

Expert Group on Economic Migration

Discussion paper N°2

REVIEWING THE BLUE CARD DIRECTIVE

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1. Aim of the EU Blue Card Directive

The EU Blue Card Directive was adopted to facilitate the admission and mobility of highly qualified migrants and their family members by harmonizing entry and residence conditions throughout the EU and by providing for a legal status and a set of rights.

It is aimed at attracting highly qualified migrants from around the world who can contribute to boosting economic growth and competitiveness, in particular strengthen the EU's knowledge economy, addressing labour market shortages and offsetting the costs of demographic aging. The Directive also intends to offer a harmonised set of rights (minimum standards), to minimise brain drain in developing and middle-income countries and to encourage circular and temporary migration.

2. Evaluation of the EU Blue Card

The first implementation report on the Blue Card Directive¹ concluded on 22 May 2014 that there are wide variations between Member States in the number of Blue Cards granted and how the scheme is being embraced and promoted by them. The Directive as adopted on 25 May 2009² sets only minimum standards and leaves much leeway to MS through many "may-clauses" and references to national legislation.

While the report, based on short period of application³ and the limited available statistics for 2012 and 2013, concluded that it was too early to draw conclusions about the impact of the EU Blue Card on attracting highly qualified migrants to the EU, the Commission nevertheless expressed concern about flaws in the transposition, the low level of coherence, the limited set of rights and barriers to intra-EU mobility. The report also revealed a general lack of communication by MS of data and

¹ Communication of 22 May 2015 on the implementation of Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment ("EU Blue Card"), COM(2014)287 final.

² The Blue Card Directive was negotiated and adopted before the entry into force of Treaty of Lisbon. Under the former system unanimity was required in the Council, instead of the current qualified majority, and the European Parliament was not co-legislator. This led to long and difficult negotiations on the Commission's proposal.

³ Only 4 MS transposed on time by 19 June 2011, 5 by the end of 2011, 8 in the first half of 2012, 5 in the second half of 2012, and 2 only in 2013. Croatia joined on 1 July 2013.

measures taken in application of the Directive and a number of deficiencies in the transposition of the Directive.

In the meanwhile, the new Commission President Jean Claude Juncker made a "new policy on legal migration" one of his ten priorities, highlighting in particular the need to review of the Blue Card Directive. The goal is to make Europe at least as attractive as the favourite migration destinations such as Australia, Canada and the USA.

3. Identified shortcomings of the Blue Card

National parallel schemes for highly qualified migrants

Article 3(4) of the Directive explicitly allows Member States to run national schemes targeted at highly qualified migrants in parallel with the EU wide Blue Card scheme. These residence permits issued under such national schemes do not confer the right of residence in the other Member States as provided for in the Blue Card Directive. Combined with the sectorial approach to labour migration at EU-level, this results in a large number of labour migration schemes across the EU.

Some 17 Member States have made use - in one form or another - of the possibility of Article 3(4) and have a national policy in place for attracting highly qualified migrants besides the EU Blue Card.⁴ The policies that run in parallel are very diverse. Some Member States target highly qualified migrants, while others aim more widely at several categories of migrants.⁵ Some Member States have placed a specific focus on certain groups of individuals⁶ or on precise areas of occupation in which there are a specific national labour market needs and shortages⁷. These policies use different definitions for identifying highly qualified migrants, their scope varies, the conditions for entry and residence may be stricter or more liberal than the Blue Card, and different sets of rights are granted.

Furthermore, there is also a lot of divergence in the way Member States promote themselves to highly qualified migrants, facilitate their admission and entry (e.g. fast-track procedures for permits and visas, exemptions from general immigration requirements and labour market tests), run information campaigns and offer other incentives. Some of the systems in place are points-based systems while others are employer-led, demand driven systems like the Blue Card.

