

Opinion of the European Committee of the Regions — Legal migration

(2017/C 185/13)

Rapporteur: Olgierd GEBLEWICZ (PL/EPP), Marshal of the West Pomerania region

Reference document: 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

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I. RECOMMENDATIONS FOR AMENDMENTS

Amendment 1

Article 2(h)

Text proposed by the Commission	CoR amendment
<p>'higher education qualifications' means any diploma, certificate or other evidence of formal qualifications issued by a competent authority attesting the successful completion of a post-secondary higher education or equivalent tertiary education programme, namely a set of courses provided by an educational establishment recognised as a higher education institution or equivalent tertiary educational institution by the State in which it is situated, where the studies needed to acquire those qualifications lasted at least three years and correspond at least to ISCED 2011 level 6 or to EQF level 6, according to national law;</p>	<p>'higher education qualifications' means any diploma, certificate or other evidence of formal qualifications issued by a competent authority attesting the successful completion of a post-secondary higher education or equivalent tertiary education programme, namely a set of courses provided by an educational establishment recognised as a higher education institution or equivalent tertiary educational institution by the State in which it is situated, where the studies needed to acquire those qualifications lasted at least three years and correspond at least to ISCED 2011 level 6 or to EQF level 6, according to national law; for persons with refugee status or subsidiary protection status resident in the territory of the EU who do not have the documents necessary to prove their qualifications, Member States will apply appropriate additional procedures to establish their level of education and skills;</p>

Reason

It is necessary to redefine this concept, to take account of the fact that a potentially large number of refugees may not be able to document their vocational qualifications. The proposed provisions of the Directive require a much more flexible approach to this issue than at present. The CoR draws attention in this context to existing documents setting out accumulated experience in this area, in particular the Skills Profile Tool Kit for Third Country Nationals currently being prepared, as proposed in the New Skills Agenda for Europe. It is also suggested that use be made of the experience of European regions in this area.

Amendment 2*Article 2(i)*

Text proposed by the Commission	CoR amendment
<p>'higher professional skills' means skills attested by at least three years of professional experience of a level comparable to higher education qualifications and which is relevant in the profession or sector specified in the work contract or binding job offer;</p>	<p>'higher professional skills' means skills attested by at least three years of professional experience of a level comparable to higher education qualifications and which is relevant in the profession or sector specified in the work contract or binding job offer; for persons with refugee status or subsidiary protection status resident in the territory of the EU who do not have the documents necessary to prove their higher-level professional skills, Member States will apply appropriate additional procedures to establish their skills and professional experience;</p>

Reason

See previous point.

Amendment 3*Article 6(4)*

Text proposed by the Commission	CoR amendment
<p>Member States may reject an application for an EU Blue Card in order to ensure ethical recruitment in sectors suffering from a lack of qualified workers in the countries of origin.</p>	<p>Member States may reject an application for an EU Blue Card in order to ensure ethical recruitment in sectors suffering from a lack of qualified workers in the countries of origin. <i>In order to ensure that the ethical dimension is given appropriate consideration in the recruitment process, Member States should refer to the standards developed by international authorities, such as those of the International Organization for Migration or the IRIS monitoring system.</i></p>

Reason

Ethical issues are particularly important in the context of recruiting highly skilled workers. This is because demand from European employers is often in occupations where workers are also needed in third countries as a result of severe skills shortages. A massive and uncontrolled exodus could lead to a long-term deterioration in the socioeconomic situation in the countries of origin and thus effectively increase the potential for migration. It is proposed that the ethical recruitment provisions be supplemented by practical principles drawn up, inter alia, by international organisations. In this respect, attention should be drawn to the Public Private Alliance for Fair and Ethical Recruitment (PPA) initiative of the International Organization for Migration (IOM) and the IRIS monitoring system.

Amendment 4

Article 12(1)

Text proposed by the Commission	CoR amendment
<p>Recognised employers: Member States may decide to provide for recognition procedures for employers in accordance with their national law or administrative practice for the purpose of applying simplified procedures for obtaining an EU Blue Card.</p> <p>Where a Member State decides to provide for recognition procedures, it shall provide clear and transparent information to the employers concerned about, among others, the conditions and criteria for approval, the period of validity of the recognition and the consequences of non-compliance with the conditions, including possible withdrawal and non-renewal, as well as any sanction applicable.</p>	<p>Recognised employers: Member States may decide to provide for recognition procedures for employers in accordance with their national law or administrative practice for the purpose of applying simplified procedures for obtaining an EU Blue Card. <i>These criteria will take account of the ethical aspects of the recruitment process (especially a company's earlier experience of employing highly skilled third-country nationals), and a list of companies will be drawn up with the participation of regional and local-level institutions.</i></p> <p>Where a Member State decides to provide for recognition procedures, it shall provide clear and transparent information to the employers concerned about, among others, the conditions and criteria for approval, the period of validity of the recognition and the consequences of non-compliance with the conditions, including possible withdrawal and non-renewal, as well as any sanction applicable.</p>

Reason

It is proposed that specific conditions for acquiring the status of 'recognised employer' be added, taking into account the regional/local dimension as well as the ethical aspects of recruitment. The Committee of the Regions suggests that a list of companies of this kind benefiting from simplified procedures be drawn up, with the involvement of local and regional bodies, and that the ethical aspects of recruitment be taken into account.

