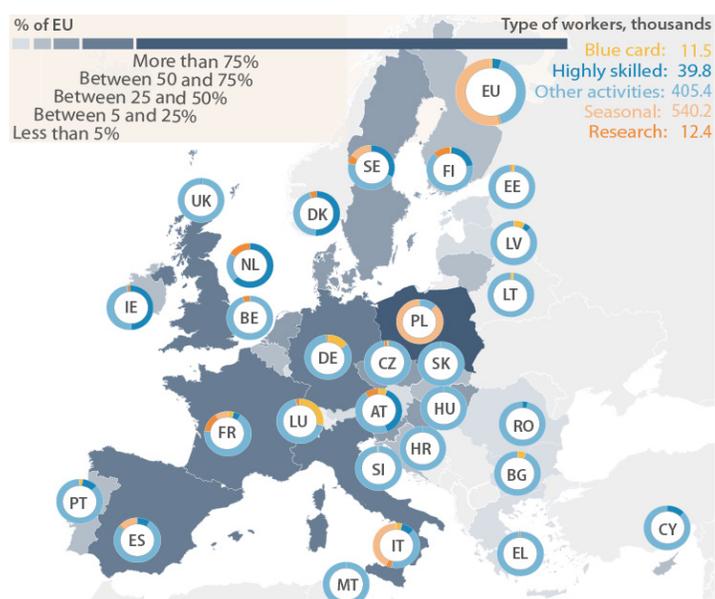
before taking root in political debates across Europe. Many of the myths surrounding immigration are not debunked since they prove to be vote-winners. By way of an example, the Brexit debate in the UK was fueled by concerns over mass immigration and the resulting threats to jobs and social services. The spread of untruths and misinformation has made the issue of migration extremely toxic across Europe as a result.

The flip-side of this situation is that business - as well as the local and national economies - loses out. Companies are reluctant to draw attention to themselves and the issue in the current political climate, yet rely on migrant workers - and particularly the highly-skilled - to operate their businesses and deliver products and services. Despite politicians talking about "bringing jobs home" and putting up barriers to foreign workers, a huge number of positions remain unfilled because the skilled labour is not there to fill them. To take the example of Germany, the BDI (the Federation of German Industries) has highlighted that studies show 71 percent of enterprises are finding it "very difficult" to "moderately difficult" to find suitable workers to fill their vacancies. This shortage of skilled labour is therefore increasingly jeopardising the growth of many companies in Germany. Welcoming skilled foreign labour is one of the remedies that the BDI cite in addressing this problem.

The reality is that high-skilled migration, and Intra-Corporate Transferees (ICTs) in particular, represent a clear and distinct category of workers who provide services and skills which cannot be found locally, come for a limited amount of time on relatively high salaries, and positively contribute to their host country economically.

Prior to the ICT legislation, the Blue Card Directive of 2009 (Directive 2009/50/EC) was designed to regulate the entry and residence provisions of highly qualified third-country workers in the EU, as well as attracting the right talent. This however proved to be a failure since it was neither used by companies nor attractive to highly-skilled foreign workers due to its terms and conditions. In 2017, for example, the number of highly skilled workers coming to the EU was only 39,800. Of this number 24,305 were Blue Cards, the majority of which were issued in Germany (20 541).

First residence permits for occupational reasons (in thousands, 2017 figures)



Source: Eurostat



Due to the ineffectiveness of the Blue Card Directive a revision was launched in 2016, but discussions remain blocked on issues ranging from the inclusion of skills to the recognition of professional experience and family reunification modalities. The EU legislation on ICTs therefore set out to avoid the shortfalls of the Blue Card initiative.

An ICT is defined in EU law as a third-country national on a temporary secondment for occupational or training purposes who resides outside the EU and is bound by an existing work contract. The legal framework on ICTs is covered by Directive 2014/66/EU and the implementation date was end-November 2016. 17 EU Member States subsequently received a letter of formal notice for failing to implement the Directive. These implementation problems have been resolved in all cases, except Belgium who have been referred by the European Commission to the Court of Justice of the EU in July 2019 for failing to transpose the Directive.

This legislation sets out the rules and conditions covering entry and residence in the EU for more than 90 days - and up to three years - for an ICT. To fulfil the criteria, the ICT needs to: 1) Have an existing employment contract with the relevant company (for at least three uninterrupted months); 2) Provide details of salary, qualifications, duration of the assignment, seniority of the role and ability to return after the assignment. It is important to highlight that ICTs must legally be paid the same or above the accepted levels for a comparable position on the local market. This status is granted for twelve months, and can be extended up to a maximum of three years.

