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*The New Blue Card Scheme:  
A Second Chance for Europe to Attract Foreign Talents*

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*Abstract*

*European migration policies have changed considerably in recent times, and the doors of many EU Countries are now willingly opened only to “talented” immigrants. On 7 October 2021, the Council finally adopted the new rules for the entry and residence of highly skilled workers from outside the EU under the revised Blue Card Directive. The new rules aim at introducing more flexible admission conditions, enhancing rights and the possibility to move and work more easily between EU Member States. After giving a brief legal framework of the text adopted, the paper deals with a first analysis of the new scheme and the old unresolved issues, especially under the lens of the impact on EU migration policies.*

## 1. Background

The [Directive \(EU\) 2021/1883](#) of The European Parliament and of the Council of 20 October 2021 *on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, and repealing Council Directive 2009/50/EC* entered into force 20 days after its publication in the [Official Journal](#).

The [previous](#) text (Council Directive 2009/50/EC of 25 May 2009) had demonstrated intrinsic weaknesses such as restrictive admission conditions and very limited facilitation for intra-EU mobility, as [reported](#) in 2014. This, combined with many different sets of parallel rules, conditions and procedures for admitting the same category of highly skilled workers which apply across EU Member States, has limited *de facto* the EU Blue Card's attractiveness and usage. As already [observed](#), the main elements of the original Blue Card proposal which aimed to attract highly-skilled migrants were “*dropped or watered down*”: a short decision-making deadline; a derogation from the salary threshold for younger workers; and the rules on in-country applications, job mobility and validity of permits.

In that context, in mid-2016 the previous Commission tabled a [proposal](#) as part of the EU's efforts to develop a comprehensive migration management policy – finally based on Article 79 TFEU – and in particular of a new policy on legal migration, contributing to the [EU Growth Strategy](#), in line with Europe 2020 priorities.

The negotiations between the Parliament and the Commission ended at the beginning of 2019. They were resumed in autumn 2020, finally leading to the [agreement](#) on 17 May 2021. On 15 September 2021, the revised text of the reform was [approved](#) with 556 votes in favor, 105 against and 31 abstentions. On 7 October 2021 Council of the EU [adopted](#) the revised text of the Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (hereinafter the EU Blue Card Directive), with the aim to attract and retain highly-qualified workers, particularly in sectors facing skills shortages.

With the new rules, on the test bench there are: more inclusive admission criteria; enhanced rights, including intra-EU mobility; family reunification, simplification of procedures for recognized employers. Revolutionary and long-expected is also the broadening of the scope of application, redesigned to include non-EU family members of EU citizens and beneficiaries of international protection.

## 2. The new ‘make-up’ of the EU Blue Card

The [EU Blue Card](#) is a work and residence permit for non-EU/EEA nationals for the purpose of highly qualified employment. It can be requested by foreign workers residing in a non-EU country after obtaining an entry visa with the same reason – even outside the *quota* set by flows

decrees<sup>1</sup> – or by workers legally residing in another EU Country.

Having regard to the Directive (EU) 2021/1883, the new rules establish more inclusive admission criteria (art. 5), grant a high level of access to the labour market and equal treatment (art. 16), extend the subjective scope of application in order to include beneficiaries of international protection and non-EU family members of EU citizens (artt. 3 and 9); facilitate family reunification (artt. 17 and 22) and [intra-EU mobility](#) (artt. 20 and 21); simplify the procedures (artt. 9 and 11), especially for *recognised* workers (art. 13).

Among the condition of admission, the applicant has to present a work contract or a binding job offer of a minimum of 6 months (instead of 1 year), as well as evidence of higher qualifications or professional skills. In particular, a foreign worker who wants to apply for a Blue Card visa has to: (1) have a valid work contract or binding offer of highly qualified employment for at least six months; (2) be offered a gross annual salary that meets the threshold set by Member States (although lower salary thresholds may be applied in some cases, e.g. for recent graduates or professions in particular need of workers); (3) fulfil, as the case may be, the regulatory conditions set out for the exercise of the specific profession, or (3.1) have relevant higher professional qualifications, for unregulated professions. In case of IT workers, they have to prove relevant “higher professional skills”.

