

December 2015

## The EU Blue Card Directive

**Directive 2009/50 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment**

*This briefing is one in a series of 'Implementation Appraisals' on the operation of existing EU legislation in practice. Each such briefing focuses on a specific EU law which is likely to be amended or reviewed as, foreseen in the European Commission's Annual Work Programme. Implementation Appraisals aim to provide a succinct overview of material publicly available on the implementation, application and effectiveness of an EU law to date - drawing on available input from the EU institutions and external organisations. They are provided to assist parliamentary committees in their consideration of the new proposals, once tabled.*

<b>EP committee responsible at time of adoption of the EU legislation:</b> Committee on Civil Liberties, Justice and Home Affairs (LIBE)
<b>Date of adoption of original legislation in plenary:</b> 20 November 2008
<b>Deadline for transposition of legislation:</b> 19 June 2011 <sup>1</sup>
<b>Planned date for review of legislation:</b> According to Article 21 (Reports) of Directive 2009/50, every three years, and for the first time no later than 19 June 2014, the European Commission shall report to Parliament and the Council on the application of this Directive in the Member States, in particular the assessment of the impact of Articles 3(4), 5 and 18, and shall propose any amendments that are necessary. Furthermore, the Commission shall notably assess the relevance of the salary threshold defined in Article 5 and of the derogations provided for in that Article, taking into account, inter alia, the diversity of economic, sectorial and geographical situations within the Member States. <sup>2</sup>
<b>Timeline for new amending legislation:</b> The Commission Work Programme 2015 ( <a href="#">Annex I: New Initiatives</a> ) noted that the objective (of the <a href="#">European Agenda on Migration</a> ) is to develop a new approach on legal migration to make the EU an attractive destination for talents and skills, as well as to improve the management of migration by intensifying cooperation with third countries, fostering burden sharing and solidarity and fighting against irregular migration and smuggling. The agenda specifically includes the review of the EU Blue Card Directive. Also the Commission Work Programme 2016 ( <a href="#">Annex I: New Initiatives</a> ) noted that one part of Better Migration Management package is an 'extension of the Blue Card approach'.

### 1. Background

In the recent years, the European Union has been facing various long-term challenges, including economic or demographic. One of the issues addressed in the [ten political priorities](#) of the Juncker Commission is migration. According to the [Political Guidelines for the European Commission](#) (July 2014), a new European policy on legal migration should endeavour 'to address shortages of specific skills and attract talent to better cope with the demographic challenges of the European Union'<sup>3</sup>. This policy aims at making Europe 'at least as attractive as the favourite migration destinations such as Australia, Canada and the USA.'<sup>4</sup> The policy concentrates on reviewing and potentially amending existing legal instrument on legal migration, notably the EU Blue Card Directive.

<sup>1</sup> The Commission launched infringement proceedings against 20 Member States which did not transpose the Directive into their national legislation in time. For further information, see also p. 5 and footnote 28.

<sup>2</sup> The report was submitted to the European Parliament on 22 May 2014 (COM(2014) 287 final). See further.

<sup>3</sup> Political Guidelines for the next European Commission (July 2014), p. 15.

<sup>4</sup> Ibid.

According to the Commission's [staff working document: "Regulatory Fitness and Performance Programme \(REFIT\): State of Play and Outlook"](#) accompanying the ["Better Regulation for Better Results – An EU Agenda"](#) a fitness check of Directive 2009/50 is being prepared for the year 2016<sup>5</sup>.

The initial Commission [proposal](#) (2001) intended to lay down common criteria for entry and residence of third-country nationals for the purpose of paid employment in general. However, this proposal, which took a general approach, was withdrawn. Instead, a more fragmentary, sectoral approach to the topic of labour migration has been taken, which concentrates on specific categories of potential legal migrants, such as highly-qualified, researchers or students. The EU Blue Card Directive addresses the issue of the legal migration of workers from non-EU countries, with specific skills who can fill the posts that cannot be filled by EU citizens. This directive is one of several existing EU instruments in the field of legal labour immigration into the EU. It was negotiated and adopted before the Lisbon Treaty entered into force. The European Parliament was only [consulted](#). At the time, the directive was adopted by unanimity in the Council.

**Some of instruments in the field of labour migration**

- Directive [2003/109](#) on long-term residents
- Directive [2003/86](#) on the right to family reunification
- Directive [2004/114](#) on students
- Directive [2005/71](#) on researchers
- Blue Card Directive [2009/50](#)
- Single Permit Directive [2011/95](#)
- Directive [2014/36](#) on seasonal workers
- Directive [2014/66](#) on intra-corporate transfer

After the changes introduced by the Lisbon Treaty, issues relating to migration and EU migration policy are adopted in the ordinary legislative procedure with the Parliament as a co-legislator. In accordance with Article 79 (2) TFEU, the Parliament and the Council adopt measures, inter alia, in the area of the conditions of entry and residence, and standards on the issue by Member States of residence permits. They also define the rights of third-country nationals residing legally in Member States, including the conditions governing freedom of movement and of residence in other Member States. The Parliament and Council can also support Member States with a view to promoting the integration of third-country nationals residing legally in their territories. However, according to Article 2(5) TFEU, these measures cannot entail the harmonisation of Member States' laws or regulations.

