

Revision of the Blue Card Directive

OVERVIEW

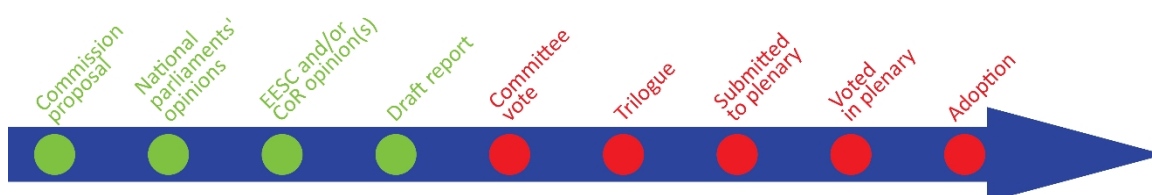
Attracting highly qualified immigrants to Europe has been one of the EU's key priorities for several years. However, up until now the EU has not been as successful as other OECD countries. This demand for workers is expected to increase due to the increasing shortage of certain skills and the aging of the EU's population.

The proposed directive, which would replace the 2009 Blue Card Directive, increases the attractiveness of the EU highly skilled migration scheme by expanding its scope, lowering criteria for admission, expanding the rights of beneficiaries, and abolishing parallel national schemes.

Stakeholders and experts agree with some proposed changes, while others have received more criticism (for example, the abolition of national schemes). Both EU advisory committees have issued opinions and some national parliaments have made comments on the proposal. The Council started work on the proposal in July 2016.

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

<i>Committee responsible:</i>	Committee on Civil Liberties, Justice and Home Affairs (LIBE)	COM(2016) 378 7.6.2016
<i>Rapporteur:</i>	Claude Moraes (S&D, UK)	2016/0176(COD)
<i>Shadow rapporteurs:</i>	Mariya Gabriel (EPP, Bulgaria) Kazimierz Michał Ujazdowski (ECR, Poland) Nathalie Griesbeck (ALDE, France) Barbara Spinelli (GUE/NGL, Italy) Bodil Valero (Greens/EFA, Sweden) Laura Ferrara (EFDD, Italy) Gilles Lebreton (ENF, France)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	Awaiting committee decision	



Introduction

After the 2009 Blue Card Directive had been [evaluated](#) as not sufficiently successful in attracting highly skilled migrants into the EU, the European Commission decided to revise and improve it. This is considered especially relevant in the context of the current [migration](#) crisis, which requires not only immediate, short-term solutions, but a more far-reaching, durable answer to questions posed by the current economic and demographic situation.

Currently, the EU is not reaching its full potential in relation to highly qualified migrants: according to [OECD](#) data, only 25.4 % of immigrants coming to the EU have high-level education, whereas 35.6 % of the immigrants to other OECD countries have this level of education. The need for highly qualified workers is expected to increase significantly (an [increase](#) from 68 to 83 million jobs between 2012 and 2025). This is accompanied by a [decrease](#) in the EU's working population and the overall aging of the EU population in general, presenting a challenge to the sustainability of the current trend.

Existing situation

According to Article 79 [TFEU](#), the EU may adopt measures related to conditions of entry and residence, as well as the definition of rights of third-country nationals legally residing in the EU. However, Article 79(5) TFEU preserves the right of Member States to determine volumes of admission of economic migrants entering their labour markets.

Currently, it is Council Directive 2009/50/EC (the 'Blue Card Directive'), which determines the entry and residence conditions for the purpose of highly qualified employment at EU level. The Blue Card Directive does not apply to the UK, Ireland and Denmark since they opted out under their Treaty protocols. The Blue Card has been criticised for being ineffective – among its perceived deficiencies are its limited scope and high eligibility standards, including the high salary threshold, limited harmonisation and intra-EU mobility, lengthy bureaucracy, and (more contentiously) the existence of parallel national schemes. In many Member States, the directive did not draw in as many people as the national programmes (Figure 1). The role that Member States play in using and promoting (or not) the Blue Card as the main highly qualified immigration scheme has been key in this respect. Compared with the highly successful and promoted Dutch Highly Skilled Migrant Programme (HSMP),¹ for example, the Blue Card's administrative burden, as well as its relatively long processing times, may have contributed to only few eligible people choosing the Blue Card over HSMP. In Germany, on the other hand, the Blue Card was a great success. Almost all highly skilled third-country nationals applied for a Blue Card, which can be attributed to several factors: Germany's [commitment](#) to actively use the Blue Card scheme and its high labour demand, aided perhaps by the perceived [complexity](#) of German national immigration law.

