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EU BLUE CARD: SUGGESTED CHANGES WILL UNDERMINE POTENTIAL BENEFITS

On 23 October 2007, the European Commission published its proposal for a Council directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (the "EU Blue card proposal"). The European Parliament and the EU's Justice and Home Affairs (JHA) Council are currently discussing the proposal with the aim of adopting it before the end of 2008.

BUSINESSEUROPE has welcomed the Commission's proposal as an important step in the right direction to increase the EU's attractiveness for highly qualified workers which is urgently needed to help address the challenge of population ageing, alleviate skills shortages and increase European companies' ability to compete on the global stage.¹

However, European companies are greatly concerned about recent developments in the European Parliament and the JHA Council concerning two key issues of the proposal, i.e. the definition of highly qualified workers and the conditions of admission, in particular the wage criterion.

1. Definition of highly qualified employment

Under the original Commission proposal, highly qualified employment would require higher education qualifications or at least three years of equivalent professional experience. Under a French Presidency compromise proposal, five years of equivalent professional experience would be required. The EP's draft report asks for six years of professional experience including at least two years in a senior position.

BUSINESSEUROPE is very concerned that these new proposals, in particular that of the European Parliament, would undermine European industry's ability to attract the workers they need. Many third-country national workers (for example medical and IT specialists, engineers etc.) would contribute immediately and significantly to the performance of our companies, labour markets and economies without the previous experience of two years in a senior position.

Companies therefore call on the Council and the European Parliament not to amend the original Commission definition which leaves the necessary flexibility to suit various business needs.

2. Wage admission criterion

With respect to the wage admission criterion, the Commission proposal required companies to offer a gross monthly salary to the highly qualified third-country national worker that is at least three times the minimum gross monthly wage as set by national

¹ See BUSINESSEUROPE Position Paper on Commission proposal for directives on the admission of highly qualified immigrants and on a single application procedure/single permit and common set of rights, 31 January 2008, available at www.businesseurope.eu

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).

However, BUSINESSEUROPE is strongly opposed to the introduction of a wage threshold because this would amount to a form of wage-setting at EU level for those in highly qualified employment. European companies insist that any wage threshold should be defined nationally, respecting the competence of social partners and/or the individual company and employee to determine pay levels.

Secondly, the wage threshold could also lead to confusion when considered in relation with article 15 (1) (a) on equal treatment with nationals as regards pay. In fact, the Commission proposal could entail unequal treatment of national workers compared to higher-paid third-country nationals.

Thirdly, such an overly high statutory salary threshold might be a problem for many small and medium-sized companies.

BUSINESSEUROPE understands that other stakeholders and Member States have voiced similar concerns and that, as a result, a French Presidency compromise proposal is currently being discussed.

This new proposal would require companies to pay a wage to Blue Card holders that is at least 1.5 times the average gross wage level in the Member State in question. The European Parliament proposes to use a multiplier of 1.7.

While restating its opposition in principle to the introduction of a wage threshold at EU level, European companies are very much concerned that these new proposals could have even more damaging consequences than the original article 5.2.

The following evidence for a limited number of Member States indicates that the 1.5 average wage admission criterion could constitute an important obstacle for recruiting third-country national workers. For Belgium, 1.5 times the annual average wage would mean 51,450 euros; for Denmark 63,150; for Luxembourg 69,900; for Austria 48,750; for the Netherlands 53,700; for Spain 33,450; Poland 13,500; and for Slovenia 27,300.

Not only would such high wage levels be an important obstacle for many companies to recruit third-country national workers; they are also much more restrictive than the national admission criteria currently in place for highly skilled workers in several Member States. For example, in the Netherlands and Belgium, the threshold currently stands at 47,000 and 33,000 euros respectively.

In addition, the gap between the wages of national highly qualified workers and those of immigrant workers would become even bigger, thereby exacerbating the risk of unequal treatment.

Based on the above, BUSINESSEUROPE reiterates its call to abandon the wage admission criterion at EU level. Both the Commission proposal and the French compromise text fail to respect subsidiarity, could entail situations of unequal treatment vis-à-vis national workers and, because of the overly high level at which wages are set, risk diluting the objective of attracting more highly skilled workers to the EU.