



CONDITIONS OF ENTRY AND RESIDENCE OF THIRD-COUNTRY NATIONALS FOR THE PURPOSES OF HIGHLY SKILLED EMPLOYMENT (EU BLUE CARD)

KEY MESSAGES



- 1** The European Commission's renewed focus on economic migration is important in view of employers' evolving need for highly skilled workers combined with projected changes to Europe's demographic composition. The proposal for revising the Blue Card can, therefore, be a useful element in this approach and is broadly welcomed by BusinessEurope.
- 2** The ability to recruit and retain highly-skilled third-country nationals in an efficient, effective and transparent way is the main added value of the Blue Card for employers. In this respect BusinessEurope welcomes the proposals to lower the salary threshold and to enable greater flexibility within it; as well as introducing an optional system of recognised employers.
- 3** It is important that Member States are able to retain their own national systems in parallel to the revised Blue Card so as to to particular national situations and employers' needs at the national level that cannot be met by the Blue Card.

WHAT DOES BUSINESSEUROPE AIM FOR?



- Structural reforms that encourage people to stay in the workforce, promote life-long learning, and promote the EU as a destination for highly skilled migrants. Reforms to this effect are needed to boost companies competitiveness and in response to demographic change.
- A Blue Card scheme that helps to address employers' skills needs in a timely and effective way.

POSITION PAPER

CONDITIONS OF ENTRY AND RESIDENCE OF THIRD-COUNTRY NATIONALS FOR THE PURPOSES OF HIGHLY SKILLED EMPLOYMENT (EU BLUE CARD)

Introduction

1. On 7 June 2016 the European Commission published a legislative proposal aiming to revise directive 2009/50/EC of May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment – known as the EU Blue Card.
2. Between March 2015 and December 2015 BusinessEurope participated in the European Commission's Expert Group on economic migration, which discussed, among other things, a review of the EU Blue Card directive
3. BusinessEurope also participated in the various activities associated with the first European Dialogue on Skills and Migration that took place in January 2016.
4. This paper constitutes BusinessEurope's position on the proposed revision of the EU Blue Card directive.

General comments

Economic migration as a way to meet employers' unmet skills needs and to respond to demographic challenges

5. BusinessEurope has consistently stated that the migration of highly skilled third-country nationals is necessary for achieving greater productivity and competitiveness of the EU. However, migration should be seen as an additional instrument to achieve these goals while Member States should also try to activate their own workforce potential.
6. Although there continues to be around 21 million unemployed people in Europe who need to be brought into the labour market, highly skilled third-country nationals can help to respond to employers' growing and unmet need for highly skilled workers.
7. The EU's old-age dependency ratio is projected to increase from 29% at present to 54% in 2050. By means of comparison, in the US the ratio is expected to increase from 22% to 37%.
8. In 2020 the EU's total population without migration¹ is expected to be roughly 506 million. In 2060 this figure is projected to have fallen to around 442 million people. At the same time the projected working age population in 2060 is set to be approximately 45 million fewer than it is today. This demonstrates the relevance of the current focus on attracting highly skilled third-country nationals to the EU. In the longer-term there may be a need to attract people of varying skill levels.

¹ i.e. if international net migration to the EU is zero

9. Research conducted by The European Centre for the Development of Vocational Training (CEDEFOP) has also projected that around 14 of every 15 job openings between 2016 and 2025 will be to replace workers leaving their jobs, many of whom will retire. This is combined with not enough young people entering the labour market to replace those leaving.
10. In order to mitigate the impact of demographic change on the labour market, reforms are required to encourage people to stay in the workforce, promote life-long learning, and to promote the EU as a destination for highly skilled migrants.
11. The renewed emphasis by the current Commission on economic migration is therefore welcome and needed.
12. It can also be noted that one of the aims of the New Skills Agenda that was published by the Commission on 7 June is to develop labour market intelligence on skills demand and supply. If such information could be gathered it might enable the EU to consider how to develop a more demand-led migration system, such as an expression of interest approach, as has been implemented in Canada.