Figure 1 - Comparison of EU Blue Cards (BC) and first permits to highly skilled third-country nationals (other) issued by Member States in 2015

	BC	other
Belgium	19	2 679
Bulgaria	61	0
Czech Republic	181	45
Germany	14 620	11
Estonia	19	0
Greece	0	0
Spain	4	2 547
France	659	2 552
Croatia	32	0
Italy	237	1 006
Cyprus	0	662
Latvia	87	143
Lithuania	128	0
Luxembourg	336	0
Hungary	15	0
Malta	0	0
Netherlands	20	7 909
Austria	140	1 173
Poland	369	570
Portugal	:	896
Romania	140	140
Slovenia	15	0
Slovakia	7	0
Finland	15	959
Sweden	2	4 527

Source: Eurostat [migr_resbc1](#) and [migr_resocc](#)

Since the Blue Card Directive was negotiated and adopted before the Lisbon Treaty entered into force, its adoption required unanimity in the Council, while the European Parliament was only consulted. The negotiations in the Council resulted in a directive which sets minimum standards and provides Member States with wide discretion regarding its implementation in national law. As a consequence, the [implementation](#) of the Blue Card Directive in Member States has been very heterogeneous.

Not all Member States, for example, have opted to recognise five years of professional experience at a comparable level to higher education qualifications as evidence of higher professional qualifications. Some Member States have set their salary thresholds at above or below 1.5 times the average gross annual salary (e.g. for professions in particular need of migrant workers), and the standard periods of validity of the card vary between one and five years (even though the directive lays down that the maximum period of validity is four years).

Most Member States have adopted the option to withdraw or not renew the card if the holder does not have sufficient resources to maintain themselves or their family. In most states the migrant makes the application for the card, but others require the employer, or the employer and the migrant jointly, to do so. The time limit for adopting a decision on an application varies between 7 and 90 days.

A majority of Member States allow equal treatment in access to highly qualified employment after two years, and nearly all require the authorisation of a competent authority if the card-holder changes employer within the first two years. Most Member States have transposed provisions on temporary unemployment (the beneficiary may be unemployed for less than three consecutive months and not more than once), and some even apply conditions that are more favourable.

There is also variation with respect to the application of provisions for residence in other Member States. The directive stipulates that the Blue Card holder may move to a second Member State after 18 months of legal residence in the first Member State, and may apply for a second Blue Card in the first Member State or within a month of entering the second Member State.

Comparative elements

In discussions on how to revise the EU Blue Card scheme, comparisons were made with other immigration systems, especially because, as previously stated, other OECD countries have been more successful in attracting highly skilled migrants. The 'expression of interest system',² existing in Canada, Australia and New Zealand, was considered, but [rejected](#) as an option for the EU for reasons of subsidiarity and proportionality. A DG IPOL [study](#), for example, considers the advantage of the Canadian system to be initial pre-selection, which assesses the education of migrants quickly and efficiently. However, the study also questions the feasibility of this in the EU, because it could entail the introduction of another level of decision-making in migration and administration.

Parliament's starting position

The European Parliament has repeatedly called for revision of the EU's legal migration policy with a view to better managing migration. For example, in its [resolution](#) on 'the situation in the Mediterranean and the need for a holistic EU approach on migration' of 12 April 2016, the Parliament criticises the fragmented nature of the EU's legal migration framework, and states that this may have to be changed in the future in order to fill in the gaps in the EU labour market. Nevertheless, it emphasises the revision of the Blue

Card Directive specifically, calling for it to be 'ambitious and targeted', and focused not only on the highly qualified, but also on high-qualification occupations where there are documented shortages. Parliament also calls for removing inconsistencies in the present Directive, particularly as regards parallel national schemes. The [resolution](#) on 'refugees: social inclusion and integration into the labour market', adopted on 5 July 2016, also calls for the revision of the Blue Card Directive, and draws attention to the problem of recognition of refugees' existing qualifications and skills, calling on the Commission to propose guidelines for their recognition.