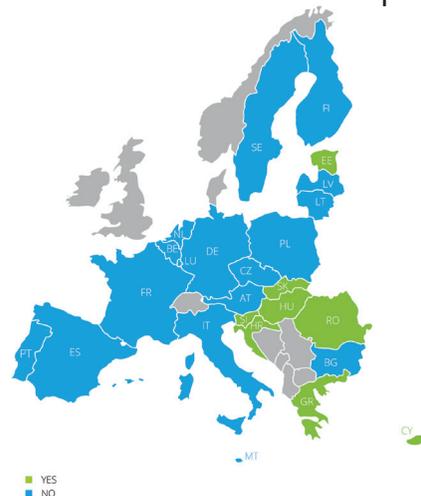
POLICY OPTIONS

There are a number of policy options that exist within the letter of the law. In this section we analyse why and how the current approach could be amended and improved.

National quota systems for ICTs

Article 6 of the ICT Directive allows EU Member States to restrict the number of ICTs that they accept. As a result, applications can be rejected on the back of a political decision. This quota can often be an arbitrary figure that has no connection to the national labour market reality and the demand from business. It would be more appropriate to allow the market to decide what skilled labour is required rather than leave this to random quotas set by administrators.

EU countries which have a quota system for ICTs



Source: Deloitte

Quotas, long processing times and applications rejected for minor administrative errors.



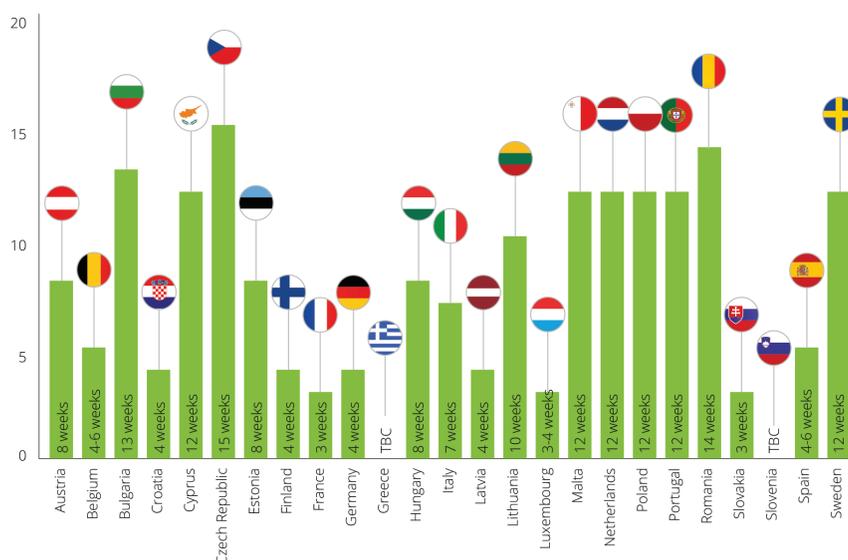
Processing times and rejecting ICT applications

Article 7 clearly states the grounds on which an ICT application may be rejected. These make perfect sense where an employer has tampered with documentation, not declared work or carried out illegal employment, for example, or in some way tried to “game the system”.

National authorities should, however, have some room for manoeuvre when it comes to unintentional mistakes and errors on applications. Too often we see legitimate ICT applications rejected or held up for many months due to small administrative problems. These may include issues with insurance information from previous employers, incorrect pension payments, or applicants taking too little or too much holiday.

National authorities should clearly state what information is missing, and allow a reasonable time-frame within which this should be provided. While the legal criteria and spirit of the legislation must be respected, national authorities should be flexible on minor administrative matters. This same reasoning and approach should apply when it comes to ICT renewals too. It is often even more important for renewals to be treated within an acceptable time-frame by national authorities. The onus is on employers to apply in good time for ICT renewals, but having ICTs waiting many months and being sent back to their home country while the process takes its course is bad for employers as well as the local and European economy.

Processing times for ICT applications



Source: Deloitte

A good case study of how this process should work is Sweden: a country with a long history of strong unions and strict agreements designed to protect employees’ rights.