II. POLICY RECOMMENDATIONS

THE EUROPEAN COMMITTEE OF THE REGIONS

General recommendations

1. Applauds the efforts of the EU institutions to ensure an adequate supply of highly skilled workers by strengthening common EU standards and by coming up with a procedure that provides such migrants with access to the EU labour market. In this context, the proposed solutions are a step in the right direction and, to some extent at least, a response to criticism of the current Directive.
2. Considers that the establishment and promotion of effective channels for the legal/documentated entry of third-country nationals should remain one of the priorities of migration policy at EU, Member State and regional level. In this sense, an improved legal framework for highly qualified migrants is one important part of the necessary development of a comprehensive EU migration policy based on the principles of respect for human rights, international obligations and solidarity.
3. Takes the view that the European Union's long-term goal of remaining a competitive global actor requires the creation and modification of a comprehensive strategy for attracting human capital as well as financial investments from third countries. The latter element is important for every economic system wishing to scale up its innovativeness, level of technology and competitiveness. It is, however, particularly important in the demographic context being experienced by some Member States and of the problems facing the EU's labour markets.
4. Points out that the EU already has to contend with structural shortages of workers in certain sectors, and that unfavourable demographic trends will exacerbate these shortages. At the same time, the European Union is currently losing the race for talent with such global players as the USA, Canada and Australia.

5. Points out that measures for the recruitment of workers from third countries cannot and should not replace large-scale, long-term investments in education and vocational training for EU residents. Taking into consideration that many countries, especially Eastern European countries, face the phenomenon of brain drain (skills emigration), which puts a country/region at risk of depopulation and the emigration of intellectuals, this investment should be geared more towards jobs identified as being strategically important or deficit occupations and it should be used to develop specific measures to support those wishing to train in these areas.

6. Welcomes the broad consultation process that accompanied the drafting of the current version of the Directive, but is concerned that too little was done at regional level, involving regional and local authorities, which have the best knowledge of the needs of local and regional labour markets.

7. Also points out that local and regional authorities play a very important role in providing public services for immigrants, in terms of access to the labour market, as well as other dimensions of integration (education, housing, health care etc.).

8. Stresses that regional-level institutions play a key role in identifying the needs of the labour market, as well as in defining conditions requiring the implementation of safeguard procedures (labour market test). In addition, however, these institutions could create a positive climate for the proposed measures and the critical mass needed to raise the profile of the Blue Card procedure.

Assessment of the current arrangements

9. Notes that the measures introduced in 2009 have not met expectations. One reason for this was that national systems were allowed to coexist with those introduced by the Directive.

10. Notes that past experience with the implementation of the Blue Card procedure shows that, while the European Commission is seeking to place migration policy and sectoral measures on a European basis, the Member States remain committed to maintaining and promoting national solutions.

11. Notes that the rules introduced in 2009 have not met many of the needs and expectations of both migrants and employers and have instead perpetuated a fragmented system in the EU, with an overall unsatisfactory provision of rights for highly skilled workers and their families, high costs for applicants, employers and national administrations and with the system having a low profile outside the EU, making it generally unattractive.

The proposed measures — potential risks and shortcomings

12. Welcomes the proposals to reduce income thresholds, introduce instruments to promote internal mobility, facilitate access to long-term residence permits and take account of migrants already residing in the EU.

13. Wonders, in view of the steadily growing competition for talent, whether consideration should be given to incorporating into the European migration system elements of a supply-driven or points-based system (PBS) or a hybrid system, modelled on that of countries which are more effective in attracting highly skilled workers (Australia, Canada).

14. Stresses that, for highly skilled individuals, considerations such as career opportunities, access to equipment, language of communication and work commensurate with qualifications play an important part in their decisions. The Committee of the Regions is concerned that the proposed measures still take little account of these issues.

15. Welcomes the recognition that the Blue Card may be granted not only to workers arriving in the EU, but also to those who are already there.

16. At the same time, however, considers that clarification is needed as to why this option should be available only to recognised refugees. The proposed Directive explicitly excludes from this possibility seasonal and posted workers, as well as persons whose application for refugee status is pending. While understanding the political reasons for this decision, the Committee of the Regions considers that opening up a path to employment commensurate with qualifications for other categories of person residing in the EU could result in more stable perspectives for the migrants and employers concerned and thus a better use of human capital.