It could be argued that the existence of a multitude of parallel national schemes in the EU confuses potential migrants and dilutes the recognition and the attractiveness of the EU as a destination for skilled migrants. In addition, a policy preference for a national scheme for highly qualified workers, and better promotion of this, may impact on the EU Blue Cards issued by some Member States.⁸

On the other hand, parallel national schemes give more flexibility and allow for the admission of skilled migrants who do not meet the criteria of the EU schemes. In case of the Blue Card, which

⁴ For more info: EMN Study, Attracting Highly Qualified and Qualified Third-Country Nationals, Synthesis Report, 2013, pp. 16-21. http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/attracting/emnsr_attractinghqworkers_finalversion_23oct2013_publication.pdf

⁵ BE, EE, FI, EL, IT, LT, LU, SK, SI and SE have specific provisions in wider migration policies; AT, CZ, DE, ES, FR, NL and PT have separate policies targeted at highly qualified migrants.

⁶ E.g.: Executive staff and managerial employees; Researchers and scientists; or Intra-Corporate Transferees.

⁷ E.g.: Information and Communications Technology; Healthcare; Academia; Financial services; or Engineering.

⁸ As suggested by Annexes 3 and 4

focuses on a small group of well-paid highly-qualified migrants, these parallel schemes may therefore cover a genuine need (e.g. highly-qualified workers not meeting the salary requirements).

Questions for discussion:

- Would increasing the harmonisation level of the EU-wide rules for highly qualified workers (HQW) improve the attractiveness of the EU labour market? **Yes, absolutely.**
- How do you see the relation between the EU Blue Card and national parallel schemes for HQW? **Not aligned and in some instance contradictory: national schemes being more favorable than the Blue Card.**
- Does the existence of national parallel schemes result in internal competition, a complexity of multitude of schemes, a reduced attractiveness due to limited geographical scope, a diluted publicity effect or other effects? Or, on the contrary, does it allow for much needed flexibility to cater to migrant workers who do not meet the criteria of the EU schemes? **It differs per country. In some Member States it could benefit the non-EU resource in others creates contradiction and misunderstandings.**
- In general, what could be done to encourage Member States to make better use of the Blue Card to attract highly-qualified workers, researchers and innovators? **Make them aware of the skills shortages. As well as the positive aspects of having skilled migrants transferring their knowledge into their respective labor markets.**

Level of flexibility for Member States

The Directive sets only minimum standards and leaves much leeway to MS through many “may-clauses” and references to national legislation. Member States have thus developed diverging “national interpretations” of the Blue Card within the lines set by the Directive.

Questions:

- Would further harmonisation of admission channels at EU-level be desirable? Would it help with increasing the “EU brand” recognition as an attractive destination for HQW? Does this bring a need for allowing more flexibility to MS to tailor the Blue Card to their national needs? **On the contrary more harmonization of clear criteria and requirements at EU level should be mandated to the Member States.**
- Would a more prescriptive Blue Card, with less “may-clauses” and room for national interpretation, increase its strength as an instrument? **Yes** Or would this lead to overly inflexible rules with too little space to adapt to the national context and needs? **If harmonized properly, not.**

Recognition of qualifications

The recognition of qualifications remains an important hurdle for the admission of foreign highly-qualified workers. The process can be time-consuming and its outcome uncertain. When it is part of the admissions procedure of a labour migrant, it can result in overly restrictive policies if the degree

has to be relevant for the job, regardless of whether it was obtained 2 years or 20 years ago.

Equivalent professional experience is not widely recognized when selecting labour migrants. To date, the focus is firmly on the formal qualifications (degrees), whereas the optional provision to take into account “at least five years of relevant 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” has been transposed into national legislation by only 12 Member States⁹. In fact, not all of these Member States even actually apply this provision¹⁰. One of the difficulties encountered by Member States is how to assess such relevant professional experience as evidence of higher professional qualifications.