The national Migration Agency (Migrationsverket) was strictly interpreting a 2015 ruling made by the Migration Court of Appeal, which said that permits should not be extended for workers whose employers had not upheld industry norms. The ruling was linked to two cases where foreigners had been underpaid and the judgement was designed to protect



migrants from exploitation by dishonorable employers. Despite the spirit of the ruling being designed to help workers, the effect was the opposite. Much-needed talent was being turned away on the grounds of minor technical errors on applications. As a result, the law has been changed so that employers are now allowed to correct errors retroactively. Furthermore, a new decision by the Migration Court of Appeal in December 2017 ruled that there should be an “overall assessment” of each applicant’s case in order to make more proportionate decisions, instead of immediately rejecting applications based on minor errors.

The EU ICT legislation also allows for a fast-track procedure for ICTs and this should be used more frequently and across all EU Member States. Where established, trusted and proven companies apply for ICTs there should be the option for these applications to be fast-tracked. This fast-track provision should also depend on the nature of the business and the time-sensitivity linked to bringing in specific skills. It is quite natural that an extra fee can be imposed by the national authorities to provide this service. However, this “green lane” status should be controlled and monitored regularly for irregularities and withdrawn in cases of repeated and/or grave inconsistencies.

Duration of the ICT status

With regard to the duration of an ICT status, the law underlines that the maximum period shall be three years for managers and specialists and one year for trainee employees. After this time period elapses, the ICT is often forced to leave the EU and cannot re-apply for up to six months in certain Member States. This appears to be rather restrictive and disadvantages European companies in need of skilled labour. The current system can often be inflexible in demanding ICTs to leave the EU after three years or else apply for a more permanent form of residency. If an ICT has developed their skills and attained specific competences, it is a pity to automatically lose that once the duration of three years is up, irrespective of the actual economic need locally. Even if the ICT is mid-project the provisions still apply. It would be advantageous for European business to consider allowing extensions to be made while the ICT is still in Europe, and not force them to return to their country of origin.

Number of months that ICTs need to wait before reapplying



Source: Deloitte



Intra-EU mobility for ICTs

Chapter V of the legislation covers intra-EU mobility for ICTs. While the legislation currently allows ICTs to move where they are needed within the EU (up to 90 days within a 180-day period), based on demand, the practical implementation is quite varied. Certain EU Member States do not allow intra-EU mobility and this means that their businesses and industries suffer, especially when the corresponding skills do not exist locally. While notification and application/registration requirements in the other EU Member State are valid, blocking the movement of skilled labour (which meet all the criteria and have passed all other relevant checks and requirements) is counterproductive. Similarly, the granting of long-term mobility (over 90 days) should be reviewed on the grounds of need and the role that is being carried out, as well as its significance and benefit for the relevant company and the broader economy.

Similarly with other applications, these should be handled quickly and smoothly by the relevant local authorities. Undue delays and administrative barriers will harm local businesses and the wider economy.

Intra-EU mobility process for short-term (up to 90 days) and long-term (over 90 days) mobility

Process Requirements EU Mobility	Short-term mobility	Long-term mobility
Austria	Notification	Application
Belgium	TBC	TBC
Bulgaria	Notification	Application
Croatia	Notification	Both
Cyprus	Notification	Application
Czech Republic	Notification	Application
Estonia	Notification	Notification
Finland	Notification	Application
France	Notification	Application
Germany	Notification	Application
Greece	TBC	TBC
Hungary	Notification	Application
Italy	N/A	Application
Latvia	Notification	Application
Lithuania	Notification	Application
Luxembourg	Notification	Application
Malta	Notification	Application
Netherlands	Notification	Application
Poland	Notification	Application
Portugal	N/A	Application
Romania	Notification	Notification
Slovakia	Notification	Notification
Slovenia	notification	Application
Spain	Notification	Notification
Sweden	N/A	Application