**• Directive [2009/50](#) on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment**

The EU Blue Card Directive is only applicable to *highly-qualified workers* from third-countries and their family members. It does not apply to a number of third-country nationals including asylum seekers, refugees, beneficiaries seeking international or national protection, posted workers etc.<sup>6</sup> The directive sets common rules for admission and stay of highly-qualified non-EU nationals who request admission to a Member State for the purposes of highly qualified employment. The directive is not applicable to the UK, Ireland and Denmark as they more opted-out from its application. An EU Blue Card is an authorisation entitling its holder to reside and work in the territory of the EU Member State issuing the card<sup>7</sup>. The directive also provides for measures that Member States can take to limit brain drain from the developing countries.<sup>8</sup>

**EU Blue Card Directive 2009/50**

- applies to the non-EU nationals for the purpose of highly qualified employment
- United Kingdom, Ireland and Denmark opted-out
- requires a valid work contract or a binding job offer for highly qualified employment of at least 1 year
- requires equal treatment and same rights of Blue card holders as Member State nationals
- Blue card is valid for 1 - 4 years
- Blue card can be renewed
- gives a broad discretion to Member States

<sup>5</sup> SWD(2015) 110 final.

<sup>6</sup> Article 3(2).

<sup>7</sup> Article 2 c).

<sup>8</sup> Article 8 (4) and Recital 22 of the directive.

**The directive sets the conditions of entry and residence in the territory of the Member States of third-country nationals for the purpose of highly qualified employment and of their family members. It also sets conditions for entry and residence of the holders of the EU Blue Card to the Member States other than the Member State which granted the card<sup>9</sup>. For the first time, the directive also provides for a definition of "highly qualified employment" as an employment of a person who:**

- in the Member State concerned, is protected as an employee under national employment law and/or in accordance with national practice, irrespective of the legal relationship, for the purpose of exercising genuine and effective work for, or under the direction of, someone else,
- is paid, and,
- has the required adequate and specific competence, as proven by higher professional qualifications.<sup>10</sup>

In order to receive an EU Blue Card, the third-country national must present:

- a valid work contract or a binding job offer for highly qualified employment of at least one year with a salary of at least 1,5 times<sup>11</sup> the average gross annual salary paid in the Member State concerned<sup>12</sup>,
- a valid travel document and evidence of a valid residence permit or of a national long-term visa,
- a proof of sickness insurance,
- for regulated professions, documents attesting fulfilment of the conditions set out under national law for the exercise by Union citizens of the regulated profession,
- for unregulated professions, documents attesting the relevant higher professional qualifications and
- not be considered to pose a threat to public policy, public security or public health<sup>13</sup>.

Member States have discretion to determine the volume of admission of third-country nationals entering their territory for the purposes of highly-qualified employment in line with Article 79(5) TFEU. They can decide whether the application for an EU Blue Card has to be made by the third-country national and/or his/her employer.<sup>14</sup> If the applicant meets the criteria Member States authorities can decide to grant him an EU Blue Card valid for a period between one and four years.

An application for a Blue Card can be refused if the above-mentioned conditions are not met or the presented documents have been fraudulently acquired, falsified or tampered with. An application can be also refused in cases when a Member State, because of the situation of its labour market, decides to give priority to EU citizens, third-country nationals already lawfully resident in the Member State or to EU long-term residents. Rejection is also possible in order to ensure ethical recruitment in sectors suffering from a lack of qualified workers in the countries of origin or if the potential employer has been sanctioned for undeclared work or illegal employment.<sup>15</sup> Based on the conditions of the directive, Member States can withdraw the Blue Card or refuse to renew it. In all these cases, the applicant has rights to legally challenge the decision concerned.<sup>16</sup>

The Blue Card is linked with various rights of the card holder and his/her family, for example:

- the right to enter and stay in a Member State that granted the Blue Card,
- the right to work in the sector connected,

---

<sup>9</sup> Article 1.

<sup>10</sup> Article 2 (b).

<sup>11</sup> According to directive, Article 5 (5), 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 (International Standard Classification of Occupation), the salary threshold may be at least 1,2 times the average gross annual salary in the Member State concerned.

<sup>12</sup> Member States have discretion to use different (higher) thresholds (Article 5(3)). This fact shows that the thresholds can vary among Member States. See scheme 1. For further specifics see, [Communication](#) (COM(2014) 287 final).

<sup>13</sup> Article 5.

<sup>14</sup> Article 10.

<sup>15</sup> Article 8.

<sup>16</sup> Article 11.

- the right to enjoy equal treatment with nationals of the Member State issuing the Blue Card, including in relation to working conditions, recognition of diplomas, certificates and other professional qualifications or free access to the entire territory of the Member State concerned,
- the right to move to another Member State for the purpose of highly qualified employment after 18 months of legal residence in the first Member State as an EU Blue Card holder,<sup>17</sup> and
- various favourable family reunification rights.

Member States can restrict these rights. They are explicitly allowed to run, in parallel with the EU Blue Card scheme, their own national schemes and issue residence permits other than an EU Blue Card for any purpose of employment<sup>18</sup>.