Having regard to this, it is not possible to conduct an in-depth analysis of the entire text; nevertheless, some bullet points about the most important reform interventions are worth mentioning.

- *Facilitation of the evidence of being highly skilled*

As to the *qualifications*, the revised concept of “highly qualified employment” (art. 2) refers to *paid* employment – self employed workers, service providers, entrepreneurs are not included though – in accordance with national law and practice, by a person having the necessary competence, to be proven by “*higher professional qualifications*”. The latter can be now attested by either “higher education qualifications” (i.e. the successful completion of a post-secondary higher education or equivalent tertiary education programme, corresponding at least to level 6 of ISCED 2011 or to level 6 of the European Qualification Framework) 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

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<sup>1</sup> A “quota” is defined as the share of a total that is assigned to a particular group. In Europe, Member States do apply quotas or limits as measures to manage labour migration from third countries. In Italy, the art. 27 and following of the Legislative Decree n. 286/98 (“Testo Unico sull’immigrazione”) provide for a series of categories of workers for whom the authorization (“*nulla osta*”) for work is either not necessary or, when it is required, is issued outside of the quotas periodically established by the flow decree.

carried out). As an option, Member States might accept admission of those with five years' professional experience in a field. Invariably, the level of required skills remains the same, but it becomes mandatory for Member States to recognise professional experience as an alternative to education qualifications (artt. 2 and 26).

In sum, exempting applicants from providing certain documents, as well as subjecting them to shorter deadlines for notification of the decision, appears to be a measure in line with the more inclusive scheme that the Commission wanted to achieve. However, in practice, the recognition procedures vary considerably amongst Member States and are often [lengthy and burdensome](#), representing an additional hurdle for migrants wishing to integrate into a Member State's labour market.

- *Reduction of the salary threshold*

The reform reduces the salary threshold for applicants to at least 100% and not more than 160% of the average gross annual salary in the Member State of employment, differently from the previous 150% minimum with no upper limit. Optionally, the threshold may be further cut by Member States by 20% for recent graduates (within the last three years) and for some jobs (managers and professionals), but the reduced threshold cannot go below the average national salary. According to Article 5(3), the salary threshold should be chosen also within the range of the lower and upper limits, *after consulting the social partners in accordance with national practices*.

Such a measure, it has been [observed](#), does not represent a revolutionary intervention. Indeed, since most Member States already apply the 1.5 average salary threshold, they are not required to change it to meet the new law's requirement of a threshold between 1 and 1.6 times national average salary. In this sense, despite the achievement of a higher level of harmonization thanks to the establishment of lower and upper limits, Member States remain in control over the level of the salary threshold which will be calculated on a national average of the wages, and over the shortage occupations to which a lower threshold will apply. Hence, the reformed scheme does not prevent the general reluctance of Member States. Some of them are particularly determined to retain national schemes for admission of highly qualified workers and may wish to retain a gap between the salary thresholds in EU and national schemes, as they: (i) will not reduce the salary threshold for the Blue Card scheme; or (ii) will not use the relevant optional derogations to reduce the threshold for some groups of workers.

- *Inclusion of highly-skilled beneficiaries of international protection*

The new text complements the "[Qualification Directive](#)" to the extent that the scope of this proposal is finally extended to highly skilled beneficiaries of international protection as

defined by the article 2(a), as well as non-EU family members of EU citizens as mentioned above. Refugees or beneficiary protection holders will be given access to the EU Blue Card scheme and will be enabled to take up employment across Member States in accordance with their skills and education, filling occupational shortages in particular regions.