The previous parliamentary term also dealt with issues relevant for the revision of the Blue Card. The [resolution](#) on the 'integration of migrants, its effects on the labour market and the external dimension of social security coordination', adopted on 14 March 2013, welcomed the 2009 Blue Card Directive, but wanted to see the results of its implementation. It also called for better integration of young migrants who graduated from universities in Member States, a European entry system open to Member States on a voluntary basis, an international platform on EURES, better coordination at European level, and guidelines on how to better recognise qualifications of third-country nationals, including refugees and asylum-seekers.

Council starting position

At the Justice and Home Affairs Council meeting in December 2016, the Maltese Minister for Home Affairs and National Security Carmelo Abela [said](#) that the Maltese Presidency would continue and facilitate work on legal migration, including the Blue Card Directive.

Preparation of the proposal

In 2014, the Commission [communication](#) on the implementation of the 2009 Blue Card described its under-performance and deficiencies, and Jean-Claude Juncker made the reform of EU's legal migration framework, including the revision of the Blue Card Directive, one of his [priorities](#). The following year, the Commission developed this issue further in its [European Agenda on Migration](#), with legal migration one of its four pillars, and launched a public consultation from May to September 2015. Stakeholders were invited to share their views not only on the EU Blue Card, but also on various aspects of the EU's labour migration policies for highly skilled workers in general. The consultation, the report on which was [published](#) on 6 April 2016, resulted in 625 contributions from employers and their organisations, third-country nationals, academia, national ministries, NGOs and other interested parties. Findings show that the 2009 Blue Card is not sufficiently known, with only 55 % of respondents knowing of its existence. A majority of the respondents (71 %) think that Blue Card's attractiveness could be improved, especially if its scope were extended (80 %). Such an extension of scope might be to entrepreneurs in high-tech sectors (39 % of respondents), or facilitation of access for international graduates of European universities (58 %), job-seeking permits for the highly skilled (59 %) or for sectors experiencing labour shortages (56 %). Fast-track entry procedures (44 %) and a clear, streamlined and uniform scheme (41 %) are the most often indicated means through which the scheme's attractiveness could be improved. While 53 % think that one unified EU-wide scheme would be more attractive for high-skilled workers, 34 % would still retain parallel national schemes along with the EU Blue Card.

In addition to that, the OECD and the Commission conducted an analysis of EU labour migration policies, the results of which were published on the same day as the new legislative proposal, 7 June 2016. The study [report](#) concludes that Europe is under-

achieving in attracting highly skilled foreign workers. In order to improve this, the EU could revise the Blue Card Directive, in particular by lowering the wage threshold, which would especially benefit younger applicants. Access to the EU labour market should be facilitated, especially for those who have graduated in the EU. The report proposes creating a pool of candidates whose qualifications have been recognised, and it also suggests simplifying procedures for the recognition of qualifications and the creation of a pool of trusted employers. Furthermore, it emphasises the importance of improving possibilities for intra-EU mobility, because this would help present the EU as a single labour market for highly skilled workers, something that ought to increase the appeal of the Blue Card.

On the same day, the Commission published the [Impact Assessment](#) for the new proposal, which was evaluated positively in the EPRS [initial appraisal](#). The appraisal suggests, however, that quantitative evidence, particularly regarding the economic impacts of the proposal, might need to be explored further. EPRS has also published an [implementation appraisal](#), which gives further information on sources publicly available on the implementation, application and effectiveness of the current directive up to December 2015.

The changes the proposal would bring

The [new proposal](#) sets out admission conditions and rights of highly skilled third-country workers in accordance with Article 79 TFEU. Its new provisions have the aim of increasing the attractiveness of the revised Blue Card and tackling the shortcomings of the 2009 directive. Inter alia, the proposal would entail faster, simpler and more inclusive access for highly skilled third-country nationals to the Member States' labour markets, better mobility within the EU and more rights for the beneficiaries.

For example, the length of contract required to obtain the card has been reduced from 12 months to six months, as well as the length of time required to obtain long-term residence if the Blue Card holder has resided continuously in one Member State (from five to three years). Time that needs to be spent in the first Member State before obtaining permission to reside in another Member State has also been shortened (from 18 to 12 months). Blue Card holders would also be able to enter and stay in other Member States for the purpose of carrying out a business activity without having to procure a work permit from the other Member State.

