

Position Paper

UEAPME¹ position on the EC Proposal for a Directive on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment (Blue Card revision) – COM (2016) 378

The European Commission on 7 June 2016 published its Proposal for a Directive on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment, in short the Blue Card Directive. Through its active participation in the Expert Group on Economic Migration, UEAPME has contributed to the proposal.²

Executive Summary

- UEAPME welcomes the revision of the Blue Card Directive to make it more attractive and flexible to the European labour market. The potential of the Blue Card is currently insufficiently tapped, hampering innovation, growth, and competitiveness of European companies including SMEs.
- UEAPME opposes the proposal to establish the Blue Card as the only scheme in the EU, no longer allowing parallel national schemes. UEAPME would like this proposal to be revised in order to keep a positive competition between the European and the national system. The directive could, however, provide for priority of the application of the Blue Card directive when all conditions are met.
- UEAPME appreciates the added flexibility with regard to salary threshold, which will be useful to adapt to national labour market needs. However, it would have been better to leave the decision for salary thresholds entirely to Member States and social partners.
- UEAPME asks that the scope of the Blue Card is more clearly extended to medium-skilled workers, for which there are also high labour market shortages.
- UEAPME welcomes several additional rights and perks granted to third-country nationals to make the Blue Card more attractive for potential talent. Increased options for intra-EU mobility will be a major driver to achieve this objective.
- UEAPME regrets that its proposal to establish an “expression of interest” scheme, a talent pool with a point-based system, is not part of the EC revision. Such a scheme would create an efficient and highly esteemed system well-suited for a diverse European labour market and would contribute to creating a level playing field for companies and Member States.
- UEAPME supports EC proposals to simplify procedures for recruitment and reduce bureaucracy, but believes that more can be done. SMEs need to be able to perceive the Blue Card as a feasible option to fulfil their skills needs.

¹ UEAPME subscribes to the EC’s Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is 55820581197-35

² See for UEAPME’s position on legal migration policies, ahead of the Blue Card revision:

http://ueapme.com/IMG/pdf/UEAPME_position_on_EU_legal_migration_policies_and_revision_of_the_Blue_Card.pdf

EUROPEAN ASSOCIATION OF CRAFT, SMALL AND MEDIUM-SIZED ENTERPRISES

I – General remarks

UEAPME welcomes the Commission's initiative to revise the 2009 Blue Card Directive in order to make the EU more competitive in attracting highly qualified workers from around the world. **The potential of the Blue Card is currently insufficiently tapped**, thus hampering innovation, growth and competitiveness of European companies including SMEs.

Crafts and SMEs are confronted with manifold challenges including a lack of qualified workers. Technological developments and changing societies are rapidly increasing the demand for new types of talents, notably in the digital field. If these skills needs are not met, it will be detrimental for Europe's ability to grow, innovate, and remain competitive on the global market. Already, European companies, including SMEs, increasingly report **lack of skills available for their production processes**. 4 out of 10 companies report difficulties in finding the right staff.

Next to developing effective skills migration pathways and attracting foreign talent, the priority to tackle these issues lies with domestic policies through unlocking the potential of Europe's current under-skilled population, fighting high existing levels of unemployment and further incentivising intra-EU labour mobility. **UEAPME insists on the need to modernise education and training systems** to deliver the skills needed on the labour market and thus ensuring higher employability of the European work force. Skills migration policies should be narrowly coordinated with EU skills initiatives including the "New Skills Agenda for Europe".

For effective skills migration policies, there is an increasing **need for improved identification of skills needs** on the national, regional and sectoral level. UEAPME supports efforts facilitating this process, but underlines that **SMEs rely to a great extent on the support of labour market intelligence and professional structures** such as skilled crafts chambers and chambers of commerce and industry or business organisations to anticipate labour market evolutions and adapt the curricula and training offers accordingly.

The core objective of the Blue Card should be to **enable companies to attract those people who offer specific added value to enterprises when not enough EU citizens are available to fill these vacancies**. This system needs to be **as clear and attractive as possible** within the context of diverse labour markets.

UEAPME assesses that the **increased intra-EU mobility options** for Blue Card holders are among the main drivers for higher attractiveness of the scheme.

UEAPME shares the EC's analysis that the 2009 Blue Card Directive has failed to achieve several of the original objectives. It believes that an improved Blue Card is necessary for two main purposes: to better address skills shortages and respond to the needs of national labour markets, and to make it more attractive for talent from third countries.

