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COMMISSION PROPOSALS FOR DIRECTIVES ON THE ADMISSION OF HIGHLY QUALIFIED IMMIGRANTS AND ON A SINGLE APPLICATION PROCEDURE/SINGLE PERMIT AND COMMON SET OF RIGHTS

Summary

The labour markets of many EU member States face the prospect of a shrinking and ageing workforce. In many countries too, companies already find it difficult or impossible to fill vacancies due to labour and skills shortages. Facilitating legal migration can help boost the size of the labour force and enable companies to fill current job vacancies, in particular for highly qualified workers.

In this respect, BUSINESSEUROPE welcomes the European Commission's two legislative proposals, aimed at establishing a directive on immigration for the purposes of highly qualified employment (the "blue card" proposal) and a directive on a single application procedure for a single work/residence permit and a common set of rights.

Against the background of growing international competition for talent, the blue card proposal is a step in the right direction to increase the EU's attractiveness for highly qualified workers. Allowing blue card holders to move to another Member State, granting them more favourable conditions in terms of family reunification and introducing equal treatment with respect to a set of socio-economic rights could attract more highly-skilled migrant workers to Europe. Likewise, both businesses and migrant workers should benefit from the introduction of a fast-track admission procedure.

However, the proposal also has important weaknesses, in particular the fact that it does not fully comply with the subsidiarity principle. By stipulating at EU level a minimum salary of at least three times the existing minimum wage, the proposal clearly interferes with the freedom of the individual employer and the worker to negotiate the salary. Moreover, the proposal should not prevent Member States from putting into place more favourable provisions for first entry. Member States should also be allowed to retain their national immigration systems in parallel to the blue card scheme which in no way may conflict with national systems.

While welcoming the fact that Member States would still be able to determine the volume of admission, examine their labour market situation and apply national procedures regarding the requirements for filling a vacancy, employers insist that these provisions should not be used to dilute the objective of the proposal. Moreover, employers' federations should be fully involved in assessing labour market needs.

In addition to the need to attract more highly-skilled workers to Europe, companies also need efficient admission procedures for other categories of migrant workers. BUSINESSEUROPE therefore broadly supports the proposed directive which introduces a single application procedure for a single work/residence permit for all migrant workers, irrespective of their level of skills.

I. Introduction

1. On 23 October 2007, the European Commission adopted a proposal for a directive on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment (HQE). At the same time, the Commission also adopted a proposal for a directive establishing a single application procedure for a single residence/work permit for all third-country nationals – irrespective of the level of skills – to reside and work on the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (SAP). The two proposals are said to be mutually compatible and consistent.
2. The aim of the HQE proposal is to improve the EU's ability to attract highly qualified immigrant workers by creating a common fast-track admission procedure for admission. Upon admission, the third-country national receives a so-called "blue card" entitling him to a set of rights, favourable conditions for family reunification and the possibility to move for highly qualified employment to a second Member State after two years of legal residence in the first Member State.
3. The aim of the SAP proposal is to introduce a fair and rights-based approach to labour migration by securing the legal status of already admitted third-country workers and by introducing procedural simplifications for the applicants.

II. General comments

4. European economies and societies are faced with the challenge of demographic ageing. The large majority of Member States will see their population age and shrink over the next 50 years with major implications for their economies and public finances. EUROSTAT figures indicate that Europe's native-born workforce will fall by 48 million by the middle of the century. Moreover, in many EU Member States, labour shortages – at skilled and/or unskilled levels – are already acting as a brake on growth, impacting adversely on competitiveness and economic growth, and are likely to do so even more in the future.
5. A shortage of highly skilled workers, in particular, is causing serious problems. This is true for countries in Europe but also for other developed countries such as the USA, Japan, Australia, Canada, and emerging economies such as China and India. As a result, European companies are involved in a worldwide competition for talent, which is intense and growing. Their ability to compete in the world economy depends to a large extent on their ability to attract the best and brightest. It is therefore essential to put in place the conditions and procedures that will increase Europe's attractiveness for highly skilled workers.