The new proposal sets the standard validity period of the Blue Card to at least 24 months, or length of the contract plus three months, but a renewal should last at least 24 months. Applicants should be notified of the decision within 60 days, and this period is even shorter for 'recognised employers', a new optional system for Member States according to which certain employers recognised by the Member State may obtain access to the fast-track recognition procedure of 30 days maximum.

Blue Card holders would also be able to exercise a self-employed activity in parallel to their main work, to which the Blue Card pertains. Access to highly skilled employment in the EU is also simplified, and Member States may only ask the holder to communicate changes of employer or other changes which may affect the holder's status as Blue Card beneficiary. Family members of Blue Card holders may now receive their permits without delay, which facilitates family reunification, as well as the reducing of limitations to their access to the labour market (although a labour market test can still be carried out before giving access).

Salary thresholds have also been reduced to equivalent to, or at the highest 1.4 times, the average gross annual national salary. In accordance with Parliament's resolutions, the new scheme offers more flexibility for recent graduates and workers in occupations suffering shortages, who would need to reach only 80 % of the national salary threshold. The new scheme also makes it mandatory for Member States to recognise professional experience as an alternative to education qualifications, which may prove challenging in the absence of concrete guidelines, as the Parliament has already recognised.

The scope of the proposal is extended to include third-country national family members of EU citizens and highly skilled beneficiaries of international protection who already reside in the EU and have the right to work under EU asylum rules (under Directive 2011/95/EU). Long-term residents, seasonal workers and posted workers are excluded.

To increase the popularity of the new scheme, and to address the inconsistencies in the previous scheme, the revision proposes to abolish parallel national schemes.

Advisory committees

Both advisory committees have given opinions on the proposal. The Committee of the Regions adopted [its opinion on legal migration](#) (rapporteur Olgierd Geblewicz, EPP, Poland) at its plenary session on 8 December 2016. It welcomes the Commission's proposal as a step in the right direction and sets out measures for greater involvement at local and regional level. These levels are especially important because they can improve the EU's data, determine where migrants are most needed, and improve integration.

The European Economic and Social Committee adopted its opinion ([Towards a coherent EU labour immigration policy with regard to the EU Blue Card](#), rapporteur: Peter Clever, Germany) at its plenary session on 14 December 2016. The Committee welcomes the revision of the directive, but would prefer that Member States keep their national schemes. It also expresses doubt over the application of lower salary thresholds, and emphasises the importance of non-discrimination of third-country nationals and close involvement of social partners.

National parliaments

The subsidiarity deadline for [national parliaments](#) to give reasoned opinions was 22 September 2016. National parliaments from 19 Member States considered the proposal, and two adopted reasoned opinions stating that the proposal does not comply with the principle of subsidiarity (the Czech Republic and Bulgaria). Additionally, national parliaments from five Member States sent [contributions](#) (Austria, Italy, Poland, Portugal, and Romania).

The two chambers of the Czech parliament issued reasoned opinions, where they withheld their support for the proposal, and concluded that it is not in compliance with the principle of subsidiarity. The mandatory abolition of parallel national schemes is considered especially problematic.

The Bulgarian parliament's reasoned opinion supports in principle efforts to improve EU's migration policies aimed at highly skilled workers. However, it also has reservations about subsidiarity and the proportionality of the measures and their impact on the Bulgarian labour market (especially the equating of educational qualifications and professional experience, lowering of salary thresholds, and the ban on parallel national schemes).

Stakeholders' views

This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.

[UNHCR](#) emphasises the importance of highly skilled refugees being included in the new scheme. The [ETUC](#) expresses its support for the Blue Card Directive, if it will be able to open legal channels and extend access to more migrants without undermining standards of protection. [Business Europe](#) agrees with attempts to reform the EU's legal migration and integration framework, because – due to the decreasing of Europe's workforce – labour market integration of third-country nationals is crucial for the EU's future growth and prosperity.

Academic views

Several features of the 2009 directive, which are still relevant for its revision, have been discussed and criticised. Steve Peers³ warned that the features of the 2009 Blue Card which would have been attractive to third-country nationals, such as short decision-making deadlines, job mobility, lower thresholds for younger applicants, and validity of permits, were either dropped or watered down in the legislative procedure. He also identified the exclusion of certain categories of people, such as beneficiaries of international protection, as a problem.