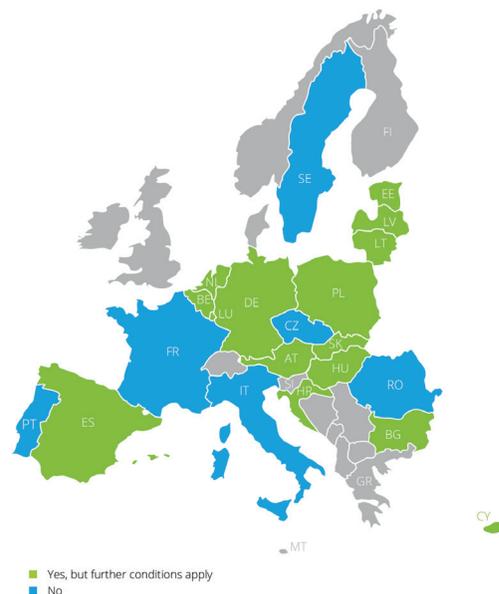
Source: Deloitte



ICTs ability to work from clients' sites

When it comes to ICTs working at a client's site, the rules are very different across the EU. Although the ICT legislation is focused on allowing existing company employees to work for another branch of the same company, but in different locations, in reality many business sectors work with clients/customers at their site. This is increasingly very common. Some countries have understood the practical reality and permit ICTs to work from client sites, while others adopt a very strict labour law interpretation. This means that working from a client's offices is banned completely in some cases, while in other countries quite heavy extra administrative processes are required to receive authorisation.

EU Member States which allow ICTs to work from a client's site



Source: Deloitte

POLICY RECOMMENDATIONS

Given the heightened protectionism that we are witnessing globally, there is an opportunity for the EU to swim against this tide and show that it is open to skilled labour and welcoming to the best global talent. Business is international and European companies have the opportunity to benefit by attracting the best and most creative talent while other countries are putting up barriers. This approach would see the European economy as a whole benefit as the wealth created would support social provisions from schools to hospitals. Furthermore, this need for skilled labour is increasing and ICTs will help the EU reach its development goals in areas such as technology, artificial intelligence and medical advancements.

Within the framework of the ICTs Directive this can be done in the following ways:

- removing arbitrary national ICT quotas;
- more flexibility around small administrative errors;
- raising awareness of the current rules among employees and employers;

The EU has an opportunity to attract the best and most creative talent while other countries are putting up barriers.

- creating a fast-track system for processing applications;
- taking away mandatory “cooling off” periods;
- allowing intra-EU mobility;
- and permitting ICTs to work at clients’ sites.

Firstly, taking away national quotas for the number of ICTs who can enter the country would be a good move. The number of ICTs should be linked to need and not administrative quotas. The removal of quotas would also require EU Member States to have a good understanding of their labour market needs. This would require an open relationship to be established between companies, employers’ trade associations, policy makers and government agencies. There is no use countries allowing in scores of ICTs who are computer programmers, for example, if there is already an oversupply locally. The EU has to attract the right set of talent and skills and enable admissions to be in line with employment needs. In this way overall EU economic growth will be facilitated and economic and social problems - as well as negative headlines - avoided.

Secondly, national authorities across the EU should be instructed to allow administrative errors to be corrected by applicants and not just reject them immediately. These errors can cover changes to submissions and the provision of additional information where applications are incomplete. This represents a new approach and requires an agreement and decision from national ministries and politicians. If not, national authority employees dealing with cases will interpret the letter of the law narrowly. It is not the role of national migration authorities to facilitate economic growth, but to keep people out who do not meet the criteria set. Given this reality, clear political guidance is crucial. Furthermore, an appropriate timeline for the submission and treatment of new data and information in the case of a problem would be 90 days.

All too often currently highly skilled employees from third countries, whose skills are in demand, are deported for small administrative errors. While no one should be allowed to game the system, the EU needs highly skilled labour and EU Member States need to take a more flexible approach. Even in relatively welcoming EU countries like Sweden, Spotify’s co-founder Daniel Ek has stated that 15 of his company’s top hires (all from outside the EU) had been threatened with deportation. Trade associations and chambers of commerce across Europe echo these views and highlight that something must be done.

In parallel, raising awareness of the current rules among employees and employers is a vital first step which should not be forgotten. This needs to be done in a clear and obvious way, and could include information sessions, social media campaigns and outreach to trade bodies. Spreading practical information and establishing a dialogue will remove many of the most common small unintentional errors. Better collaboration between companies (large and small), trade associations, unions and politicians will lead to better implementation of current laws as well as support in forming, implementing and amending future policy, rules and regulations.

Linked to this administrative issue, all EU Member States should have a “fast track” for frequent and trusted users of ICTs. This would mean that authorities can issue ICTs status more quickly and not need to take each application in turn on its own merits. This would free up time and resources for case handlers. As a quid pro quo, “fast track” companies and organisations should be required to pay a fee for this service and also be subject to periodic random checks and auditing. Frequent errors or abuse of the system should result in fines and eventually the loss of the “fast track” status as an approved partner if these persist.