Questions

- Should the required link between the higher educational qualification and the job offer be loosened (e.g. a migrant with an MA or MSc in Psychology should not be prevented from working as marketing manager)? What would be the pros and cons of offering more flexibility on this aspect? [Yes. Education could be overruled by experience and special skills.](#)
- Are you aware of well-functioning and/or innovative national systems for the recognition of qualifications? [Yes, the German example.](#) How can the cooperation between the immigration authorities, employment services and qualification recognition bodies be improved? [By having open and transparent communication on the skills shortage, contributions that the private sector could make to re-train unemployed persons and graduates, whilst the government facilitates the access of non-EU skills to the EU for the skills transfer.](#)
- How can relevant professional experience in lieu of higher education qualifications be assessed and taken into account? [Trusting the employing company’s judgment which guarantees at all times the stay and the skills of the resource.](#)

4. Where is the untapped potential and how to reach it?

Graduate students

Many potential highly-skilled migrant workers currently already reside in the EU. For instance, over one million non-EU students reside in the European Union. Many of them will graduate with marketable skills, local degrees, knowledge of the local language and the ambition to get ahead in life. Nevertheless, many of them have to leave the EU after their studies as their permits run out and, as inexperienced young graduates, they do not immediately find employers who are willing to sponsor their immigration status. Currently, in some Member States graduates may stay for a limited period of time after finishing their studies to look for a job (these periods generally range from 6 to 18 months). The proposal for a new Directive on Students and Researchers that is currently being negotiated also includes such a “job seeking permit for recent graduates”.¹¹

Questions:

- Several Member States have recognised the potential of foreign students and allow them to stay to look for a job under certain conditions. Once they have found a job, would the EU Blue Card be a suitable instrument to retain them? [Could be an incentive for them.](#)

- Would this require different conditions (e.g. lower salary threshold) than currently is the case? Or would facilitated access to the EU Blue Card dilute its focus on retaining the “best and the brightest”? **If the objective is to retain the best and the brightest, conditions could be amended. It is important not to have a category trying to fit all types of different resources (e.g high skilled, students, researchers etc.).**

⁹ DE, EE, EL, ES, FR, LT, LU, MT, PL, PT, SE and SK

¹⁰ E.g.: DE foresees the option to use this derogation through a regulation but does not currently apply it.

¹¹ The minimum period of stay is still under negotiation.

Entrepreneurs

European countries increasingly recognise the potential of attracting and retaining promising entrepreneurs from abroad. So far only a few Member States have implemented dedicated schemes for entrepreneurs, on top of a package with targeted measures for entrepreneurs.¹² Admission schemes are focused mostly on wealthy investors, while the EU already has many investors looking for promising start-ups. As is the case for highly-qualified workers, individual Member States may lack the recognition or attractiveness for entrepreneurs which the EU, as the largest economy in the world, can provide.

Questions:

- Would an EU Blue Card with a wider scope be a suitable instrument to attract entrepreneurs? Could a separate set of admission conditions for entrepreneurs be introduced under the umbrella of the EU Blue Card? If so, how?
- Should a potential EU Blue Card covering entrepreneurs include a “start-up visa” focussing on young potentials with a promising idea but without the business credentials? Should this cover all sectors or focus on specific sectors? Should this be combined with a “start-up package” of support services (e.g. mentoring, networking support, financial support, incubator, etc.)?
- How can business potential of start-up entrepreneurs be recognised when little is proven? Could there be a role for the entrepreneur's backer (venture capitalist, business angel, accelerator...) in the admission process?

Others

Other categories of migrants in the EU (e.g. family migrants, asylum-seekers) may also possess valuable skills that they cannot apply due to restrictions in the access to the labour market or lose over time due to de-skilling while waiting during procedures.

The lives of many resourceful and entrepreneurial people outside the EU are uprooted due to conflict and other hardships. For reasons out of their control they may look at years of losing significant amounts of money, incurring great personal hardship and professional inactivity before acquiring some degree of certainty again. These people often resort to wasteful, expensive and dangerous migration channels to find a way out. For some of them, existing legal migration channels could provide an alternative, while avoiding the waste of human capital that is currently associated with irregular migration and asylum.

Questions:

- Could existing legal migration channels, such as the EU Blue Card, provide an alternative for resourceful, entrepreneurial and/or highly-qualified migrants who are fleeing from conflict?
Probably yes.
- If so, how could such migrants be identified? **On the basis of proven experience and skills to be assessed in a neutral way regardless of their home situation or status.**

¹² E.g. Sirius Programme for graduate entrepreneurs in the UK (<https://www.gov.uk/government/collections/sirius-programme-for-graduate-entrepreneurs>) or the Italia Startup Visa in Italy (<http://italiastartupvisa.mise.gov.it/>)

- How could the countries of origin involved be identified and limited?
- How could they be attracted and their admission facilitated?