## 2. EU-level reports, evaluations and studies<sup>19</sup>

- **The European Migration Network<sup>20</sup> [Synthesis Report: Attracting Highly Qualified and Qualified Third-Country Nationals \(2013\)](#)**

This report closely researched the applicability of the EU Blue Card scheme and the national schemes in the EU27. As regards the main positives of the directive, it concluded that the directive:

- helped Member States with limited or no policies to introduce concepts and definitions and to develop their legal framework on admission and entry of highly qualified workers,
- encouraged policy-makers to consider the direction of the national policy, in terms of the needs of the labour market and the type of occupations / qualifications required to address emerging skills gaps, and
- allowed Member States to recognise the importance of additional incentives to influence the migration decision of third-country nationals<sup>21</sup>.

The report noted that the EU Blue Card has a potential to maximise the benefits of highly qualified third-country national migrants at the EU level by facilitating their mobility and allowing for skills progression and development, so that talent is both attracted to and, where still required, retained in the EU<sup>22</sup>.

- **[Communication](#) from the European Commission on the implementation of Directive 2009/50 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment (2014)<sup>23</sup>**

This is the first, and so far the only implementation report by the European Commission on the Blue Card Directive. By this report, the European Commission responds to its obligation included in Article 21 of the directive to report to Parliament and the Council on the application and implementation of the directive.

<sup>17</sup> Still, the Blue Card holder then needs to file a new application with the second Member State meeting (again) all the criteria set out in Article 5

<sup>18</sup> Article 3 (4).

<sup>19</sup> See also, other documents such as [Green Paper](#) of the European Commission on an EU approach to managing economic migration (2004).

<sup>20</sup> The [European Migration Network](#) comprises the European Commission, its Service Provider (ICF GHK-COWI) and EMN National Contact Points. It was established by [Council Decision 2008/381](#). EMN has to meet the information needs of Community institutions and of Member States' authorities and institutions on migration and asylum, by providing up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policymaking in the European Union in these areas (Article 1, Council Decision).

<sup>21</sup> p. 29 - 30.

<sup>22</sup> Ibid., p. 4.

<sup>23</sup> COM(2014) 287 final.

The report assessed the implementation of individual provisions of the directive by Member States and proposed some recommendations. The report clearly showed that there has been an obvious problem with implementation of the directive. The Commission noted that only four Member States (NL, CZ, ES and EE) implemented the directive on time. In the case of all other Member States (20 at the time of adoption of the directive) the Commission started infringement proceedings, which in the meantime have all been closed<sup>24</sup>. Because of the late implementation of the directive by the Member States, the report only evaluated data from 2012 and 2013. The report provided for some statistics which point to low rates of use of the Blue Card scheme, as in 2012, only 3644 Blue Cards were granted. In 2013, this number rose to 15 261. The report also pointed to a fragmented implementation of the directive. The data showed that in both years, the majority of all Blue Cards were awarded in Germany: 70,5 % in 2012 and 75,8 % in 2013. Most Blue Card holders come from Asia, particularly India and China. However no specification of the sector of the employment of Blue Card holders was provided.

#### Implementation report found

- low rates of use of the Blue Card
- most of the Blue Cards issued in Germany
- broad discretion of Member States
- low level of coherence
- competition between the Blue Card scheme and national schemes
- implementation deficiencies in Member States
- insufficient information about the Blue Card scheme abroad
- limited set of rights of card holders
- barriers to intra-EU mobility of card holders

The report highlighted the challenge of the EU Blue Card scheme competing with the national schemes<sup>25</sup> for highly-qualified employment which exist in a majority of Member States and which are more successful in attracting the workers. An example is the experience of the Netherlands, where in 2012, more than 5500 permits were given under the national scheme and only one under the EU Blue Card scheme.<sup>26</sup> Although the report argued that it is too early to draw real conclusions, it noted that the directive had set only minimum standards and had left a lot of leeway to the Member States through a broad discretion in transposition of the directive.

The Commission identified as the other main challenges of the directive

- various flaws in the transposition of the directive,
- low level of coherence between Member States,
- limited set of rights for the Blue Card holders,
- existing barriers to the intra-EU mobility for the Blue Card holders,
- lack of communication between individual Member States on the application of the directive, and
- insufficient information about the Blue Card scheme for the potential highly qualified migrants.

In order to respond to these shortcomings, the Commission promised to organise meetings with Member States, to make the best use of existing websites and to encourage Member States to improve their provision of information and to raise awareness. On the basis of available information and given the short time of application of the directive, the report did not propose any amendments.

#### • [Communication](#) from the European Commission on a European Agenda on Migration (2015)<sup>27</sup>

The new EU policy on legal migration envisages among other things, a better functioning of the EU Blue Card directive. In this context, the European Agenda on Migration confirmed the European Commission's intention to review of the EU Blue Card directive. The review should look into the ways of increasing Europe's attractiveness for global talent. Specifically, the communication announced that the review will look at the improvement of the

<sup>24</sup> However, before closing these infringement procedures, in relation to several countries ([AU, CY, GR, DE, SE, IT, MT, PL, PT](#)) the Commission issued reasoned opinions (under Article 258 TFEU) requesting these Member States to take action. In other cases the Commission issued formal notices.

