



## **PROPOSAL FOR A DIRECTIVE**

### **ON THE CONDITIONS OF ENTRY AND RESIDENCE OF THIRD-COUNTRY NATIONALS FOR THE PURPOSE OF HIGHLY SKILLED EMPLOYMENT**

#### **POSITION OF PEARLE- Live Performance Europe**

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#### **I. Introduction**

Pearle\*- Live Performance Europe, welcomes the Commission proposal for a Directive on the conditions of entry and residence of third-country nationals for the purpose of highly skilled employment, which revises the EU Blue Card scheme. In particular the proposed changes to the admission conditions will encourage take up by employers who employ third-country nationals in artistic organisations.

Pearle\* represents through its members associations about 10,000 organisations and companies in the performing arts and music sector. Pearle\* is recognised as a European employers association taking part in the European sectoral social dialogue for the live performance.

Members discussed the proposal at its general assembly meeting in Zurich on 25-26 November agreeing on the potential opportunities and advantages of the new Commission proposal to facilitate the employment of third-country nationals.

Although the EU Blue card scheme is already in place since 2009, employers in the live performance sector have not been able to make use of it due to the fact that the conditions are either too complicated or difficult to consider the option. However, in principle, employers could be interested in making use of this legal instrument when employing a highly skilled worker coming from a third country.

The Commission proposal of 7 June 2016 to reform the rules on highly skilled migrants coming to work to the EU should therefore increase to potential uptake of blue card in a sector as the live performance depending on some further improvements to the text.

## II. Main messages

1. In general, Pearle\*-Live Performance Europe supports the Commission proposal of 7 June 2016 on the revision of the directive on the conditions of entry and residence of third-country nationals for the purpose of highly skilled employment.
2. The new proposal addresses a number of concerns which Pearle\* had already formulated prior to the 2009 Directive, including scope, salary threshold, duration of the work contract, validity and the meaning of highly qualified.
3. The EU blue card proposal is the only legal instrument on third-country national employment which employers of the EU live performance sector could make use of, as other EU directives focus on specific categories of third country nationals which are not of immediate interest to the live performance sector (e.g. intra-corporate transferees directive). It therefore has a potential to be considered by employers as an opportunity to facilitate the employment of highly skilled third-country nationals.
4. The EU blue card scheme can complement national schemes where the duration of the contract exceeds three months. Failure to do so would create legal uncertainty for contracts of a duration more than three months and less than six months.
5. For the EU blue card to act as a single EU-wide scheme a number of improvements to the Commission proposal can be considered.

## III. Specific comments to the proposal

### 1. Definitions (chapter I, article 2)

The new proposal for directive clearly focuses on highly skilled third country nationals. The definitions allow to understand the Commission approach to the terminology on highly skilled persons. On the one hand there is a reference to higher professional qualifications, on the other hand reference is made to higher professional skills. The definition of both terms refer to higher education programmes or professional experience comparable to such education level. In practice it corresponds with people of about 21 years old.

In sectors such as live performance or sports, because of the type of their work the high professional skills are often already present at a younger age. It is quite common that youngsters are reknown as top talents at the age of 18 (or even younger), yet no one will doubt or argue that they have higher professional skills.

For that purpose **a derogation should be possible for these categories who can proof from their reputation, talent, portfolio and professional recognition that they qualify as if having obtained a higher education.** Several Member States have already such system in place for national labour permits.

## 2. Criteria for admission (chapter II, article 5)

### **a) Minimum duration of the work contract**

The proposal sets a criterion for a binding job offer or work contract of at least six months in the Member State concerned. Whilst Pearle welcomes that it is an improvement to the 2009 Directive which sets a minimum of 1 year, questions arise for those contracts of less than six months (and more than three months).

As described in article 1 the directive sets the **conditions of entry and residence of third-country nationals for more than three months.**

Setting the **minimum duration of the contract or job offer to three months would avoid a legal gap** for those third-country nationals who are offered a job of a duration between three and six months.