5. Admission under the Blue Card Directive

The current Blue Card Directive applies a **salary threshold** as a condition for entry. This is an easily verifiable admission condition, but it also indicates the economic need of the skills which the migrant worker brings. Therefore, it plays an indirect, but significant, role in determining the scope of the admission scheme. Currently, the Blue Card Directive sets the salary threshold at 1,5 times the average gross annual salary of the Member State concerned. A comparison of available data on salary thresholds with Eurostat and OECD data on average gross annual salaries suggests that in some MS the threshold may not correspond to the minimum 1,5 times the average gross annual salary. The Directive also foresees a possible derogation for employment in professions which are in particular need of third-country national workers and which belong to the major groups 1 and 2 of ISCO, for which the salary threshold may be at least 1,2 times the average gross annual salary in the Member State concerned.¹³ Some of the parallel national schemes do not have a salary threshold thus allowing a wider scope for the admission of wider categories of migrants.

The scope of the Blue Card Directive is also determined by, for unregulated professions, the required relevant higher professional qualifications in the occupation or sector specified in the work contract or in the binding job offer as provided for in national law, and, for regulated professions, the required document attesting fulfilment of the conditions set out under national law for the exercise by Union citizens of the regulated profession specified in the work contract or binding job offer as provided for in national law.

Currently, the rules on **how to apply for an EU Blue Card** vary from Member State due to the leeway given to Member States. A majority of Member States requires that the migrant makes the application for an EU Blue Card, but some require the employer to do so,¹⁴ jointly by the migrant and the employer,¹⁵ or either the migrant or the employer.¹⁶ In most Member States applications can be considered and examined when the applicant is either outside or already residing in the MS as holder of a valid residence permit or national long-stay visa.¹⁷ Seventeen Member States¹⁸ also applied the derogation that applications may be submitted when the applicant does not have a valid residence permit but is legally present in its territory. In LU and SE an application can only be submitted from outside the territory¹⁹. Thirteen Member States set the **time limit for adopting a decision** on a

¹³ CY, DE, EE, EL, ES, HU, LU, MT and PT have transposed the option to apply a salary threshold of at least 1,2 times the average gross annual salary for employment in professions which are in particular need of migrant workers and belong to ISCO major groups 1 and 2. Only DE, EE, HU and LU are known to effectively made use of this derogation possibility to set a lower salary threshold.

¹⁴ CY, ES, FR, IT and MT.

¹⁵ BE and LV.

¹⁶ NL, AT, PT and SI.

¹⁷ Except in BG where applications can only be made in the territory. EL requires a pre-application for a visa outside and then a formal application within the territory, with a visa for the issuance of a Blue Card.

¹⁸ Except BG, EL, ES, FR, IT, LV, PL and RO.

¹⁹ Standstill derogation of Article 10(4): a corresponding national provision existed in LU and SE prior to the adoption of the Directive.

complete application and giving written notification to the applicant at 90 days²⁰, yet the others set shorter time limits.²¹ The time needed other procedures, such as the recognition of qualifications, is not included in this period. Most MS determined the consequence of a decision not having been taken by the end of this period, though some have only foreseen an extension of the deadline.²²

The Directive determines that Member States must set a **standard period of validity** of the EU Blue Card in their legislation of between one and four years which, in principle, applies to all applications and renewals. As an exception, if the work contract covers a period less than the standard period, the EU Blue Card is to be issued or renewed for the duration of the work contract plus three months.

Member States issue Blue Cards for widely differing periods of validity within this range.²³ However, some Member States appear to link the period of validity of the EU Blue Card to the length of the work contract plus three months and set a *maximum* period (between 1-4 years) instead of a *standard* period.