17. Points out that measures for the recruitment of third-country nationals in occupations requiring high-level skills should aim not only to attract immigrants but also to create conditions conducive to their remaining in the EU and integrating effectively.

18. Suggests that the issue of the employment of highly skilled workers should be treated in a holistic and comprehensive way appropriate to the logic of the migration process: from recruitment, via admission and identification of skills, to effective integration and eventual freedom of movement within the EU labour market.

19. In the context of the proposed measures, considers it necessary to develop a single, generally accepted method of collecting data on the demand for highly skilled workers in various occupations and labour markets. Establishing mechanisms for filling gaps in the labour markets of the Member States more effectively than at present would require further development of initiatives such as the EURES portal, EuroPass and the actions currently foreseen under the New Skills agenda, making it possible to bring together employers looking for job seekers and prospective workers with appropriate skills. Stresses the potentially key role of European regions in the collection of this type of data.

20. Is concerned that the proposed measures may take insufficient account of young graduates, whose level of earnings may be insufficient to satisfy the criteria set out in the Directive.

21. Emphasises that the issue of recognition of qualifications — and the practical aspects of this process — will be particularly relevant in the case of a category of persons who are for the first time becoming potential beneficiaries of the scheme: recognised refugees and those granted subsidiary protection. It may be expected that in the case of these persons obtaining proof of qualifications will be especially difficult and complex.

22. Stresses that more attention should be paid to ethical issues relating to the recruitment of highly skilled workers from third countries and that effective methods should be devised for preventing a brain drain from less developed countries with already low levels of human capital.

23. Proposes that an in-depth and reliable analysis be carried out of the outflow of highly skilled workers from third countries and of the potential impact of a brain drain. The results of this study should be used to develop common actions — by the EU and the migrants' countries of origin — aimed at preventing the negative effects of migration and, where possible, creating 'win-win-win' solutions (migration that is beneficial to the countries of origin and destination and to the migrants themselves).

24. Points out that any process of migration is a complex, multi-level phenomenon, in which both the countries of destination and the countries of origin of migrants play a major role. Inter alia in the context of the ethical issues highlighted above, calls for enhanced dialogue and closer cooperation between the EU institutions and those of the countries of origin of migrants and transit countries, also at regional and local level. Taking international public law instruments as the basis, this cooperation should make use of existing bodies and platforms, such as ARLEM, CORLEAP, Task Force Ukraine, joint consultative committees and working groups; use should be made of the experience of the European Training Foundation in supporting circular migration mechanisms.

25. Considers that the proposal is in compliance with the subsidiarity principle as the objective — to compete in the international competition for highly skilled workers — cannot be sufficiently achieved by the Member States acting alone, but can by reason of the scale be better achieved at the EU level. The proposed measures do not go beyond what is necessary to improve the EU's ability to attract and retain highly skilled third-country nationals, as well as to enhance their mobility and circulation between jobs in different Member States, and they leave certain flexibility for Member States to adapt the scheme to their national situation. Thus, the proposal complies with the principle of proportionality.

The role of the regions

26. Would stress that the socioeconomic consequences of migration, such as its impact on the functioning of labour markets and on the social and cultural spheres, are felt most keenly at regional and local level. Similarly, Europe's aggregate competitiveness could be regarded as an abstract concept; what counts is ensuring competitiveness and a high level of innovativeness in Europe's cities and regions, building on the work that non-profit organisations and the third sector carry out on a daily basis.
27. Points out that bringing a regional perspective to bear on the discussion of the proposed measures highlights various paradoxes. One of them is that, while highly skilled immigrants may be attracted by the most developed regions, their presence may be most desirable in regions that are not in a position to offer them such attractive work and residence conditions.
28. Welcomes the retention of the safeguard measures which could be introduced in the event of a deterioration in the labour market in a given country.
29. Would stress, in a local and regional context, the particular importance of a question that is insufficiently addressed by the Commission proposal: how to increase the effectiveness of integration measures and how to make use of existing best practice in this area.
30. Proposes that the role of the local and regional partners be considered in various contexts, such as in relation to: the establishment of experimental fast-track systems in partnership between regions, countries and the private sector; the effective sharing of best practice, especially in connection with recognition of qualifications and reducing structural mismatches and boosting the effectiveness of integration; and the implementation of solutions ensuring the best possible match between formal qualifications and the needs of local and regional labour markets.
31. Stresses the need to establish a more direct relationship with the business world in terms of communication, involving the companies themselves in the development of employment initiatives.

Brussels, 8 December 2016.

*The President
of the European Committee of the Regions*

Markku MARKKULA