This is not unusual in cases of a project-based activities. Whereas in the live performance sector third-country nationals may be engaged for even shorter periods of three months, different member states have specific provisions for very short term employment (for example France just accepted new rules waiving the obligation for work permit for artists and top talents in the case of less than three month contracts).

A **lowering of the duration to three months** would still be in line with the subject matter of the directive, avoid any legal gap and would accommodate third-country nationals and employers for specific (shorter term) projects.

### **b) Salary threshold**

A minimum of 1.0 time the average gross salary (and not higher than 1.4 times higher) remains as a principle difficult to accept, as **it may lead to new or other salary levels** which are different from those negotiated by social partners in their respective sector or at company level. Should the third-country national for a similar job receive a higher wage it would create tensions and frustration with those who would not be employed under the blue card scheme.

Pearle is of the opinion **that it is preferable to employ such third-country nationals under the same conditions** as national or EU nationals who are employed according to the wages negotiated in the respective collective agreements.

As regards the salary threshold of 80% for employment in shortage occupations and for recent graduates, again a problem may arise with regard to national schemes who might

have a lower threshold. Therefore when there is a threshold that exists for one of these categories and this is lower than the directive should allow to apply it according to the national circumstances.

### 3. EU blue card and procedure

Article 10 proposes an **application procedure of 60 days** (or 30 days in case of recognised employer). This is an improvement to the Directive of 2009 but in a context where there is high competition for the best qualified, **an application procedure of 2 months is excessively long**. In some EU Member states the application for a labour permit can be processed in a period of only 14 days, which demonstrates that it is realistic and feasible to take a decision in a shorter timeframe.

In article 11 it is left to the Member States to set a **fee for the application**. It might be desirable to **set a threshold as a reference point** for Member States.

It is welcomed that the proposal foresees simplified procedures for **recognised employers** (art 12) and that it is underlined that the **recognition procedure shall not entail disproportionate or excessive administrative burden or costs** for employers. In this regard it is essential to keep in mind that the latter is essential for SMEs, by which a sector as the live performance is characterised.

Pearle\* is of the opinion that the **application procedure should be at least reduced to 30 days and 15 days in case of a recognised employer**, whereby the procedure for recognition should be proportionate in terms of administrative requirements (or costs).

### 4. Mobility between Member States

The proposal for Directive rightfully addresses issues of mobility between Member States. The added value of an EU blue card is precisely in the fact that a third-country national can be mobile in the EU for the purpose of executing his work.

One of the goals of mobility can be business activity as described in article 19 or to apply for an EU blue card in a second Member State (art 20). Also posting of workers is part of mobility, which is also understood to be an inherent part of the possible professional activities of an EU blue card holder employed by a European-based enterprise.

For instance in the live performance sector, posting is inherent to its activity performing in different cities inside a Member State as well as across Europe (and the world). The duration of the posting is usually of very short period ranging from a day to a number of days for one or more performances or tours abroad. When a third country national is part of a team in a live performance company it is absolutely essential that this artist can travel along with the other team members.

Pearle underlines that mobility is a key factor to develop an EU wide scheme for highly skilled third country nationals, who work with enterprises which operate in a European internal market.

#### IV. Conclusions

Pearle\* welcomes the Commission proposal on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment. In order to be able to reap the full benefits of a new EU blue card scheme, improvements could be made with regard to:

- **Definition** on highly professional skills, allowing **specific categories** such as artists to access the blue card based on the reputation, talent and professional recognition and to allow for derogation of young but highly talented artistic professionals.
- **Duration** of the EU blue card, **starting from 3 months** (instead of 6 months, thus avoiding a legal gap in case of employment contract between 3 and 6 months)
- **Salary threshold** to be in line with collective agreement and wage practices in the sectors concerned, rather than setting other or new thresholds
- **Shorter application procedures** should be possible, whether being a recognised or non-recognised employer

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Further any further questions, please contact:

Anita Debaere

Director Pearle\*-Live Performance Europe

[anita@pearle.ws](mailto:anita@pearle.ws)

tel +32-2-203.62.96