On the need for revising the current directive

13. The overall aim of the revision must be to improve the EU's ability to effectively and promptly respond to skill shortages so as to increase the contribution of economic migration to the EU's productivity and competitiveness. The EU as a common economic area should become more attractive for highly skilled third-country nationals. The Blue Card could be used for such promotional purposes.
14. The current Blue Card directive has had only a moderate impact. Although the number of Blue Cards that have been issued has grown from 3664 in 2012 to 13,852 in 2014 this is rather low relative to the needs that European companies have for skilled workers. Even when combined with admissions under national permit schemes the Commission assesses that the EU admits less than 40,000 highly skilled migrants per year. By way of comparison, the US is said to admit around 200,000 highly skilled workers per year.
15. Against this backdrop BusinessEurope considers that it is relevant to reconsider how the Blue Card directive could be adapted to facilitate the EU's ability to attract and retain highly skilled third-country nationals. In particular this concerns ways to enhance the mobility of third-country nationals and their circulation between jobs in different Member States.
16. In addition, we broadly welcome the proposed link with the current refugee situation by enabling beneficiaries of international protection² to apply for a Blue Card, like any other third-country national, while retaining the rights provided as beneficiaries of protection. Additionally, third-country nationals re-settled in the EU under future EU schemes who are granted similar rights to those provided for beneficiaries of international protection will be given access to a Blue Card.

² As described by directive 2011/95/EU on "the standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted" (2011/95/EU)

Maintaining parallel national schemes

17. The Commission proposes to move from the current practice whereby the Blue Card and national schemes run in parallel to a single EU scheme for the admission of highly skilled third-country nationals.
18. BusinessEurope recognises the analytical work that has been undertaken by the Commission and can see how the conclusion might be reached that moving to a single scheme could, potentially, increase the attractiveness of the Blue Card scheme and result in more applications.
19. It is also noted that this proposal only concerns those third-country nationals that are deemed to be highly skilled and that Member States could continue to run their own schemes for the admission of other categories of third-country nationals.
20. This being said, it is BusinessEurope's view that Member States must be able to continue to run their own national schemes in parallel to the Blue Card directive. In particular these schemes are justified in terms of responding to particular national situations and employers' needs at the national level that cannot be met by the Blue Card directive.
21. If the revised Blue Card proves to be sufficiently attractive for employers and third-country nationals, it may gradually develop to become the most used system and, de-facto, *the* system for the admission of highly skilled third-country nationals.

Specific comments

Parity between professional experience and formal qualifications (Article 2)

22. Under the revised proposal parity would be established between professional experience and formal qualifications as part of the admission criteria on the basis of evidence attesting to "higher professional qualifications". Therefore, "higher professional skills" that are attested by at least three years of professional experience at a comparable level to higher education qualifications have the same standing as a formal qualification when it comes to determining a person's eligibility to qualify as being highly skilled.
23. BusinessEurope notes that in the current directive Member States had the option to take relevant professional experience of the applicant into account as a proxy for high qualifications, but that this was an option rarely used and was not always implemented on the national level.
24. While making it mandatory for Member States to establish parity between professional experience and formal qualifications could increase the number of permits that are issued, BusinessEurope questions how it can be proved, in practice, that someone has worked for three years in an equivalent position.

Criteria for admission (Article 5)

Salary threshold

25. Under the current directive the salary threshold is set at 1.5 times the average gross annual salary in a Member State. The new proposal seeks to lower the salary threshold by creating a flexible range of between 1.0 and 1.4 times the average gross annual salary that can be applied according to the national labour market context.

