

ASSEMBLY OF THE PORTUGUESE REPUBLIC

EUROPEAN AFFAIRS COMMITTEE

Opinion

COM(2016)378

PART I - INTRODUCTION

Pursuant to Article 7 of Law 43/2006 of 25 August 2006 on monitoring, examination and decision by the Assembly of the Portuguese Republic on matters relating to the process of EU integration, as amended by Law 21/2012 of 17 May 2012, and in accordance with the Guidelines for the Scrutiny of EU Initiatives approved on 1 March 2016, the 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 [COM(2016)378] has been submitted to the European Affairs Committee.

In view of its subject matter, the above initiative was sent to the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees and the Labour and Social Security Committee, which approved the reports attached to and forming an integral part of this Opinion.

Under the new guidelines for the scrutiny of European initiatives, approved by the European Affairs Committee, this Committee has drafted a technical note on the initiative under examination, which will also be attached to this Opinion.

PART II - RECITALS

1. This initiative concerns the 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.
2. The proposal forms part of the EU's efforts to develop a comprehensive migration management policy, based on Article 79 of the Treaty on the Functioning of the European Union, and in particular a new policy on legal migration, thereby contributing to the EU Growth Strategy, in line with the 'Europe 2020' priorities¹.
3. The 2009 EU Blue Card Directive² was intended to facilitate the admission and mobility of highly skilled third-country nationals and their family members, by harmonising entry and residence conditions throughout the EU and providing a legal status and a set of rights. Its aim was to make the EU more effective in attracting highly qualified workers from around the world, thereby helping to address labour and skills shortages on the EU labour market, and strengthen the EU's competitiveness and economic growth. According to the initiative, however, the 2009 Directive failed to achieve these objectives.
4. The initiative under examination states that the current EU Blue Card Directive has demonstrated intrinsic weaknesses, such as restrictive admission conditions and very limited facilitation for intra-EU mobility.

¹ For an overview, see the website 'Europe 2020 in a nutshell'.

² Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (OJ L 155, 18.6.2009, p.17).

This situation, combined with a wide range of parallel sets of rules, conditions and procedures for admitting the same category of highly skilled workers, which apply across EU Member States, has limited the EU Blue Card's attractiveness and usage. The initiative also points out that this is neither efficient - since such fragmentation imposes a burden on employers and individual applicants - nor effective - as shown by the very limited overall number of permits issued to highly skilled workers.

5. For this reason, the European Commission declared its intention to address the shortcomings of the EU Blue Card Directive and substantially broaden its impact in attracting more highly skilled workers to the EU³.

6. The European Agenda on Migration⁴ accordingly announced a review of the EU Blue Card, as part of the new policy on legal migration, to make it more effective in attracting talent to Europe.

The 2016 Commission Work Programme announced that 'to meet Europe's future demographic and labour market needs, the Commission will present a renewed approach on legal migration, including measures to improve the EU Blue Card Directive'.

This initiative represents the outcome of this review process.

7. It is made clear that the EU already faces structural skills shortages and mismatches in certain sectors that could potentially limit growth, productivity and innovation (e.g. healthcare, ICT and engineering) and thus slow down Europe's continued economic recovery and limit its competitiveness.

Activation, training and up-skilling of the existing labour force must therefore all play a role in countering these shortages, especially at a time when overall unemployment is high.

8. The proposal makes it clear that the EU's current immigration system for highly skilled workers is not well-equipped for current and future challenges.

The overall inflow of highly skilled third-country workers to the Member States that participate in both the EU Blue Card scheme under the EU Blue Card Directive⁵ and national schemes for highly skilled workers was 23 419 in 2012, 34 904 in 2013 and 38 774 in 2014.

When compared with the projected needs for highly specialised workers in certain sectors, these numbers will never be sufficient to address current and future labour and skills shortages in the EU in highly skilled occupations.

³ Political Guidelines Juncker; Priorities for this Commission; Mission letter Commissioner Dimitrios Avramopoulos.

⁴ Commission Communication of 13 May 2015, A European Agenda On Migration, COM(2015) 240 final.

⁵ In line with the respective Protocols annexed to the Treaties, the UK, Ireland and Denmark do not participate in the EU Blue Card Directive,

9. The proposal also points out that while surveys on the intentions of highly educated potential migrants indicate that they find the EU relatively attractive, the EU is not sufficiently effective in converting this positive aspect into larger numbers of highly skilled workers or retaining home-grown talent in the EU, when compared with other developed economies.

Figures show that of all non-EU migrants who head for OECD countries, 48 % of low-educated migrants and 31 % of highly skilled migrants choose an EU destination⁶.

10. This proposal, which replaces the existing EU Blue Card Directive (2009/50/EC), aims to improve the EU's ability to attract and retain highly skilled third-country nationals, as well as to enhance their mobility and movement between jobs in different Member States.

The objective is to improve the EU's ability to effectively and promptly meet existing and emerging demands for highly skilled third-country nationals, and to offset skill shortages, in order to increase the contribution of economic immigration to enhancing the competitiveness of the EU economy and addressing the consequences of demographic ageing.

11. Lastly, it should be noted that the reports submitted by the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees and the Labour and Social Security Committee were both approved and fully reflect the content of the proposal.

Accordingly, the reports should be deemed to have been reproduced here in full in order to avoid repetition of analysis and consequent redundancy, and they should be attached to this Opinion, of which they form an integral part.

In view of the substance of this proposal, the following questions must be addressed:

a) Legal basis

This proposal concerns conditions of entry and residence for third-country nationals and procedures for issuing the necessary permits linked to highly skilled work. It also lays down the conditions under which a third-country national may reside in a second Member State.

Consequently, the appropriate legal basis is Article 79(2)(a) and (b) of the Treaty on the Functioning of the European Union, in conjunction with Article 79(1).

b) Principle of subsidiarity

Since the technical note drafted by the European Affairs Committee does not refer to the assessment of the principle of subsidiarity, the rapporteur of this Opinion states the following:

⁶ Senne, J.-N. and David, A., 'General Context and Contribution of Labour Migration in Europe' OECD 2016, due out shortly.

The objectives of this proposal, namely the establishment of a special admission procedure and the adoption of the conditions of entry and residence – and the rights – applicable to third-country nationals for the purpose of highly skilled employment and to their family members, cannot be sufficiently achieved by the Member States. In particular, the objectives of better exploiting the EU's overall attractiveness as regards ensuring these workers' mobility between Member States and offering a clear and single set of admission criteria across the Member States can be better achieved at Union level. The Union may therefore adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.

Consequently, the principle of subsidiarity has been complied with.

Furthermore, in accordance with the principle of proportionality, as set out in that Article, this proposal does not go beyond what is necessary in order to achieve those objectives.

PART III - OPINION

In the light of the information set out above, the European Affairs Committee is of the opinion that:

1. This initiative is not in breach of the principle of subsidiarity, in so far as the objective pursued will be achieved more effectively by means of action at Union level.
2. This concludes the scrutiny of this initiative.

Palácio de São Bento, 20 September 2016

Signed:

António Costa da Silva, Rapporteur

Regina Bastos, Chair of the Committee

PART IV - ANNEX

- Report from the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees;
- Report from the Labour and Social Security Committee;
- Technical note from the European Affairs Committee.