



India-EU Common Agenda on
Migration and Mobility



Reflections of the Indian Information Technology Industry on Opportunities within the EU Legal Migration Framework

30 April 2020 | Virtual Meeting

SUMMARY DOCUMENT



India-EU Cooperation and Dialogue on Migration and Mobility Project:

NASSCOM®

Event Partner



Local Partner



Implementing Partner



Implementing Partner

I. EU LEGAL MIGRATION FRAMEWORK AND COVID-19 RELATED MEASURES

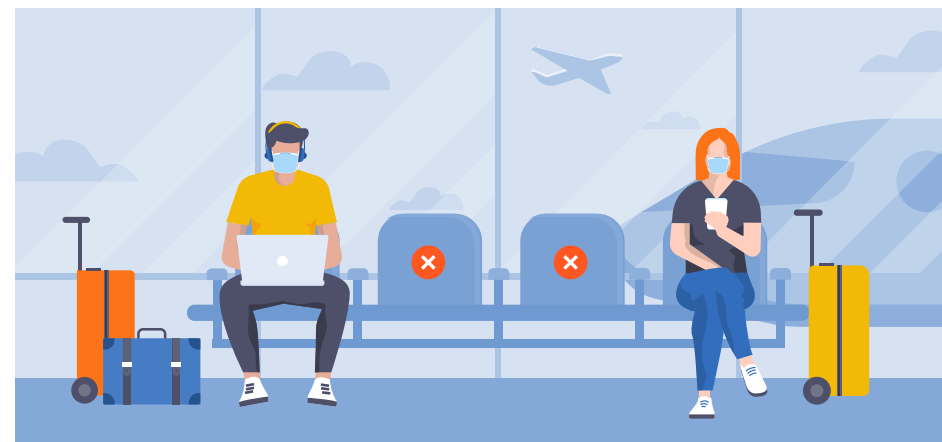
COVID specific temporary measures undertaken by the EU

Globally, the COVID-19 pandemic situation is continuously evolving and the EU is providing guidance on all relevant fronts including travel and mobility as the situation progresses. So far, temporary travel restrictions for all non-essential travel in the EU+ area¹ have been imposed till 15 May 2020². Any further prolongation depends on continuous assessment of the developing situation.

EU-wide roadmap to lift the containment measures was adopted on 15 April 2020³. Further efforts on this and a step-by-step recovery plan are in process. EU is currently looking into possible EU-wide solutions and discussions are ongoing.

On 16 March 2020, the Commission published guidelines to EU Member States and non-EU Schengen Associated States regarding the issue of overstays of third country nationals (TCN) due to the temporary travel restrictions. These States were requested to find a pragmatic solution for the extension of authorisation of their stay in Europe and encouraged to waive administrative sanctions or penalties on TCN unable to leave their territory due to the travel restrictions. Overstays due to travel restrictions should not be taken into account during the processing of future visa applications. It is important for TCN to contact the relevant authorities in the MS. The EU guidelines requested EU MS consulates and external service providers to remain open and process short-term travel applications for priority categories of travellers, i.e. family members of TCNs and health workers. Other traveller categories can expect some delays.

However, issues pertaining to TCN, whose work permit expired or they are placed on part time employment or temporary unemployment exist in some Member States.



WHAT HAPPENS IF YOUR SCHENGEN VISA EXPIRES DUE TO TRAVEL RESTRICTIONS?

Your visa can be extended for a maximum of 90 out of 180 days by the national authorities. Process of extension varies from MS to MS. If visa holders have to stay beyond this period, national long stay visa and resident permit should be issued. National variations in procedures and outcome exist. For instance, an electronic application needs to be submitted for visa extension in Belgium, whereas the extension is automatically granted in Luxembourg.

EU Legal Migration Framework & Fitness Check Findings: Overview



EU develops a legal framework for the common immigration policy (Art. 79 (1) TFEU) via Directives. EU MS implements the rules according to their legal and administrative traditions, using the options available in the EU Directives. They can determine the numbers of TCN they admit for economic purposes (Art. 79 (5) TFEU). The EU verifies compliance and possible infractions in the implementation of EU legislation. All EU MS except Denmark and Ireland implement these Directives. In what regards integration of migrants, the EU does not legislate but contributes to

the Member States' strategies with financing of projects and other measures.