26. BusinessEurope has a principled opposition to the threshold believing that, in practice, it is a form of wage-setting at EU level for those in highly skilled employment. Instead, the decision whether to establish a wage threshold should be defined nationally, respecting the competence of social partners and/or the individual company to determine pay levels.
27. Beyond its position of principle, BusinessEurope has previously commented that the current threshold of 1.5 times the average gross annual salary is too high and may be an obstacle to the recruitment of third-country nationals in cases where the threshold was higher than in national admission criteria. In this respect the proposed flexibility for Member States to lower the threshold is a welcome step in the right direction and could have a positive impact in facilitating the recruitment of highly skilled third-country nationals.
28. This is also the case for shortage occupations and young graduates where a mandatory lower salary threshold - at 80% of the general threshold - is proposed, which could help to facilitate a better matching of workers with job vacancies. As regards young graduates, the proposed threshold rightly reflects the fact that they have not accumulated a long work experience before applying for a blue card. When it comes to the design of such a threshold, however, attention should be paid to not pricing out third-country young graduates in relation to the conditions that prevail for those young people who graduated recently in the domestic context.
29. At the same time, some Member States may regard a higher threshold as a way to help ensure the quality and high skill level of third-country nationals. It could also be a means to increase the crucial public acceptance of highly skilled third-country nationals by demonstrating that they are not preventing unemployed people to find jobs and are also not undercutting those people already in employment.
30. An additional point related to the salary threshold, and a new requirement from the current directive, is the proposal to use Eurostat data as the basis for calculating the threshold on the grounds of increasing transparency and harmonisation. While this could seem an appropriate step from a European perspective, Member States should have the right to decide on their own which data they would like to use.
31. BusinessEurope underlines the importance of letting Member States decide whether or not to establish a salary threshold and, if they do, the level at which it should be set, according to national practices.
32. To summarise, the revised Directive should make sure that Member States get sufficient flexibility in order to determine their own salary thresholds on the national level. In addition, it would also be useful if the Directive itself would offer some guiding principles on how to calculate the salary thresholds.

Contract duration

33. The Commission proposes to lower the minimum duration of contracts for Blue Card holders from 12 to 6 months.
34. BusinessEurope considers that this would help to make the Blue Card more demand-driven by introducing greater flexibility for employers to use the Blue Card according to their changing needs.

National industrial relations systems

35. Within the criteria for admission, Article 5.3 states that Member States “*shall*” require that all conditions in the applicable laws, collective agreements or practices in the relevant occupational branches for highly skilled employment are met. The wording in the current directive says that Member states “*may*” require that all conditions in the applicable laws, collective agreements or practices in the relevant occupational branches for highly skilled employment are met.
36. BusinessEurope considers that this change is too limitative. Member States need to have the space to adapt the functioning of their national industrial relations systems and practices to the specific situation of highly-skilled third-country nationals. The wording of the current directive should be retained.

Applications for admission (Article 9), procedural safeguards (Article 10) and Recognised employers (Article 12)

37. The Commission proposes to introduce the possibility for applications to be made either outside or inside the Member State where the applicant is applying instead of following the current requirement that only legally staying third-country nationals can apply. It is also proposed that the period of time within which Member States need to respond to a Blue Card application is to be reduced from a maximum of 90 days down to 60.
38. To further facilitate the application process in a timely and efficient way, BusinessEurope supports the proposal for introducing a fast-track application procedure through an optional system of recognised employers so as to reduce the application procedure to a maximum of 30 days.
39. Such practices are already in place in Italy, Netherlands, Spain and Sweden and help to meet employers’ needs in a more efficient way. For example, In the Netherlands the target time limit for processing an application of a highly skilled worker under the national scheme is 14 days.
40. Companies need admission procedures that allow them to recruit the best candidates through un-bureaucratic, rapid and transparent procedures. Therefore, BusinessEurope welcomes the proposed changes in Articles 9, 10 and 12.

Labour market access (Article 13)

41. The proposal includes the possibility for Blue Card holders to undertake self-employed activity in parallel with their Blue Card occupation.
42. Giving flexibility to foster entrepreneurship as a secondary issue or to gradually move from employment to entrepreneurship is a positive development, while recalling that the primary focus of the directive must continue to be on the employment of highly skilled third-country nationals. As such, the admission of highly skilled third-country nationals must continue to be based on a contract or an offer of employment.