6. In this context, BUSINESSEUROPE welcomes the fact that the Commission is seeking progress in the area of legal migration. Creating adequate avenues for legal migration will increase the size of Europe's working-age population, alleviate labour and skills shortages and boost European companies' ability to compete on the global stage. It will also help fight the challenge of illegal migration.
7. BUSINESSEUROPE believes that the proposal on immigration for the purposes of highly qualified employment is a step in the right direction. In particular, the provision aimed at facilitating cross-border mobility of third-country nationals already legally residing and working in a Member State and holding a blue card is of value to European employers. Likewise, more favourable conditions in terms of family reunification and equal treatment with respect to a set of socio-economic rights might have a positive impact on the attractiveness of the EU. In addition, quick and simple admission procedures such as the fast-track procedure should facilitate recruitment for highly qualified employment.
8. The common criteria for admission proposed in the directive, such as a work contract, ability to prove professional qualifications, travel document, evidence for sickness insurance and a minimum salary level, might increase the transparency and reduce the complexity of admission procedures. The EU should however avoid imposing criteria which are too restrictive and which could, as a result, dilute the objective of the proposal to attract more highly skilled workers.
9. BUSINESSEUROPE therefore strongly opposes the provision that Member States would not be allowed to adopt more favourable conditions for entry into the first Member State than the criteria proposed in the directive. Moreover, BUSINESSEUROPE insists that Member States should also be allowed to retain their national immigration systems which may have more favourable provisions for entry (such as points-based systems for which no work contract or job offer is required) in parallel to the blue card scheme. In no way may the HQE proposal conflict with existing national systems.
10. The HQE proposal also contains other provisions which should remain at the level of Member States. For example, by stipulating at EU level that workers should receive a salary that is at least three times the minimum wage, the proposal clearly interferes with the competence of social partners and/or individual employers and workers to determine pay levels. According to European employers, such interference fails to respect the principle of subsidiarity, which is unacceptable.
11. On the other hand, BUSINESSEUROPE welcomes the fact that Member States would still be able to determine the number of third-country nationals to be admitted for the purpose of highly qualified employment. Likewise, Member States would be allowed to examine the situation of their labour market and apply their national procedures regarding the requirements for filling a vacancy. European employers insist that the latter provision in particular should not be

used to dilute the objective of the proposal. Moreover, employers' federations should be fully involved in assessing labour market needs.

12. As Member States are confronted with shortages of labour at both skilled and unskilled level, BUSINESSEUROPE supports the proposed directive which introduces a single application procedure for a single work/residence permit for all potential immigrants irrespective of their level of skills. This is a key initiative with a view to administrative simplification. In addition, European employers welcome the fact that the proposal respects the competence of Member States to set their own admission criteria.
13. Efficient exchange of information between different government bodies within Member States and/or between Member States will be of crucial importance if the potential of the Commission proposals is to be fully exploited.
14. Finally, it is important to bear in mind that policy attempts to facilitate immigration of third-country nationals can only make much of a difference in the context of a vibrant and well-performing EU economy. Member States should therefore further implement the necessary economic and labour market reforms in line with the Growth and Jobs Strategy.

II. Specific comments

Definitions

15. For the purposes of the HQE proposal, the Commission defines key concepts such as “highly qualified employment”, “higher education qualification” and “higher professional qualifications”. Highly qualified employment is defined as “the exercise of genuine and effective work under the direction of someone else for which a person is paid and for which higher education qualifications or at least three years of equivalent professional experience is required”.
16. BUSINESSEUROPE acknowledges that highly-qualified employment does not necessarily require higher education qualifications but insists that the definition should not be widened any further in order to avoid adopting a definition so broad as to be meaningless and creating uncertainty.
17. In addition, other concepts put forward by the Commission are also defined in broad terms. For example, “higher professional qualifications” means qualifications attested by evidence of higher education qualifications or of at least three years of equivalent professional experience. As no precise definition is given of what is meant by “equivalent professional experience”, Member States have the flexibility to adapt the concept to different professional practices. However, BUSINESSEUROPE wonders how it will be proved in practice that someone has worked for three years in an equivalent position. Will an employer certificate be sufficient?

Conditions of admission

18. In article 5 of the HQE proposal, the Commission suggests that admission should be conditional upon presentation of a valid work contract or binding job offer, having the relevant professional qualifications, presentation of a valid travel document and evidence of sickness insurance. In addition, a gross monthly salary should be offered equal to at least three times the minimum gross monthly wage as set by national law (or three times the minimum income under which citizens are entitled to social assistance in that Member State or to be in line with applicable collective agreements).

