

EU Blue Card Directive

2016/0176(COD) - 07/06/2016 - Legislative proposal

PURPOSE: to establish the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the 2009 “EU Blue Card” Directive ([Council Directive 2009/50/EC](#)) intended to facilitate the admission and mobility of highly qualified third-country national workers, and their family members, by harmonising entry and residence conditions throughout the EU and by providing for a set of rights. The current EU Blue Card Directive has demonstrated **intrinsic weaknesses** such as restrictive admission conditions and very limited facilitation for intra-EU mobility.

The overall inflow of highly skilled third-country national workers to the participating Member States under both the EU Blue Card and national schemes for highly skilled workers was **23 419 in 2012, 34 904 in 2013 and 38 774 in 2014**. When compared to the projected needs for highly skilled workers in certain sectors, **these numbers are by far insufficient to address** the existing and projected future labour and skills shortages in the EU in highly skilled occupations.

The current fragmented situation with diverging and parallel national rules for the same category of third-country nationals across Member States is neither effective nor efficient for any party involved.

The conclusions of the European Council of 26 and 27 June 2014 state that in order to remain an attractive destination for talents and skills, Europe must compete in the global race for talent. **Strategies to maximise the opportunities of legal migration** should therefore be developed, including the streamlining of existing rules.

[The European Agenda on Migration](#) adopted on 13 May 2015 called for an **attractive EU-wide scheme for highly qualified third-country nationals**, and specifies that a review of Council Directive 2009/50/EC is needed to make it more effective in attracting talents to the Union and thereby address both the demographic challenges faced by the Union and labour and skills shortages in key sectors of the Union economy.

IMPACT ASSESSMENT: the preferred option includes therefore the following main elements:

- modifying the admission conditions and making the EU Blue Card accessible to a wider group of highly skilled workers; improving the rights associated with the EU Blue Card, including intra-EU mobility; and not extending the scope beyond highly skilled workers;
- national schemes for third-country nationals falling within the scope of application of this Directive would no longer be allowed;
- the legislative measures would be complemented by non-legislative actions and potentially by making the EU Blue Card accessible to highly skilled beneficiaries of international protection.

The estimated additional permits for this option are in the range of **minimum 32 484 to maximum 137 690 highly skilled workers** (per year, aggregate across participating Member States, variation depending on the salary threshold set by individual Member States). This would result in an estimated positive annual economic impact of between **EUR 1.4 billion to EUR 6.2 billion**.

CONTENT: 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. It seeks to establish a special admission procedure and the adoption of conditions of entry and residence, and the rights, applicable to third-country nationals for the purpose of highly skilled employment and their family members.

Definitions: the proposal sets out the definition given to "highly skilled employment", which replaces the concept of "highly qualified employment" in the current Directive. It refers to **paid employment, in accordance with national law and practice**, by a person having the necessary competence as proven by "higher professional qualifications". The latter can be attested by either "higher education qualifications" or by "higher professional skills" (i.e. skills attested by at least three years of professional experience of a level comparable to higher education qualifications and relevant to the work or profession to be carried out).

The definition of "**business activity**" is provided in order to define which professional activities can be carried out by the EU Blue Card holder in the context of the specific rules for short-term mobility to other Member States.

Scope: the proposal:

- does not cover EU citizens, third-country nationals who are EU long-term residents and want to move to another Member State, seasonal workers nor posted workers;
- shall not apply to third-country nationals who apply to reside in a Member State as **researchers**, within the meaning of [Directive \(EU\) 2016/801](#), in order to carry out a research project;
- provides that all third-country national **family members** of EU citizens are given access to the EU Blue Card in order to enable them to engage in highly skilled employment and perform business trips in different Member States regardless of whether or not the EU citizen accompanies them;
- continues to not apply to persons seeking international protection and awaiting decision on their status or to those who are beneficiaries of temporary protection or residing in a Member State on a strictly temporary basis. As a novelty it does cover, however, **beneficiaries of international protection** under [Directive 2011/95/EU](#) ("Qualification Directive").
- obliges Member States to **grant an EU Blue Card instead of a national permit** for highly skilled work to persons falling under its scope.