<sup>25</sup> Some of national schemes are described in the [Synthesis Report for the EMN Focussed Study 2015](#): Determining labour shortages and the need for labour migration from third countries in the EU, November 2015.

<sup>26</sup> Ibid., p. 3.

<sup>27</sup> COM(2015) 240 final.

possibilities for intra EU mobility of Blue Card holders and at other issues, such as encompassing covering entrepreneurs who are willing to invest in Europe.<sup>28</sup>

- **European Commission's [Inception Impact Assessment](#) - Review of Directive 2009/50 of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment ("EU Blue Card" Directive) (2015)**

The Inception Impact Assessment was published with regard to the future review of the directive and to the likely impacts associated with this review. According to the inception impact assessment, the main objectives of the review of the directive are:

- improving the EU ability to attract and retain third-country highly skilled workers,
- effectively and promptly responding to existing and arising demands for highly qualified labour and offsetting skill shortages and
- examining the potential extension of the current Blue Card scheme.

These general objectives should be met while trying to develop a coherent approach and common immigration policy on highly-skilled third country nationals, simplifying and harmonising admission procedures and fostering intra-EU mobility of Blue Card holders. The inception impact assessment proposed several options for approach towards revision of the directive. These include no EU policy change, repealing the directive, comprehensive legislative action at EU level, amending the directive, and non-legislative actions. The inception impact assessment noted that if the review concludes that the new system must be improved, proposals by the Commission to amend the Blue Card Directive would be a natural option to explore.<sup>29</sup>

According to the 2015 [Better Regulation Guidelines](#) (SWD(2015)111final) **inception impact assessment** is a Roadmap for initiatives subject to an impact assessment. It sets out in greater detail the description of the problem, issues related to subsidiarity, the policy objectives and options as well as the likely impacts of each option.

The inception impact assessment noted that the proposed policy options can have various impacts, particularly:

- economic impact (e.g. positive impact in achieving single market), social impact (e.g. contribution to job creation),
- impact on simplification (e.g. increase of coherence and harmonisation of the regimes for admitting highly qualified nationals across Member States),
- impact on SMEs (e.g. growth of SMEs perspectives),
- impact on competitiveness and innovation (e.g. positive impact on the competitiveness of the labour force) and
- impact on third countries, international trade and investment (e.g. negative or positive impacts connected with a brain drain).

- **EP [Study](#): Exploring new avenues for legislation for labour migration to the European Union (2015)<sup>30</sup>**

The study provided a critical overview of the existing legal framework for labour migration at the EU level. It noted that 'the low level of use of EU labour migration policy tools, such as the EU Blue Card Directive suggested that the impact of EU labour migration policy on migratory movements is very limited'<sup>31</sup>. In this context it noted that attracting international labour over the medium- to long-term is a crucial strategic issue for the European Union. The study found that the present EU Blue Card imposes various costs on migrants and employers. It also identified that the rights of the Blue Card holders, especially with regard to intra-EU mobility are limited. At the

---

<sup>28</sup> Ibid., pp 14 - 15.

<sup>29</sup> Ibid., p. 4

<sup>30</sup> The study was commissioned by DG IPOL in the European Parliament's administration and was carried out by the Migration Policy Centre of the Robert Schuman Centre for Advanced Studies, European University Institute.

<sup>31</sup> Ibid., p. 10.



same time the study had remarked that 'the wide power of discretion retained by Member States undermined the potential of [the] directives'<sup>32</sup>.

The study identified several challenges of the EU Blue Card scheme, namely:

1. the costs for all parties involved: employers, beneficiary migrant workers and implementing States,<sup>33</sup>
2. insufficient additional rights to make it attractive for potential beneficiaries,
3. failure to ensure real added value in relation to highly-qualified national migration schemes,
4. use of the Blue Card scheme is limited to multinational companies with a European reach, with SMEs seem to be too often excluded because of the high costs, and
5. the scheme seems to work only in one country, Germany<sup>34</sup>.

In the context of the EU Blue Card scheme, the study outlined some general policy reform options, including, for example:

1. an introduction of one Blue Card that should give access to the whole EU labour market and not only to the Member State where it was granted. The study suggested that the scheme should revert to the original idea of one umbrella work permit for the whole EU. However, the study did not fully assess how to establish this while respecting the fact that the wage criteria applicable to highly-skilled workers may, with regard to the gross annual salary, differ from Member State to Member State,
2. a better coordination between the Blue Card and national labour migration schemes, or
3. an enhancement of rights linked with the Blue Card, in particular residence permits for family reunification for the relatives of Blue Card beneficiaries or extending the maximum period for granting the Blue Card.<sup>35</sup>

#### • Papers of the European Commission's [Expert Group on Economic Migration](#)

The Expert Group on Economic Migration was [set up](#) by the Commission (DG Migration and Home Affairs) in 2015. Its mission is to support the future policy development in the field of economic migration, for instance skills, labour shortage or economic migration directives. The expert group's [Discussion paper N°2](#) of March 2015 expressly addressed the Blue Card Directive. The paper, among other things, pointed out that at least 17 Member States have their own national scheme competing with the EU Blue Card scheme. It also noted that there is a lot of divergence in the practice of the individual Member States. Similarly it argued that the parallel national and EU schemes can confuse potential migrants and dilute the recognition and the attractiveness of the EU Blue Card Scheme. However it claimed that the existence of the national schemes can allow for the admission of the migrants who do not meet the criteria set by the EU Blue Card.