The EU Legal Migration Framework Fitness Check, published in March 2019, was undertaken with the objective of evaluating possible gaps and inconsistencies and identifying major shifts in the objectives of the Directives. The report incorporated the evaluation criteria of Relevance, Coherence, Effectiveness, Efficiency, and EU Added Value. Some of the Directives targeted during this discussion are listed in Table 1.



Table 1: Coverage of EU Directives on Legal Migration Framework

Directive	1. Long Term Residents	2. Single Permit	3. EU Blue Card	4. Intra-Corporate Transferees
 Admission conditions				
 Admission procedures				
 Provisions on equal treatment (differing)				
 Access to work				
 Right to family reunification				
 Intra EU mobility				

Main conclusions of the fitness check report are listed below

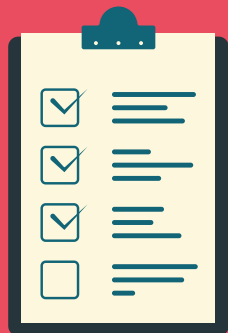


1. Policy on legal migration remains broadly in line with its **objectives** (efficient management of migration flows; fair treatment; approximation of national legislation, based on a shared assessment of the economic and demographic developments)

→ *Major policy shift: Increased emphasis towards the needs of EU economy and EU competitiveness; addressing skills shortages; attraction of talent*

2. A number of **gaps** between objectives and needs have been identified, e.g.: not covering admission conditions for major categories of migrants, such as non-seasonal low-and medium-skilled workers, self-employed and entrepreneurs, service providers other than Intra-Corporate Transferees (ICT), investors, highly mobile workers), business visitors.

→ *Major policy shift: These gaps are generally covered by national rules (e.g. national schemes for the admission of low- and medium-skilled third-country workers) and the result is a **fragmented system**.*



3. The action at EU level has proven **added value**, in special:

- a. (partial) harmonization of conditions, procedures and rights, helping to create a level playing field across Member States;
- b. simplified administrative procedures;
- c. improved legal certainty and predictability for all involved;
- d. improved promotion of the rights of third-country nationals;
- e. Improved intra-EU mobility for certain categories.

II. INDUSTRY DISCUSSION ON EXISTING CHALLENGES IN THE EU LEGAL FRAMEWORK IN THE IMMEDIATE AND LONG-TERM

The European Commission frequently invites views and feedback of the IT Industry on the EU Legal Migration Framework and NASSCOM has been in conversation with the EC in this regard. Most recently in September 2019, NASSCOM shared feedback with the Commission based on their survey on the performance of EU ICT and Blue Card Directive. However, the feedback response was very varied. In this context, the platform of an EU-industry conversation such as this meeting was envisaged to be meaningful in building on the industry perspective on four EU Directives: ICT, Blue Card, Single Permit and the Long-term Residents.

What works well?

- Largely the EU legal migration framework works well from the industry's perspective, which appreciates the absence of quotas. In particular, the EU ICT Directive is the most common instrument used by the companies. Introduction of this Directive has immensely facilitated intra-EU mobility. Uptake of the EU Blue Card varies from MS to MS as it has a limited coverage of high-skilled workers and due to different approaches by MS, with some preferring national schemes. The EU Single Permit Directive helps in easing many administrative challenges. All these Directives are well recognised by the EU MS and are widely implemented; they have adopted many suggestions made by the Industry.
- The possibility of using different instruments is helpful for companies to choose the right immigration path for the worker based on the duration of the assignment.



Key challenges continued to be faced by the industry

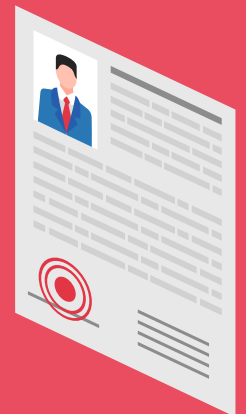
In the current context of COVID-19 pandemic

1. Following the above-mentioned communications by the EC, while EU MS have taken measures to ease the validity of existing visas/permits, outstanding questions remain on:



- implications of permit validity in the context of reduced work hours/salary,
- cases where work permit extensions have been converted into stay permits leaving workers ineligible to work,
- cases where short-term work permits have been obtained but individuals are unable to travel in the 90 day period due to the existing travel restrictions, risking visa expiration without utilization, and
- overall impact on social security and posted worker compliance.

2. **Lack of sufficient information on visa processes:** Companies have received varied information from individual MS. The extent of information shared is also limited.