More favourable provisions: this proposal harmonises admission conditions and procedures for third-country nationals falling under its scope, and for their family members, as well as for their subsequent mobility to other Member States. Member States are nevertheless still allowed to grant more favourable conditions as regards rights.

Criteria for admission: besides the general conditions similar to those included in Directive 2009/50/EC and other existing acquis on legal migration (i.e., having a valid travel document, sickness insurance and not posing a threat to public policy, public security or public health), specific conditions include:

- a work contract or a binding job offer with a **duration of at least six months** in the Member State concerned, as admission is demand-driven. The required length of contract is shortened from 12 to 6 months compared to the current Directive;

- proof of higher professional qualifications, i.e. either higher education qualifications or higher professional skills;
- the salary specified in the work contract must be at least equal to a certain threshold determined by Member States within a **range of minimum 1.0 and maximum 1.4 times** the average gross annual salary in the Member State concerned;
- a **mandatory lower salary threshold** (at 80 percent of the general threshold) for shortage occupations determined by the Member States, as well as for young graduates;

As regards the possibility of carrying out a **labour market test**, the proposal states that it is only allowed in circumstances where a Member State's labour market undergoes serious disturbances, for example a high level of unemployment in a given occupation or sector in a particular region in their territory.

Procedure: applicants for whom a positive decision has been taken by the Member State concerned shall receive a residence permit called "EU Blue Card" stating the conditions under which they are allowed to work. **The standard period of validity for the EU Blue Card is at least 24 months.** Only if the work contract covers a shorter period, the EU Blue Card validity should be at least the duration of the work contract plus three months. However, when an EU Blue Card is renewed, **the period of validity should in any case be at least 24 months.**

Member States shall notify the applicant of a decision on an application at the latest **within 60 days** after the submission of the application. This is shortened from the 90 days in Directive 2009/50/EC. Member States may decide to impose fees for handling applications. However, they should not be disproportionate or excessive.

Rights: the proposal simplifies access to the labour market: EU Blue Card holders are granted full access to highly skilled employment. Member States can only require that they communicate changes of employer or changes that can affect the fulfilment of the EU Blue Card admission conditions. **Temporary unemployment** is allowed.

The proposal provides EU Blue Card holders **facilitated access to EU long-term resident status.** To reinforce the link to the country issuing the EU long-term resident status, it is required that the EU Blue Card holder has resided at least two years immediately prior to applying for the status in the Member State concerned.

The provisions on **equal treatment** of EU Blue Card holders with Member State nationals largely correspond to the rights provided under Directive 2009/50/EC.

Mobility between Member States: the proposal allows Blue Card holders to **enter and stay in other Member States** for the purpose of carrying out a business activity. Second Member States are not allowed to require a work permit or any other authorisation than the EU Blue Card issued by the first Member State for carrying out such activity.

- Where the EU Blue Card is issued by a Member State applying the Schengen acquis in full, the EU Blue Card holder can move within the Schengen area and carry out a business activity for 90 days within a 180-day period.
- Where the EU Blue Card is issued by a Member State not applying the Schengen acquis in full, Member States may require evidence of the purpose of the trip when an EU Blue Card holder crosses an external border for mobility purpose.
- Moreover, if an EU Blue Card is not eventually issued by the second Member State, the first Member State has to allow re-entry of the person concerned with possible family members.

Access to information: Member States are required to: (i) provide easily accessible information to applicants about entry and residence conditions, as well as rights; (ii) communicate to the Commission

data on a number of aspects, such as the annual salary thresholds, the list of shortage occupations, the cases in which Member States make use of the clause on ethical recruitment, the allowed business activities in their territory.

It should be noted that the United Kingdom, Ireland and Denmark shall not participate in the adoption of the Directive and therefore shall not be bound by it.