### 3. European Parliament position / MEP questions<sup>36</sup>

#### European Parliament [resolution](#) of 26 September 2007 on Policy priorities in the fight against illegal immigration of third-country nationals<sup>37</sup>

The European Parliament, in context of a [proposal](#) for a directive on the entry and residence conditions of highly skilled workers, expressed its support for any measure designed to increase the attractiveness of the EU to the most highly-skilled workers, so as to meet the needs of the EU labour market and promote Europe's prosperity.

<sup>32</sup> Ibid., p. 34.

<sup>33</sup> The study does not specify the costs in monetary values.

<sup>34</sup> This is connected with several factors, for example, Germany's lack of a national legal migration scheme for highly-qualified third-country nationals and its well identified need for university graduate workers. Study, p. 69.

<sup>35</sup> Ibid., p. 70 and 82.

<sup>36</sup> See also, European Parliament [resolution](#) of 9 June 2005 on the links between legal and illegal migration and integration of migrants.

<sup>37</sup> T6-0414/2007

The Parliament, to this end, called on the Commission and the Member States to explore ways to grant such workers the right to move freely within the EU and to allow such workers to remain within the EU for a limited period at the end of their contract or following redundancy to allow them to look for a job. Furthermore, the Parliament supported any simplification measure designed to facilitate the entry of such workers into the EU, whilst leaving the definition of specific needs and quotas for economic migrants to the Member States. It also acknowledged the risk of a drain brain from developing countries. In general, Parliament supported the creation of an EU work permit (the Blue Card system) for highly-skilled third-country nationals.

In its [follow-up](#)<sup>38</sup> to the resolution the European Commission noted that it has put forward this proposal which met the requests expressed in the resolution. The Commission also noted that it had included in this proposal a specific "brain drain clause" allowing the conclusion of specific agreements with countries of origin as well as provisions to support circular migration and to obtain the necessary data to monitor possible serious brain drain effects of this proposal.

**European Parliament [legislative resolution](#) of 20 November 2008 on the proposal for a Council directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment<sup>39</sup>**

By this legislative resolution Parliament adopted the Commission's proposal for a directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. At that time, Parliament was only consulted. A review of the Blue Card Directive today would entail the full involvement of the Parliament under the ordinary legislative procedure.

**European Parliament [resolution](#) of 25 October 2011 on promoting workers' mobility within the European Union<sup>40</sup>**

In this resolution Parliament, inter alia, reiterated that, in order to avoid inconsistencies in the area of the EU internal market, for the purpose of employment Member States must give preference to Union citizens and may give preference to third-country nationals who apply for highly qualified employment, as set out in Directive 2009/50. Furthermore, Parliament stressed the importance of rejecting applications for an EU Blue Card in labour market sectors for which the access to workers from other Member States is restricted on the basis of transitional arrangements.

The Commission, in its [follow-up](#) to this resolution, did not explicitly react to any of the points raised by the Parliament in the resolution<sup>41</sup>.

**Written questions**

**[Written question by MEPs Nathalie Griesbeck and Cecilia Wikström, December 2014](#)**

The MEPs asked the Commission whether it could specify its intention to submit a revision to the EU Blue Card Directive in the near future, and if so, what this revision would entail and when it would be implemented. They also inquired whether the Commission intended to do something with the competing national policy schemes and 'bring these rival systems to an end'.

**[Answer given by Mr Avramopoulos on behalf of the Commission, March 2015](#)**

The Commission informed the MEPs that it is committed to addressing the shortcomings of the Blue Card Directive in order to help Europe remedy skills shortages and attract the talent that it needs. It also noted that a review of this directive is an element of the new European Agenda on Migration, further analysing and assessing

---

<sup>38</sup> SP(2007)5763.

<sup>39</sup> P6\_TA(2008)0557.

<sup>40</sup> P7\_TA(2011)0455.

<sup>41</sup> SP(2012)28.



the current shortcomings of the directive, including the impact of parallel national schemes. On the basis of the on-going review, the Commission will consider further steps.

**Written question by MEP Traian Ungureanu, January 2015**

The MEP asked the Commission about its actions to ensure correct transposition and implementation of the Blue Card Directive across the EU since the publication of the communication on implementation (COM(2014) 287 final).

**Answer given by Mr Avramopoulos on behalf of the Commission, April 2015**

The Commission informed the MEP that since the communication on the implementation it has continued monitoring the implementation of the directive by Member States and has requested data and information on the application of the directive via the National Contact Points on the Blue Card Directive. It also promised that it will continue organising the collection and exchange of this information between Member States on a regular basis. Furthermore, the Commission said that on the basis of a review of the directive it will consider further steps.