The new proposal has also already drawn some criticism. The abolition of parallel national schemes is expected to be a source of reluctance from the Member States, and as such would not make the EU more attractive according to [Jean-Baptiste Farcy](#). He also predicts a long and difficult legislative process for the directive under the current political climate. [Maria Vincenza Desiderio](#) agrees with this prediction, and discusses the abolition of national schemes and facilitated intra-EU mobility as some of the main points of contention.

Sona Kalantaryan⁴ and Ivan Martin⁵ also question the necessity of abolishing national schemes, which may be more flexible and dynamic in meeting the needs of national labour markets. They express concern over the adequacy of taking the national average salary as a threshold instead of a threshold related to sector/region/occupation-specific salary or one agreed through collective bargaining. In addition, the current proposal may not offer a mechanism enabling a pool of eligible potential candidates, but is merely a way for candidates who already have a job offer to get a permit.

Legislative process

The legislative proposal ([COM\(2016\) 378](#)) was published on 7 June 2016. It falls under the ordinary legislative procedure.

Other EU institutions reacted quickly to the proposal. The Council Working Party on Integration, Migration and Expulsion began work on the file in July 2016. In the European Parliament, the rapporteur for LIBE, Claude Moraes (S&D, UK), was appointed in February 2016. The EMPL rapporteur for opinion, Jean Lambert (Greens/EFA, UK), was appointed in October 2016. The Legal Affairs Committee (JURI) decided not to give an opinion.

There have been several events dealing with the Blue Card, for example an S&D hearing on [19 October 2016](#) and the LIBE Committee hearing on [7 November 2016](#). The LIBE Committee published its [draft report](#) in January 2017. The draft report, inter alia, proposes that the salary threshold be optional, that Blue Card holders need only notify a second Member State to which they move, rather than apply for another Blue Card, and

that seasonal workers in the EU be eligible as well. The minimum validity period of the Blue Card ought to be 36 instead of 24 months, and the maximum processing time 30 instead of 60 days. The three-year residence rule before obtaining long-term resident status ought to be without additional conditions. Beneficiaries of international protection who already have access to the labour market under asylum rules should also be eligible. The rapporteur maintains the Commission's position to abolish parallel national schemes, as this will increase the value of the EU Blue Card. Following initial discussions in the committee, more than 500 amendments to the draft report have been submitted by Members. The LIBE Committee vote is scheduled for June, after the EMPL vote on its opinion, which is scheduled for May.

EP supporting analysis

[The EU Blue Card Directive: Implementation Appraisal](#), EPRS, December 2015

[The New EU Blue Card Directive: Initial Appraisal of a European Commission Impact Assessment](#), EPRS, September 2016

[Third-country migration and European labour markets - Integrating foreigners](#), EPRS, July 2015

[Work and social welfare for asylum-seekers and refugees: Selected EU Member States](#), EPRS, December 2015

[Exploring new avenues for legislation for labour migration to the European Union](#), EP Policy Department C, September 2015

Other sources

[Conditions of entry and residence of third-country nationals for the purposes of highly skilled employment](#), European Parliament, Legislative Observatory (OEIL).

Endnotes

¹ Marcel Reurs, Transposition in the Netherlands, in *The Blue Card Directive: Central Themes, Problem Issues, and Implementation in Selected Member States*, by Carolus Grutters and Tineke Strik (Eds). Wolf Legal Publishers. 2013.

² Unlike the Blue Card, which is a demand-driven immigration system, expression of interest is a supply-driven immigration management tool: candidates express their interest in immigrating; they are evaluated and if satisfactory, placed into a pool of candidates from which they may be invited to apply for immigration.

³ Steve Peers, The Blue Card Directive, in *EU Immigration and Asylum Law (Text and Commentary)*, by Elspeth Guild; Steve Peers; Violeta Lax; Groenendijk Moreno; Acosta Kees; Diego Arcarazo. Brill Nijhoff. 2012.

⁴ Presentation at the S&D hearing on the Blue Card of 19 October 2016.

⁵ Presentation at the LIBE hearing on the Blue Card of 7 November 2016.

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