Member States would be allowed to adopt or retain more favourable provisions concerning conditions of entry and residence, except for entry into the first Member State (article 4.2) and still be able to determine the volumes of admission of third-country nationals for the purpose of highly qualified employment (article 7).

19. With regard to the conditions of admission, European companies have the following comments on the Commission's HQE proposal:

- BUSINESSEUROPE considers the existence of a work contract, in general, a relevant criterion but is opposed to the fact that, where it concerns entry into the first Member State, governments would not be allowed to put in place admission procedures – such as points-based systems – in which a work contract or job offer is not required. In this case, the proposal would oblige several Member States which have less restrictive conditions for admission to tighten their criteria.
- European employers insist that any initiative should not prevent Member States from applying more favourable provisions for entry into the first Member State. Hence, BUSINESSEUROPE suggests deletion of “*except for entry into the first Member State*” from article 4.2.
- Article 5.2 would oblige employers to pay highly qualified third-country nationals at least three times the minimum wage level. Although the Commission rightly respects the competence of Member States (and/or social partners) to set the level of minimum wages, this provision would in practice amount to a form of wage-setting at EU level for those in highly qualified employment, which is unacceptable. According to BUSINESSEUROPE, this would clearly interfere with the freedom of the individual employer and worker to negotiate the salary. Moreover, the minimum wage condition would also lead to confusion when considered in conjunction with article 15 (1) (a) which prescribes that holders of an EU blue card shall enjoy equal treatment with nationals as regards pay.
- The Commission stipulates in recital 24 of the HQE proposal (as well as in recital 19 of the SAP proposal) that Member States should give effect to the provisions of the directive without discrimination on the basis of, amongst other things, language. BUSINESSEUROPE takes it for granted that this does not

interfere with the right to require from third-country nationals that they have a sufficient knowledge of the language of the Member State in order to be able to fulfil labour market needs.

- With respect to the possibility for derogation for young professionals of less than 30 years of age which is foreseen under article 6, BUSINESSEUROPE has the same concerns regarding the salary requirement at EU level as those set out above concerning article 5.2. Moreover, the Commission has arbitrarily set an age limit of 30 years which could lead to an unjustified exclusion of specific categories of young professionals such as those entering the labour market following PhD studies. Raising the age limit to 35 years would allow these workers to fall under the scope of the Directive.

Procedure and transparency

20. The HQE proposal would introduce a fast-track procedure, requiring Member States to take a decision and notify the application at the latest 30 days after the application was lodged. The SAP proposal provides for a “one-stop-shop” system for third-country nationals who would like to reside in the EU for the purpose of work. It envisages a single application procedure, a 90-day deadline to take a decision on the application and, in the case of a positive decision, the issue of the residence and work permit in a single act.
21. Companies need admission procedures that allow them to recruit the best candidates through unbureaucratic, rapid and transparent procedures at national level. BUSINESSEUROPE therefore supports the Commission’s proposed measures. The single application procedure for a single permit in particular could be a key element for administrative simplification. However, as one of the main reasons behind the malfunctioning of admission procedures is the lack of cooperation between different administrative authorities, there should also be adequate cooperation and exchange of information between the relevant government bodies to ensure that the above-mentioned deadlines are met. To this end, the proposal should also include the obligation on Member States to assure efficient coordination between all competent authorities. Added to this, it is also important that the countdown for the deadline starts the moment the employer or worker submits the application to the competent authority.
22. According to article 8 of the HQE proposal, the initial validity of an EU blue card shall be of two years and be renewed for at least the same duration. BUSINESSEUROPE wonders why the initial validity is limited to two years only. The renewal of the blue card should be automatic if the work contract is longer than two years or permanent.

Rights: equal treatment, family members and EC long-term resident status for EU blue card holders