**Written question by MEP David Casa, June 2015**

The MEP asked the Commission whether it intends to revamp the Blue Directive scheme in order to attract more highly qualified third-country nationals to Europe as the work on the Blue Card Directive has not been given enough exposure, and the EU-wide scheme enabled through this directive is underutilised.

**Written question by MEP Helga Stevens, June 2015**

In the context of the present mass influx of migrants, the MEP asked the Commission whether the latest proclamations the President of the Commission on 'facilitating work permits for refugees' mean an overhaul of the Blue Card Directive or whether a temporary clause will be introduced that removes the strict conditions as they currently apply (e.g. a concluded labour contract) for just this group of people.

**Written question by MEP Ivan Jakovčić, July 2015**

The MEP asked the Commission on the way in which it intends to reform the EU Blue Card Directive in order to establish an EU-wide pool of qualified migrants. Furthermore, he asked about the selection procedure under the new system.

**Answer given to these three questions by Mr Avramopoulos on behalf of the Commission, October 2015**

The European Commission answered that as part of the review, it set up an Expert Group on Economic Migration. Furthermore it launched a public consultation in order to collect opinions from stakeholders. The Commission also informed that it is preparing an impact assessment on the EU Blue Card Directive which intended to include an analysis of the effectiveness and impact of the directive and put forward possible policy options with an impact assessment. Based on the outcome of this impact assessment the Commission might propose a review of the directive.<sup>42</sup>

## **4. European Economic and Social Committee (EESC) and Committee of the Regions (CoR)**

In its own-initiative [opinion](#) on a more inclusive citizenship open to immigrants of 16 October 2013, the EESC provided its opinion on European immigration, citizenship and integration policy. In the context of the Blue Card Scheme, the EESC noted that Directive 2009/50 on the Blue Card for highly-skilled immigrants, in order to increase the attractiveness of European labour markets, includes provisions on the "intra-EU mobility" dimension and approach similar to that of the long duration status<sup>43</sup>. The EESC here argued that the Commission should investigate the barriers that in some Member States still hamper the implementation of the long-term resident status and the Blue Card and that the Commission should bring infringement proceedings against those Member States that fail to comply with Community legislation.<sup>44</sup>

<sup>42</sup> See also other questions of the MEPs; [O-000039/2015](#), [E-009179/2011](#), [E-009308/2011](#), [E-3486/10](#).

<sup>43</sup> See Directive [2003/109](#) on long-term residents.

<sup>44</sup> See also Explanatory [opinion](#) of the EESC on the role of legal immigration in the context of demographic challenges of 15 September 2010 or CoR's [opinion](#) on a common immigration policy for Europe of November 2008.

## 5. Public consultation

In context of Directive 2009/50, the Commission launched a [public consultation](#) on the EU Blue Card and the EU's labour migration policies that lasted from 27 May to 30 September 2015. The aim of the consultation was to collect opinions on several issues related to economic migration in order to contribute to the elaboration of a new European policy on legal migration and a review of the directive. With regard to the directive, the public consultation aimed at gathering opinions on how to address the shortcomings of the EU Blue Card scheme and how to make it more effective and attractive. The public consultation was addressed to the broadest public possible. EU citizens, organisations and third-country nationals were welcomed to contribute<sup>45</sup>. At the time of drafting of this briefing, the European Commission has not published the results of this public consultation nor, their summary.

## 6. Petitions/Citizens' inquiries

There have been several inquiries by the European citizens and others directed to the European Parliament's Citizens' Enquiries Unit ([Ask EP](#)) which were directly connected with the functioning of the EU Blue Card scheme and its application to third-country nationals. The issue of the directive has also been raised in several petitions.<sup>46</sup> For example, in [Petition 1330/2011](#) a Ghanaian national questioned the legality of the Italian legislation which regulated the residence conditions for citizens from third countries. He namely protested against regulations that are binding on the right of residence in pursuit of an occupation. The Commission in this context replied that Directive 2009/50 is the only EU legal instrument covering labour migration which inter alia provided that an EU Blue Card may not be withdrawn solely because of the unemployment of the Blue Card holder and that it provided protection against the withdrawal of the Blue Card if the period of unemployment is three months or less. However, the Commission concluded that the situation of the petitioner did not fall under the remit of EU law as he was unemployed for more than three months.

## 7. Conclusion

Labour migration policy has the potential to tackle demographic challenges and labour market shortages. As noted in the European Commission's Work Programme for 2015, the operation of Directive 2009/50 and its evaluation could be the first step towards a new European policy on legal migration. The directive sets the conditions for the work and residence of the third-country (non-EU) nationals in the EU territory but it covers only a specific group of third-country nationals - *highly-qualified workers* and their family members.

Despite the various positive aspects that have been introduced by the directive, such as a common European scheme for attracting highly-qualified workers from third-countries to the European Union, based on the available data one can note that there are various challenges to the existing EU Blue Card scheme. The main challenges include the general (un)attractiveness of the EU Blue Card scheme, limited use of the scheme, a lack of coordination between the EU Blue Card scheme and national schemes providing similar rights to the third-country nationals, and the limitation of the rights of the EU Blue Card holders including their intra-EU migration. Another considerable challenge to the scheme is linked with the problems of the transposition among the majority of the Member States. Although the Member States have in the end transposed the directive, their approach is very diverse. These issues present a serious stumbling block to the attractiveness and applicability of the EU Blue Card scheme.

