

Translation of letter

From: Austrian Bundesrat – Mario Lindner

To: Jean-Claude Juncker

Date: 14 September 2016

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Attachment

At its meeting on 13 September 2016, the EU Committee of the Austrian Bundesrat, in the course of its discussions concerning the EU document

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

adopted the attached Communication under Article 23f(4) of the Austrian Federal Constitution (B-VG).

COMMUNICATION
to the European Parliament, the Council and the European Commission
under Article 23f(4) B-VG of the EU Committee of the Bundesrat
of 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 basic purpose of the EU Blue Card introduced in 2009 was to address labour and skills shortages and strengthen EU competitiveness and economic growth. The European Commission has proposed a revamp of the EU Blue Card because the aim of the scheme, i.e. to attract highly qualified labour from around the world, has not been achieved to the degree hoped for. Instead, the EU primarily draws third-country nationals with protection needs and low qualifications. In particular, young graduates and researchers from third countries are not being attracted to the extent desired.

The thrust of this proposal is a general lowering of the entry threshold for EU Blue Card holders and further harmonisation of the EU-wide scheme:

- The new proposal establishes a single EU-wide scheme which would replace parallel national schemes and would thus mean an end to the Red-White-Red Card.
- Under such a scheme, EU Blue Card holders will gain faster access to a long-term residence permit and enjoy more flexible labour market access.
- In general terms, the threshold for admission to the EU will be lower, e.g. by including young graduates and experts for sectors in which there are labour shortages.
- Under the new scheme, highly skilled beneficiaries of international protection will also be able to apply for a Blue Card.
- The proposal aims to lower the salary threshold in certain employment categories by means of a flexible range within which the Member States can adjust the threshold to their own labour market needs.
- Moreover, the procedure for changing jobs within the EU will be simplified and a 'trusted employers' scheme set up.

In the Bundesrat's view, the EU can be made more attractive for highly skilled workers if admission conditions are further harmonised and mobility is improved for highly qualified workers who have already been admitted to the Union. However, it must be considered whether this proposal is in line with the principles of proportionality and subsidiarity. Ten Member States currently have fully functional parallel national schemes through which a higher number of highly qualified migrants from third countries have entered the EU than under the Blue Card scheme. It should therefore be investigated whether a national scheme would not be much more effective in bringing about the immigration of highly skilled workers. The Bundesrat also considers that the respective national schemes for legal immigration can take better account of the respective economic conditions and react directly to needs on the national employment market.

An overhaul of the EU Blue Card must be in line with the principles of subsidiarity and proportionality, so the setting up of a harmonised immigration scheme would have to take account of the individual Member States' competence to determine access to the labour market under Article 79(5) TFEU. There is no legal basis for restricting national labour market tests to determine the need

for skilled immigrants as proposed in the text. There is the risk here of undermining the distribution of powers between the EU and the Member States and of circumventing primary law provisions, in particular Article 79(5) TFEU. The admissibility of the need in the case of a second or subsequent application in another Member State must not be done away with.

The EU Committee of the Bundesrat welcomes the European Commission's efforts to make the EU Blue Card framework system for highly skilled workers more attractive and thus strengthen competitiveness. However, the EU Committee stresses the added value of national admission schemes, which allow for a flexible reaction to changes on the national employment market. Doing away with these schemes would be ill-advised. Where measures concerning highly skilled immigrants are concerned, consistency with existing provisions should be ensured, especially in relation to the group of beneficiaries and the rights associated with the residence permit.