Family members (Article 16)

43. Under the new proposal family members³ will be entitled to receive their residence permit immediately when the Blue Card is issued, which means that they can join the Blue Card holder without delay.
44. Additionally, family members are to be granted access to any employed or self-employed activity in the Member State concerned. Nevertheless, there is the provision for Member States to check whether a vacancy could not be filled by a country national or EU worker or a third country national already legally resident.
45. Latest Eurostat figures show that there are around 1.6 million people from non-EU countries currently residing in the Union. Of this total just under half, around 620,000 people, receive their first permits for family reasons. While the number of third-country nationals coming to the EU as Blue Card holders or their family members accounts for only a small fraction of the 1.6 million arrivals, the figures demonstrate the significance of family reunification to the overall inflow of migrants.
46. As part of the EU's renewed focus on economic migration the policy priority should be to foster migration that helps to meet employers' skills needs.
47. BusinessEurope believes that the possibility for family members to join the Blue Card holder without delay is a key element for improving the attractiveness of the Blue Card scheme and can be considered as a vital part of a modern migration policy. Moreover, granting immediate labour market access for family members can further help to meet employers' skills needs and contribute to a more successful and sustainable integration of these third-country nationals as active citizens in their local

Business Activity in a second Member State (Article 19), application for a Blue Card in a second Member State (Article 20) and residence in the second Member State for family members (Article 21)

48. As part of a new chapter on mobility between Member States Article 19 allows a Blue Card holder to enter and stay in other Member States for the purpose of a business activity. This is permitted for up to 90 days in any 180 day period and in cases where the card has been issued by a Member State applying the Schengen acquis.
49. In such cases the country that the person is going to is not allowed to require a work permit or any other authorisation than the Blue Card issued by the first Member State for carrying out this activity.
50. Additionally, Article 20 provides that, with the Blue Card issued by the first Member State, a person can go to another Member State to look for work. However, to be able to work in the second Member State you need to have a new Blue Card and you can only apply for a new card in the second Member State if you have a contract or offer of employment.
51. More particularly, if a Blue Card holder becomes unemployed they have a period of 3 months to find another job before the Blue Card is withdrawn. During this period the holder could also look for work in another Member State, based on the existing Blue

³ As defined under Directive 2003/86/EC "On the right to family reunification" as the spouse of the third- country national applying to reside in an EU Member State and the children of the applicant and/or the spouse that are under the legal age of adulthood in the Member State concerned and which are not married.

Card. If they receive a job offer they would then need to apply for a new Blue Card in the Member State concerned.

52. BusinessEurope is a strong advocate of worker mobility between EU Member States and considers that this should be extended to highly skilled third-country nationals that hold a Blue Card. Therefore, the addition of these new articles is welcome, as a step in the right direction, and could simultaneously raise the attractiveness of the EU Member States as a destination for highly skilled third-country nationals and help to provide employers with the skilled labour that they require.
53. Blue Card holders who move to another Member State should make sure that they have the financial means to support themselves if they become unemployed. In addition, they should not have the right to claim unemployment or other social benefits if they change jobs, unless they have constituted an entitlement under the applicable national regulatory frameworks that apply to the domestic workforce.
54. Related to these new articles on the mobility of Blue Card Holders is Article 21, which allows for family members that accompanied the Blue holder to the first Member State to go with the card holder to a second Member State on the basis of the valid residence permits obtained as family members of the card holder in the first Member State. This provision can be viewed as an important and logical extension of the mobility possibilities for Blue Card holders

Summary

55. For employers the primary function of the revised Blue Card must be to facilitate the recruitment and retention of highly skilled third-country nationals through un-bureaucratic, rapid and transparent procedures.
56. The substance of the proposal for revising the Blue Card directive broadly goes in the right direction by taking into account successful elements from national schemes and using them as a basis for inspiring the new proposal. In particular BusinessEurope welcomes the proposals for a fast-track application process through a system of recognised employers and for enhancing the mobility of Blue Card holders.
57. It is important that Member States are able to retain their own national systems in parallel with the revised Blue Card so as to have the option of determining how best to admit highly skilled thirdly-country nationals, while avoiding unnecessary duplications with the Blue Card. The extent to which either the national or Blue Card scheme is then used would be based on employers' needs.