Questions

- How do you evaluate the usefulness of the salary threshold as a selection criterion? Is it too restrictive or not selective enough? Is it too rudimentary or does it allow for a useful selection? *It allows for a useful selection and is very objective.*
- Would it be better to link it to the median salary rather than the average? Would it be better to calculate it per job type or per sector? *Yes, since each sector is and job type is different.*
- Should more derogations, i.e. different salary thresholds, be made possible? E.g. for shortage occupations, recent graduates? Could for some occupations with high skill shortages a derogation for the (high) skill level be envisaged? *For niche skills in demand the labor market standards would already set the thresholds by themselves.*
- How do you evaluate the rules on how to apply for an EU Blue Card? How do you evaluate the wide variations between the Member States? *Very diverse and complex.*
- How do you evaluate the variations in the periods of validity for which EU Blue Cards are issued by Member States? Does this affect the attractiveness? How does this compare to the national parallel permits? *In some instances national permits are more flexible and attractive (e.g. the Netherlands).*
- Could there be a role for certain "certified" employers in the admission process? *Yes, absolutely. The employer should fulfill and meet certain criteria set up by the EU standards and this could award him the capability of selecting its resources, guaranteeing full compliance with the law on their behalf. A recognized sponsorship program would be adequate.*

²⁰ BE, CY, CZ, DE, EL, FI, FR, IT, HU, LU, MT, NL and SE.

²¹ 60 days (EE, LT and PT; SK and PL for complicated cases), 56 days (AT), 45 days (ES), 30 days (LV, RO and SI; SK and PL for non-complicated cases) and 7 days (BG).

²² BE, EL, IT and PL.

²³ One year in BG, CY, ES, LT, MT and PT, and 13 months in BE. AT, CZ, EL, FI, IT, LU, PL, RO, SE and SI set the period at two years and EE at two years and three months. FR and SK set it at three years and DE, HU and NL at four years. LV set it at five years.

6. Intra-EU mobility

Intra-EU mobility of migrant workers is one of the main added values of EU legislation, as it cannot be provided for by national law. It is also widely accepted (and provided for by law) that migrants become full members of the EU workforce after a certain period and if certain conditions are met, either through long-term residency status or through naturalisation. The EU has already facilitated intra-EU mobility for certain foreign workers, including Blue Card holders, mostly because their jobs required such mobility and/or because they were considered desirable and low-risk. However, the degree of facilitation provided varies across the Directives and it is only within the most recent Intra-Corporate Transferees (ICTs) Directive that the principle of "mutual recognition of permits" has been enshrined in EU legislation, at least to a certain extent.

Questions

- Would the perspective of facilitated residence in other Member States of the EU (that apply the Blue Card Directive) further increase the attractiveness of the scheme? **Yes, but not in all instances since high skilled workers tend to return to home country.**
- How could intra-EU mobility for Blue Card holders be improved, concretely? Should this be based on the ICTs model? Should alternative models be considered? **Clear and mandatory criteria for the implementation of the ICT could be seen as an alternative to the Blue Card.**

7. Other factors that affect the attractiveness and potential success

Promotion

Currently, it is up to individual Member States to promote EU Blue Cards. Some Member States do this actively, others prioritize their national permits for highly qualified workers.

Questions

- Would it be useful to do more promotion of the EU Blue Card at EU level? **Not when the national regulation are more convenient than the Blue Card.**
- If so, what would be the most efficient way to do so and reach potential applicants?

Family members

The admission conditions for highly-qualified migrants are not wholly responsible for the success (or failure) in attracting and retaining such workers. Surveys among expatriates show that opportunities (or lack thereof) for the spouse play a major role.

EU Member States already admit the spouse and dependants of highly-qualified workers under fairly favourable conditions (when compared to the general framework). However, the procedural deadlines remain clearly out of step with those applying to the highly-qualified worker him/herself.

The recently adopted ICT Directive grants more favourable conditions to family members of intra-corporate transferees. These family members receive their permits at the same time as the migrant worker and are given access to the labour market.

Questions:

- Should the favorable conditions for family members of highly-qualified migrants be improved? If so, how? Normally several national systems already grant the right to work to the spouses and family of the high skilled migrant. When this is not the case the Blue Card would be an adequate alternative.