UEAPME has identified three **main reasons for the failure of the current Blue Card scheme**: the salary threshold, the lack of flexibility to adapt to the reality of national labour markets, and too complex procedures for recruitment. In addition to legal modifications, UEAPME sees the need for a robust and effective **communication and information strategy** to promote the Blue Card towards employers and potential foreign talent.

The European labour market is unique in its diversity. Being positive on several measures to make the Blue Card more attractive for third-country nationals, **UEAPME is critical of the intention to establish the Blue**

Card as the only scheme in the EU. No longer allowing parallel national schemes fails to address the issue of flexibility for the national labour markets. **UEAPME would like this proposal to be revised.**

The best way to overcome current shortcomings and do right to the diversity of the EU labour market is to develop an **“expression of interest” scheme**, a talent pool with a point-based system. UEAPME regrets that its proposal has been left out of the EC revision. Such a scheme, based for instance on points awarded to potential talent for their levels of qualification, years of experience, and knowledge of languages, would create an efficient and highly esteemed system well-suited for a diverse European labour market. Importantly, it would contribute to creating a **level playing field for enterprises and Member States** through easier recruitment procedures and equal access to foreign talent.

UEAPME also regrets that the scope of the Blue Card is not clearer on the extension to **medium-skilled workers**. Crafts and SMEs report high skills shortages for this category.

SMEs, as a precondition, should perceive the Blue Card as a feasible option to fulfil their skills needs. To this end, there should be a clear perspective of return on investment and hence low recruitment costs. Procedures should not be too complicated and potential talent providing the skills required need to be ‘visible’ and easily accessible. **UEAPME supports the EC proposals to simplify procedures and reduce bureaucracy, but believes that more can be done.**

Finally, as skills migration is closely related to fundamental aspects of the single market as well as other (legal) migration policies, **UEAPME underlines the need for consistency between policies at EU level** and strong cooperation between services working on these different issues. At the same time, UEAPME stresses that policies to attract foreign talent for EU labour market shortages should be disentangled from discussions on the integration of current flows of refugees.

II – Specific comments

Article 2 – Definitions

- UEAPME welcomes the **replacement of “highly qualified employment” by “highly skilled employment”**, and the clarification that people are eligible for the Blue Card who have “higher professional skills”, which can be achieved by three years of professional experience of a level comparable to higher education qualifications.

Article 3 – Scope

- UEAPME welcomes the extension of the scope towards **beneficiaries of international protection** under the “Qualification Directive”. This will facilitate their integration into the labour market once they have been granted a status and create a pool of potential talent for employers.

- **UEAPME opposes the intention to establish the Blue Card as the only scheme in the EU, no longer allowing parallel national schemes.** UEAPME believes that there is a need for economic migration policies that meet the requirements of national labour markets, which cannot be guaranteed only by a harmonised, “truly EU-wide scheme”. National schemes are still needed in order to ensure effective labour market and migration policies. National schemes can tackle specific bottlenecks, which would be more difficult in case of a restrictive, single EU-wide scheme. Instead, UEAPME recommends for the Blue Card to go into positive competition with national schemes. If requirements in EU and national schemes are met, the directive could, however, provide for priority of the application of the Blue Card directive.

→ **UEAPME requests that Article 3.4 be revised**

Chapter II – Criteria for admission, refusal and withdrawal

Article 5 – Criteria for admission

- UEAPME regrets that the eligibility criteria of the Blue Card are not more clearly extended to **medium-skilled workers**. Crafts and SMEs suffer most from the lack of skilled labour which cannot be tackled only by fighting unemployment and creating optimal conditions for intra-EU labour mobility. Being able to attract talented workers with medium-level skills to European enterprises would greatly contribute to innovation capacities of Crafts and SMEs and thus to further creating growth and new jobs.
- UEAPME welcomes that the Blue Card scheme remains demand-driven, i.e. that a work contract or job offer will still be required to be eligible, as well as that the **required minimum duration of the contract is shortened to 6 months**. This gives more flexibility to employers who are unsure about the skills of foreign talent.
- UEAPME welcomes the **lowering of the salary threshold** from 1,5 times the average gross annual salary in the Member States to a range of minimum 1,0 and maximum 1,4. This will better meet the reality of the national labour markets, and make the Blue Card more accessible. UEAPME considers the salary threshold as one of the most important reasons for the current lack of attractiveness of the Blue Card, and has consistently argued that **determination of salary levels should be left to the Member States and social partners, in accordance with national practices**. The lower threshold (1,0) could be even further reduced to allow for medium-skilled workers to be eligible.
- UEAPME also welcomes the introduction of **a mandatory lower salary threshold** (at 80% of the general threshold) **for shortage occupations and young graduates**. As in the case of the general salary threshold, this will allow Member States for more flexibility to address the needs of the national labour markets. It must, however, be ensured that national collective bargaining systems and minimum wages are respected.