23. Both proposals would introduce equal treatment of third-country nationals compared with Member States' own nationals in a series of areas, including working conditions and pay, education, and social security. Blue card holders would enjoy equal treatment in a wider range of areas than third-country workers under the SAP as well as being entitled to favourable conditions for family reunification.
24. Employers broadly support the idea of granting basic socio-economic rights on an equal footing with Member States' own nationals and welcome the fact that no *new* rights are introduced since third-country national workers' rights are already adequately covered by existing national and EU legislation.
25. However, the Commission's approach of putting forward the right to equal treatment in two separate proposals for directives – a general one, applying to all migrant workers, and one specifically targeted at highly qualified workers – is confusing. It would have been clearer if, for example, the HQE proposal had clearly indicated in what aspects the rights of blue card holders would differ from those granted under the SAP proposal, if a difference in treatment is motivated at all.
26. Moreover, BUSINESSEUROPE has the following comments regarding some of the fields in which a right to equal treatment should apply:
 - The obligation to provide equal treatment with respect to pay could, in the case of highly qualified workers, lead to legal uncertainty when considered in conjunction with article 5.2 which would oblige employers to pay highly qualified third-country nationals at least three times the minimum wage.
 - Whilst in principle BUSINESSEUROPE agrees that a better understanding and transparency of qualifications is important for a better integration of migrants into the labour market and society, prescribing the recognition *per se* of qualifications goes too far. Within the EU, mechanisms and tools are being developed, notably the European Qualifications Framework (EQF), to enhance the transparency of different qualifications across Member States with the chief objective of stimulating mobility. Appropriate mechanisms could be developed in the future on a similar basis to improve the readability and understanding of qualifications outside Europe.
 - A key characteristic of most tax systems – including tax benefits – is differential treatment of citizens based on specific socio-economic criteria (such as income, employment status, household types, etc.). It would therefore make more sense to specify that the right of a third-country national worker to equal treatment applies only to those tax benefits received by a native-born worker who meets the same criteria.

- The payment of acquired *statutory* pensions is often the subject of bilateral agreements between EU Member States and third countries. With respect to *supplementary* pensions, employers insist on the need to take into account the interest of remaining scheme members as well as the financial sustainability of the scheme.
- 27. The HQE proposal contains a series of derogations from Directive 2003/86/EC on the right to family reunification. Article 16 (5) of the HQE proposal stipulates that Member States shall not apply the time limit of 12 months during which Member States may examine the situation on their labour market before authorising family members to exercise an employed or self-employed activity.
- 28. With respect to article 16 (5), BUSINESSEUROPE would like to emphasise to importance for the attractiveness of the blue card scheme that immediate access to the labour market is given to spouses of blue card holders.
- 29. Article 17 of the draft HQE directive allows derogations from directive 2003/109/EC regarding the periods of absence from the EU with a view to sustaining a circular migration policy and to limit possible brain drain effects.
- 30. As set out in its Position Paper on Mobility Partnerships and Circular Migration¹, BUSINESSEUROPE believes that, if well managed, circular migration could prove a mutually beneficial tool making it possible to tackle labour needs in the EU while maximising the benefits of migration for the countries of origin. Yet, it is worth noting that there could be a potential contradiction between the strong emphasis put simultaneously on both circular migration on the one hand and the efforts to foster integration of third-country nationals on the other hand.
- 31. It is also important to bear in mind that the aim of the proposal is to attract the best and brightest and that this does not necessarily or exclusively imply attracting workers from developing countries. Workers from the USA or other industrialised countries could also be attracted to Europe by the new system.

Residence in other Member States

- 32. Article 19 of the HQE proposal foresees the possibility for blue card holders after two years of legal residence in the first Member State to move to a second Member State for the purpose of highly qualified employment while Member States may continue to apply volumes of admission.
- 33. BUSINESSEUROPE supports facilitating cross-border mobility of third-country nationals already legally residing and working in a Member States and holding a blue card. Yet, it wonders whether the obligation on the blue card holder to relaunch the complete application procedure with the authorities of the second Member State will not discourage cross-border mobility.

¹ BUSINESSEUROPE Position Paper on Circular Migration and Mobility Partnerships between the EU and Third Countries, 26 October 2007.

34. According to article 20 of the HQE proposal, Member States shall give preference in terms of access to their labour market to EU blue card holders who have obtained long-term resident status over other third-country workers who apply to be admitted for the purposes of highly-qualified employment.
35. BUSINESSEUROPE agrees with this provision in the situation where two or more candidates are equally well qualified for the job. However, companies should be able to hire a third-country national who better fits the conditions of the free position than a blue card holder with long-term resident status. From a business perspective what ultimately counts is finding the candidate who is best suited for the job.

IV. Conclusions

36. The two proposals for directives are steps in the right direction to increase the attractiveness of Europe for third-country national workers and to put in place more efficient admission procedures at national level. Nevertheless, BUSINESSEUROPE still has some serious concerns about important provisions of the proposals, in particular the draft directive on conditions of entry and residence of third-country nationals for the purposes of highly qualified employment.