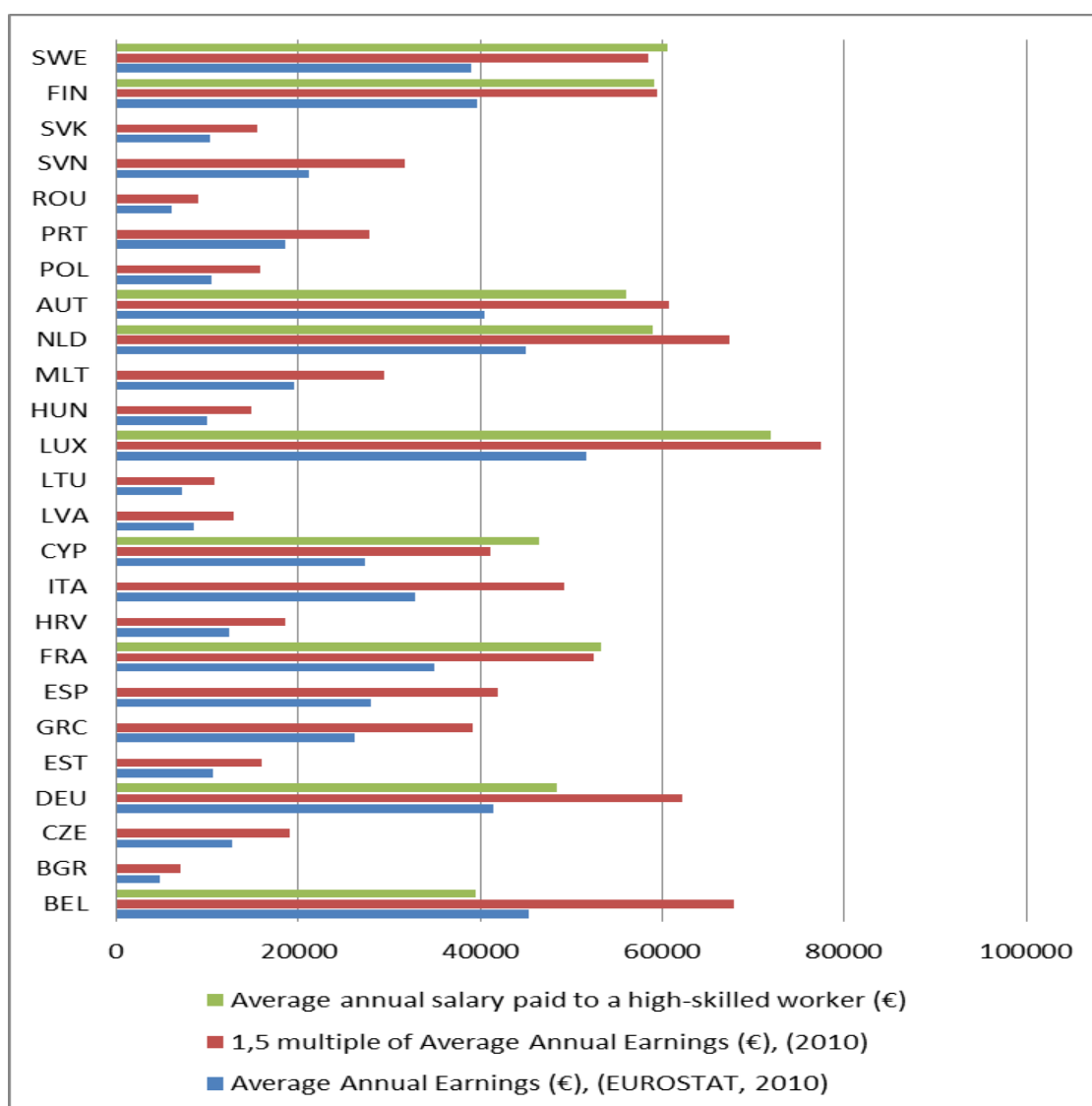
While the Parliament's role was limited to a consultation, during the adoption of the current EU Blue Card Directive, new amending legislation would be decided with the Parliament's full involvement under the ordinary legislative procedure.

---

<sup>45</sup> At the time of drafting of this briefing, no results or any other more specific information on this public consultation (e.g. questions of publication, contributions etc.) were published.

<sup>46</sup> See, for example, [Petition 1119/2011](#) or [Petition 1690/2012](#).