During business as-usual

1. Administrative challenges

- **Long Processing time of visa/permit applications:** There are huge variations in the total duration of processing visa applications at the EU MS level. For instance, in France, processing a business visa can take 7-8 days. Similarly, in Belgium, it takes up to 3-5 months to process work permits. In Italy, every interaction requires an appointment, which ends up increasing the total processing time. Preferred duration would be 1-2 days for a business visa.
- **Competitive national schemes:** The national schemes work faster, especially those offering benefits similar to the EU Blue card Directive. In the Netherlands, there is a recognized sponsorship programme, which makes it more attractive than the Blue Card as it does not offer sponsorship. However, this has been addressed in the more recent EU ICT Directive and leads to improved lead-time and simplification of documentation.
- **Heavy and overlapping documentation:** Papers need to be translated, certified, e-application is not available, lack of option for digital signatures (e.g. Sweden). This exacerbates the challenges in the current context of COVID-19. Some countries such as Spain and Italy impose heavy documentation requirements on companies in general. Moreover, posted workers notification in addition to the ICT notification causes additional burden on the company due to duplication of efforts.
- **Costs incurred by the companies:** As long as efforts to reduce the administrative hurdles are implemented, companies do not foresee costs as a major challenge.





2. Inconsistencies in the schemes vis-a-vis set objectives of the Directives and parallel national schemes

- **Implementation of EU Directives at the EU MS level:** While the EU ICT Directive works well in the Netherlands, it is not very popular in the Nordic region and Southern Europe. Bureaucratic processes and digitalization of application systems in the national context contribute in MS level variation.
- **Competitive parallel national schemes:** Many EU MS have competitive national schemes which undermine the benefits of the EU Directives. For instance, Sweden has a general work permit with 2-3 week processing time and online filing option. Whereas, obtaining the EU ICT permit takes up to three months and it is not possible to file the application through the online system. Similarly, some national

schemes do not have the requirement of a minimum period of service with an Indian entity, a requirement upheld by the EU ICT Directive. For instance, in the Netherlands, EU ICT Directive requires a worker to be employed with Indian entity for 6 months while the national scheme for high-skilled workers does not have any such this requirement, making it more attractive.

- **Client-site location:** Inconsistencies exist in facilitation of intra-EU mobility at the EU MS level. For instance, France does not allow client site work.
- **Delays in issuing residence permits, which further delay the possibility of using intra-EU mobility:** in Spain, the processing time for obtaining a resident permit takes a long time. The time lag risks shifts in client requirements and eventual loss of business.

- **Access to Social Security:** Due to inconsistent approach in the social security regulation at the EU MS level, companies and workers face the challenge of obtaining multiple Certificates of Coverage (CoC).
- **Salary levels:** Minimum salary levels under the Blue Card and ICT Directive vary with a relatively lower threshold for minimum salary under the Blue Card Directive, thereby, encouraging companies to apply for the Blue Card. There are some EU MS, such as Sweden, where no such threshold is applicable.
- **Taxation:** Taxation remains a challenge for frequent intra-EU travellers.
- Inconsistencies exist in the activities permitted in the short-term Visa at the EU MS level.

III. RECOMMENDATIONS TO ENHANCE HIGH-SKILLED MOBILITY OF INDIAN IT WORKERS IN THE EU

In the current context of COVID-19 pandemic

- Need for enhanced EU-wide guidance and communication
 - An EU-wide guidance (similar to those given to the EU Schengen regime) is needed on standardised procedures to be adopted by all EU MS. This will enhance streamlining of processes at the EU MS level.
 - Guidelines are also required on further impact of the status of TCN workers, impact on social security and posted worker compliance as relaxations in mobility are introduced.
 - Uniform guidance is also needed on safety and health rules for incoming travellers. This will contribute in alleviating the fear of receiving third-country high-skilled workers from outside of the EU.



- Similar to the efforts of the EU on working towards a road map for lifting of the mobility-related restrictions, businesses also need to work on a roadmap for relaxation of restrictions and agile remobilization of resources. A mandatory requirement of 14 day period quarantine can be anticipated when mobility relaxations are offered.
- Along with the extension of the short-term stay of third-country nationals, there is a need to offer flexibility and extension of work permits as well in a coordinated manner across EU Member States.