Article 6 – Grounds for refusal

- UEAPME agrees with the **restriction of so-called labour market tests** to cases of serious disturbances on the labour market and high levels of unemployment, and only for a period of 12 months, but warns for risk of new bureaucracy. Also, the concept of ‘serious disturbance’ requires further clarification. As this issue concerns an assessment of the labour market situation, **UEAPME believes that it should be mandatory to consult national social partners on such issues**.

- Art. 6.3 – UEAPME opposes the fact that a Blue Card application can be rejected if the employer has neglected to meet legal obligations of rather minor importance regarding social security, taxation, labour rights or working conditions. This wording could mean a **disproportionate punishment** in the case of minor or even unintended offence.
- Art 7.2. – UEAPME opposes the provision allowing to withdraw the Blue Card or to not renew it if employers have not met their duties regarding social security, taxes, labour law or labour conditions. **It should be deleted without replacement**, since it is not included in the current Directive.

Chapter III – EU Blue Card and Procedure

- **Art. 8 and 10** – UEAPME positively assesses that the **minimum period of validity for the EU Blue Card** is set at 24 months or at least for the duration of the work contract plus three months as well as the shortening of notification periods for the applicant from 90 to 60 days. Such measures provide more certainty to the Blue Card applicant and enhance its attractiveness.
- **Art. 12** – UEAPME welcomes the introduction of an optional system of **'recognised employers'** for the purpose of applying 'fast-track' procedures for obtaining an EU Blue Card. However, UEAPME stresses that under no circumstances this should lead to hindering SMEs from participating in such systems through too high fees.

Chapter IV – Rights

- **Art. 13 and 17** – UEAPME appreciates that several **additional rights and perks** are granted to Blue Card holders in comparison with regular work permits. In particular **full access to the labour market** for Blue Card holders, the right to **exercise a self-employed activity** in parallel, and the derogation to grant **long-term resident status** to Blue Card holders after 3 instead of 5 years can be beneficial.
- **Art. 16** - UEAPME also supports provisions to facilitate **family reunification** of highly skilled workers, such as the possibility to join the worker without any delay or immediate access to the labour market. UEAPME disagrees that Member States should still be able to carry out a **labour market test for family members**, which is not the case under the current Blue Card regime.

Chapter V – Intra-EU mobility

- **Art. 19** – UEAPME welcomes the introduction of the possibility for Blue Card holders to enter and stay in other Member States for **business trips** of 90 days within a period of 180 days. This clearly makes the Blue Card scheme more attractive for both workers and employers, as mobility of highly-skilled workers is often needed in the context of their tasks.
- **Art. 20** – UEAPME supports the promotion of **intra-EU mobility for all**, and this should also be fully part of the Blue Card scheme. For that reason, UEAPME agrees to reduce the **residence period required in the first Member State from 18 to 12 months**, before allowing the Blue Card holder to apply for a Blue Card in a second Member State. At the same time, UEAPME supports the possibility for Member States to take **measures safeguarding investments** made by SMEs.

Less straight forward however is paragraph 20.7, where Member States are allowed to reject an application where the third-country national “repetitively makes use of the possibility to enter and work in second Member States [...] in an abusive manner”. **This provision requires further clarification** to avoid arbitrary decisions.

- **Art. 22.4/5 – UEAPME opposes that employers can be held responsible for the costs** related to the re-entry of the EU Blue Card holder in the first Member States, or for abusively making use of the mobility provisions by the Blue Card holder. **UEAPME requests that this is deleted.**

Chapter VI – Final provisions

Art. 24 and 25 – UEAPME sees the need for **statistics** on the numbers of applications and rejections of the Blue Card, the number of Blue Card holders making use of intra-EU mobility, as well as the reporting on the relevance of the salary threshold to be **broken down also by size of enterprises** to better identify bottlenecks.

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