**Scheme 1: Average annual earnings (2010), 1,5 multiple thereof (2010) and an average salary paid to a high-skilled worker (2015)<sup>47</sup>**



<sup>47</sup> Compiled by the author on the basis of Eurostat, Annual earnings 2010, [Code: earn\_ses\_annual]. Extracted on 15 November 2015. The table illustrates the differences in average annual earnings among individual MS as they were in 2010. Based on information provided by EUROSTAT, a newer dataset on annual earnings in MS reflecting the year 2014 will be available only in June 2016. The scheme also shows the amount of required gross annual salary that should be paid to a highly-qualified migrant according to Article 5(3) Directive if all the MS applied 1,5 multiple threshold. It is also based on data from 2010. However, as noted on p. 3 (footnote 12) some of the MS do not apply 1,5 multiple threshold. Some of them even use a different method of calculation of the gross annual salary. Based on the available information, the salary threshold that should be paid to a highly-skilled worker that is the equivalent of at least 1,5 times the average gross salary is applied in BGR, CZE, EST, GRC, FRA, HRV, LVA, LUX, MLT, PRT, SVN, SVK and SWE. In ROU it is 4 times and in LTU 2 times. In DEU, FIN, NLD, POL, AUT, CYP and BEL it was not clear how an annual salary of highly-skilled workers has been calculated. With regard to [ITA](#), [ESP](#) and [HUN](#) no correspondent data has been found. The data on annual salary paid to highly-skilled workers are based on various national or European sources: [SWE](#), [FIN](#), [SVK](#), [SVN](#), [ROU](#), [PRT](#), [POL](#), [AUT](#), [NLD](#), [MLT](#), [LUX](#), [LTU](#), [LVA](#), [CYP](#), [HRV](#), [FRA](#), [GRC](#), [EST](#), [DEU](#), [CZE](#), [BGR](#), [BEL](#). The green line in the scheme represents the accessible data on the annual gross salary that has to be paid to a highly-skilled worker in 2015. This information was available with regard to nine MS.

**Scheme 2: EU Blue Cards granted, renewed and withdrawn in Member States between 2012 and 2014<sup>48</sup>**

EU Blue Cards	Granted			Renewed			Withdrawn		
	2012	2013	2014	2012	2013	2014	2012	2013	2014
Belgium	0	5	19	:	0	7	:	0	0
Bulgaria	15	14	21	0	12	25	:	:	0
Czech Republic	62	72	:	1	20	:	0	0	:
Germany	2584	11580	12108	0	1	0	:	:	0
Estonia	16	12	15	0	0	11	0	0	0
Greece	0	:	:	:	:	:	0	:	:
Spain	461	313	39	91	310	283	:	:	0
France	126	371	597	49	182	243	0	0	0
Croatia	:	10	7	:	0	3	:	0	4
Italy	6	87	165	:	0	0	:	0	0
Cyprus	0	0	0	0	0	0	0	0	0
Latvia	17	10	32	0	18	29	0	7	8
Lithuania	:	26	92	:	18	58	:	1	7
Luxembourg	183	236	262	0	70	219	0	0	1
Hungary	1	4	:	0	0	:	0	0	:
Malta	0	4	2	0	0	4	0	0	0
Netherlands	1	3	0	0	0	0	0	0	0
Austria	124	108	:	5	9	:	:	:	:
Poland	2	16	46	0	0	0	0	0	0
Portugal	2	4	3	:	1	0	:	:	0
Romania	46	71	190	0	0	41	0	6	9
Slovenia	9	3	8	:	1	2	1	0	0
Slovakia	7	8	6	0	0	0	0	0	0
Finland	2	5	:	0	0	:	0	0	:
Sweden	0	2	0	0	0	0	0	0	0
<b>Total</b>	<b>3664</b>	<b>12964</b>	<b>13612</b>	<b>146</b>	<b>642</b>	<b>925</b>	<b>1</b>	<b>14</b>	<b>29</b>

## 8. Other sources of reference

- [Third-country migration and European labour markets: Integrating foreigners](#), briefing, EPRS, July 2015.
- [Migration in the EU](#), Library statistical spotlight, Library of the European Parliament, June 2013.
- Kalantaryan, S., and I. Martín (2015), [Reforming the EU Blue Card](#), Migration Policy Centre; Policy Brief; 2015/08, European University Institute, Florence.
- Belmonte M., [The EU Blue Card - is there a need for a more comprehensive approach?](#), Institute for European Studies, Issue 2015/3, June 2015.
- Eisele, K.: [Why come here if I can go there? Assessing the 'Attractiveness' of the EU's Blue Card Directive for 'Highly Qualified' Immigrants](#), CEPS, October 2013.

To contact the Policy Cycle Unit, please e-mail: [EPRS-PolicyCycle@ep.europa.eu](mailto:EPRS-PolicyCycle@ep.europa.eu)

Manuscript completed in November 2015. Brussels © European Union, 2015.

The opinions expressed in this document are the sole responsibility of the author and do not represent an official position of the European Parliament. Reproduction and translation of this document for non-commercial purposes are authorized, provided the source is acknowledged and the publisher is given prior notice and sent a copy.

[www.europarl.europa.eu/thinktank](http://www.europarl.europa.eu/thinktank) (Internet) – [www.eptthinktank.eu](http://www.eptthinktank.eu) (blog) – [www.eprs.sso.ep.parl.union.eu](http://www.eprs.sso.ep.parl.union.eu) (Intranet)

<sup>48</sup> Compiled by the author on the basis on the information of the data of the Eurostat, EU Blue Cards by type of decision, occupation and citizenship [migr\_resbc1]. Extracted on 6 October 2015.