Furthermore, EU Member States should not require ICTs to return to their country of origin and sit through a “cooling off” period once they have come to the end of their three-year ICT status period. Instead, ICTs should be allowed to apply for a new ICT status from within their host country. ICTs should also be able to do this six months before their existing ICT status is set to run out. This new ICT application should then be assessed on the need of the company and the performance over the past three years. Even if a new ICT permit is not given, it is in the best interests of business and the local economy to allow alternatives to the ICT leaving the country. The provision of other types of work permit, based around a local contract, would be appropriate to allow the ICT to continue their activities and finish a specific project.

When it comes to intra-EU mobility, this should be allowed across all EU Member States. Countries are losing out economically by not allowing this, even though it is covered and permitted by the current provisions and scope of the EU legislation. Moreover, the notification and registration process for ICTs moving within the EU should be an administratively light process and a standard EU form agreed upon. This would make the process easier for ICTs, companies and relevant national bodies. It would also speed up registration processes.

Concerning the possibility of ICTs working at a client’s site, this should be allowed across all EU Member States. The nature of business today and the integrated way that companies work demands this. As such, where there is clearly a joint project underway between an ICT’s employer and another company/set of companies - with a contract in place - an ICT being based at a client’s site should be permitted.

From an overarching administrative perspective, 90 days is a fair amount of time to allow for processing ICT applications. National authorities need to ensure that this timeframe for good administrative practice is respected. Currently this is not the case in all EU Member States and better response times are needed which meet the 90-day limit.

Better use of the provisions made in the ICT Directive is just one piece of a much larger puzzle, however. More ambitious reforms are needed to migration policy in order to grow the attractiveness of the EU to highly-skilled labour. This includes making major changes to the Blue Card Directive and making it fit for purpose.

These reforms include reducing the cost of the Blue Card scheme for employers, beneficiary migrant workers and implementing States. SMEs in particular are turned off by the high cost of the scheme. In addition, providing real additional rights and added value to potential beneficiaries would make the scheme more attractive.

One obvious advantage would be for the Blue Card to allow access to the whole EU labour market and not only to the Member State where it was granted. An umbrella permit for the whole EU would be more desirable but the beneficiary would need to have a salary above that of the minimum in all the EU Member States where they plan to work. Having a third-country migrant worker entering the EU through a low wage country like Bulgaria and then working in a high wage member like Sweden or Germany would not be an option since it would be open to abuse.

Another positive amendment to the Blue Card would be to align it more closely with national labour migration schemes. In addition, residence permits for family members should also be looked at.

At the local level, countries should do more to welcome third-country talent. A good example of this would be the International House Helsinki in Finland. This body provides a wide range of information and public authority services to meet the needs of international newcomers to Helsinki. These cover registration, taxation matters and social security issues all under one roof. The International House Helsinki also offers free advisory and counselling services to employers on issues related to recruiting and maintaining an international workforce. Many other cities are looking at the International House model and making plans to replicate it.

It is also important to remember that it is not only host countries who benefit from skilled third-country migrants: so do their countries of origin. Many migrants send home money during their stay and even invest in their countries of origin. Short-term migrants also often return to their home countries and bring new skills, knowledge and practical experience back to their local economy.

In conclusion, the need for high-skilled migrants is strong in the EU but the political background makes it very difficult to implement national policies which meet this need. The whole topic of migration has been hijacked and become increasingly controversial and prone to manipulation through misinformation and adaption to specific political narratives. This toxic climate also makes it difficult for companies and business groups to stand up and articulate the need for high-skilled labour for fear of attack.

The current situation is not made easier by the lack of data on high-skilled workers. Most figures purely look at net migration and do not capture nor consider the role of this group of valuable talent. Even the latest data on the number of ICT applications granted and currently residing in the EU is difficult to attain. Quantifying the small number of ICTs actually in the EU and the huge positive impact they have on their host country and the EU will be an important element of gaining support for the extension of the programme.

It is encouraging, however, that European Commission President von der Leyen is underlining the requirement to reinforce a culture of evidence-based policymaking and to make full use of the available knowledge, information and research. This strong stand against “fake news” and knee-jerk policy making is to be commended. The need for high-skilled labour must be quantified and national decision-makers need to put in place provisions and a regulatory framework which facilitates this to support businesses and economic growth.

RELATED PUBLICATIONS

European Commission. Migration and Home Affairs website. https://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/work_en

Official Journal of the European Union. Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0066&from=EN>



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