

COMMUNICATION

**from the European Affairs Committee of the Federal Council
to the European Parliament, the Council and the European Commission**

pursuant to Article 23 f (4) of the Austrian Constitutional Law

13 September 2016

COM (2016) 378 final

Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third country nationals for the purposes of highly skilled employment

The underlying idea of the “EU Blue Card”, which has existed since 2009, was to address the problem of labour and skills shortages in the labour market and to strengthen competitiveness and economic growth in the European Union. The reason why the European Commission is now proposing a review of the “EU Blue Card” is that the intended objective of attracting highly qualified workers from around the world has not been achieved to the desired extent. Instead, the European Union mainly attracts low-skilled people in need of protection from third countries. The target of attracting young graduates and researchers from third countries has not been reached to the desired extent.

The proposed directive is aimed at lowering the threshold of eligibility for the “EU Blue Card” and further harmonising the EU-wide system:

- The new proposal is intended to create an EU-wide admission regime that would replace the national regimes and, thus, put an end to the “Red-White-Red Card”.
- At the same time, holders of an “EU Blue Card” are to be granted faster access to long-term residence and more flexible access to the labour market.
- In general, the barriers to admission are to be lowered, e.g. by extending the regime to recent graduates and young professionals in sectors with a shortage of labour.
- Under the new regime, the right to apply for the “EU Blue Card” is to be extended to highly skilled workers benefiting from international protection.
- In certain occupational categories, the salary threshold is to be lowered by setting a flexible range within which the Member States can fix their thresholds in accordance with the specific situation of the national labour market.

- Moreover, the procedures for a change of employer within the EU are to be simplified, and the establishment of a system of “recognised employers” is being aimed at.

From the Federal Council’s point of view, the European Union can be made more attractive for highly qualified workers through effective harmonisation of the admission criteria and by allowing greater mobility for highly qualified workers already admitted. However, the Federal Council doubts whether the proposal is in accordance with the principles of proportionality and subsidiarity. Currently, functioning national systems exist in ten Member States, which, taken together, have brought more highly skilled workers from third countries into the EU than the “EU Blue Card”. The Federal Council feels that national regimes may be much better suited to generate the desired immigration effect and therefore suggests that a process of reflection be initiated along these lines. Moreover, the Federal Council wishes to state that the national systems of legal immigration are better able to consider the economic situation of the country concerned and can react more flexibly to domestic labour market conditions.

Any review of the “EU Blue Card” has to comply with the principles of subsidiarity and proportionality; the design of a harmonised system of legal immigration has to consider the right of the individual Member States to determine the volume of access to their labour markets pursuant to Article 79(5) TFEU. The further restriction of national assessments of demand for qualified immigration has no legal basis. There is a risk of the division of responsibilities between the EU and the Member States being undermined and provisions of primary law, above all Art.79(5) TFEU, being evaded. An assessment of demand in the case of a second or subsequent application for entry into another Member State must still be allowed.

The European Affairs Committee of the Federal Council welcomes the efforts made by the European Commission to make the EU system for highly skilled workers, i.e. the “EU Blue Card”, more attractive and thus strengthen the competitiveness of the EU. The added value of national admission systems, which allow flexible reactions to changes in the domestic labour market, is to be underlined. In the Federal Council’s opinion, eliminating these systems would not be conducive to success. When measures relating to highly skilled workers are adopted, coherence with existing rules, especially in respect of the group of eligible persons and the rights accompanying their residence permits, should be maintained.