- From the perspective of European companies, it would be beneficial to avail services of TCN workers who are already in the EU in comparison to getting people from abroad as the EU's priority is to reinstall free movement of people within the EU before opening external borders again. On-going efforts of the EU can incorporate provisions to facilitate intra-EU mobility. For instance, those workers holding an EU LTR or Blue Card could be provided a facilitated opportunity to work in another EU MS.
- Prioritization of travel is very important. A dialogue may be facilitated between the industry and relevant national consulate on prioritization of traveller categories. As mobility relaxations are gradually offered, government authorities also need to consider applications of traveller categories that were earlier not processed.
- Increased screening and access to social security insurance is also required.



Recommendations of enhanced EU Legal Framework in the long-term

- There is a need for more **harmonized and flexible approach** for short-term travellers as consistency and predictability are key to businesses.



- **Parallel national schemes** should not undermine but complement the objectives of the EU Legal Migration Directives.



- **Intra-EU mobility** can be greatly enhanced if immigration, social security, payroll and medical insurance regulations can be further streamlined. For instance, answers to issues of insurance requirements in both countries (country of first and subsequent arrival), social security, and salary thresholds is needed. Provisions for deferred party placement and client location placement is also required.



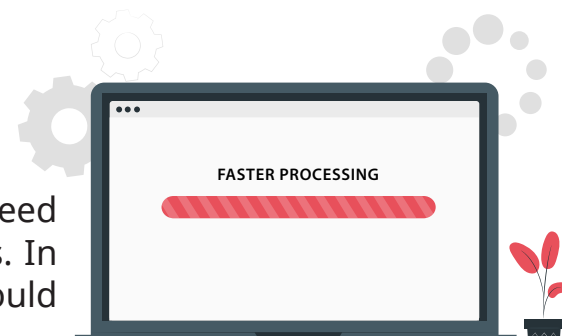
- **Active role of the companies/recognised sponsorship schemes:** If companies are assessed on the basis of credibility by government authorities and offered increased rights in notifying workers to the country of destination, then the burden of government authorities can be decreased. Companies can take on the additional work of ensuring compliance check and notifying workers to destination countries. Countries can impose stringent audits to ensure compliance, strengthen speed and predictability. Countries of destination administration can undertake post-arrival checks. This will also reduce the lead-time in application processing.

Recommendations of enhanced EU Legal Framework in the long-term



- **Access to Social Security:** There is a need for an EU-India agreement to reduce duplication of work in terms of obtaining multiple CoCs. Alternatively, a specific-country COC can be treated as multi-country CoC in absence of an existing agreement with the third country.

- More harmonization of business activities allowed for short-term visitors
- **Faster processing of applications and documentation simplification:** Businesses need faster processing of applications; preferably 1-2 days preferably for business visas. In addition to simplification and digitalization of document processing, duplication should be avoided as it exists in the case of posted worker and ICT worker notification.



- **Premium processing:** Companies are willing to pay marginal higher costs, if needed, provided they are offered a preferential treatment in fast-track processing of applications.

- **Salary thresholds:** Variations in the salary threshold under the Blue Card and ICT Directive need to be addressed. Comparisons on the basis of peer salary amounts, cost allowance and immigration perspective needs to be incorporated in setting the salary thresholds for TCN high-skilled workers.



Endnotes

1. All Schengen Member States (including Bulgaria, Croatia, Cyprus, and Romania) and the 4 Schengen Associated States (Iceland, Liechtenstein, Norway, and Switzerland)
2. This note documents the information as per the status on 12 May 2020. Updated information can be accessed on <https://ec.europa.eu> or https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response_en. Abovementioned EC communication can be found here: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0115&from=EN>
3. https://ec.europa.eu/info/sites/info/files/communication_a_european_roadmap_to_lifting_coronavirus_containment_measures_0.pdf
4. https://ec.europa.eu/home-affairs/sites/homeaffairs/files/doc_centre/borders/docs/annex_27_authorities_competent_for_extension.pdf; https://ec.europa.eu/info/sites/info/files/faqs-communication-travel-restrictions-08042020_en.pdf

Disclaimer:

This consultation report was produced with the financial support of the European Union. Its contents are the sole responsibility of the International Labour Organization (ILO) and do not necessarily reflect the views of the European Union or Government of India.

The responsibility for opinions expressed rests solely with the presenters, and publication does not constitute an endorsement by the ILO of the opinions expressed in them.

Licensed to the European Union under conditions.

ILO Decent Work Team for South Asia and Country Office for India

India Habitat Centre, Core 4B, 3rd Floor,
Lodhi Road, New Delhi 110003, India

Tel: +91 11 47509200, Fax: +91 11 24602111

Email: delhi@ilo.org | www.ilo.org/india