According to the Chapter IV of the Blue Card Directive, they have a wide set of rights and benefits as Blue Card holders, including: to enter, re-enter and stay in the territory of the EU Member State issuing the Blue Card; to be treated in the same way as nationals of the concerned Member State in terms of working conditions, education and training, social security and access to service; to accumulate periods of residence in different Member States to be eligible for an EU Long-Term residence permit (LTR), request family reunification and the labour market accessing the Member State having granted them protection (Whereas n. 16). A corollary of such a switch is expected to be much more liberal family reunification rights.

Next, the text adopted stresses that the status of a beneficiary of international protection is *independent* of whether the beneficiary is also an EU Blue Card holder and the validity of that EU Blue Card. As such, beneficiaries of international protection may be able to leverage themselves out of the more restrictive provisions of the Common European Asylum System, in particular with regard to family reunification by convincing their employers to seek Blue Cards for them. Member States are encouraged to facilitate the recognition of documents attesting the relevant higher professional qualifications of the concerned third-country national and, as regards beneficiaries of international protection who may not have the necessary documents, to «*establish arrangements for the appropriate assessment and validation of their prior higher education qualifications or, where relevant, higher professional skills*» (Whereas n. 23). This constitutes a very positive encouragement since at an [early stage](#) refugees or subsidiary protection holders usually cannot rely on proven documentation or past records to assess their skills and qualifications.

### **3. Unresolved issues**

At first glance, the adopted scheme seems to overcome several previous bureaucratic obstacles, which hindered intra-EU labour mobility for European citizens as well as for immigrants from third countries. A closer look, however, reveals that some issues are still open.

First, despite the declared attempt to reduce the gap between national and Blue Card scheme, the new rules seem to set only minimum standards, leaving much leeway to Member States through many discretionary provisions and references to national legislation.

Since the [impact assessment](#) of mid-2016, parallel national schemes were considered «neither effective nor efficient», with the "complexity of the current regulatory framework for

recruiting" highly-skilled workers creating costs and administrative burden.

As a compromise, the new law tiring out of the tunnel only indirectly impacts national schemes for admission of highly qualified workers, as it co-exists with national law.

As [noted in doctrine](#), the initial coercive approach of the proposal – according to which Member States would have been to transform their national \ systems into Blue Card ones with no competing national schemes – was gradually abandoned in the negotiations *«at the behest of a (limited) number of Member States which most firmly wanted to retain the possibility of maintaining and developing schemes tailored specifically to meet the requests of their employers»*.

Accordingly, the Council confirmed its position in the sense of maintaining the possibility of such schemes. Nevertheless, contrary to the previous Directive 2009/50/EC, the adopted text does not allow Member States to have parallel national schemes targeting the same group of highly skilled workers. This means that they may only issue national permits to third-country national workers not falling under the scope of the Directive, within the limitations set out in other EU legislation in the field of legal migration. Therefore, parallel national schemes will still exist, but their attractiveness, compared to the Blue Card scheme, will be reduced<sup>2</sup>.

Similarly, Member States can only retain pre-existing treaties on highly qualified labour migration with non-EU countries, but not sign new ones. Finally, the adopted text reverts to the *status quo* that new bilateral or multilateral agreements are possible (see art. 4, most favorable provisions).

Second, the EU Blue Card scheme would have been much more courageous if it had included also *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. The Reception Directive requires Member States to allow asylum seekers to work if they are more than 12 months in a country without having received a decision on their application. However, many Member States have been positively [experienced](#) more favorable conditions on time period, allowing asylum seekers to get access to the labour market immediately (e.g. in Sweden) or at the latest within twelve months of lodging an asylum application<sup>3</sup>.

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<sup>2</sup> In all EU legal migration schemes that have been adopted since 2009 (for intra-corporate transferees, seasonal workers, students and researchers), parallel schemes of Member States have been abolished and streamlined into one system to improve clarity. As such, it is a demonstration of the EU efforts to support its Member States in making their labour markets more visible and competitive in the global race for talent.

<sup>3</sup> In Portugal the right to work is provided after one month the asylum seekers have formally requested for the international protection. In Belgium, Denmark, Finland, Italy, Poland and Spain they can work sixty days. In Luxembourg and Slovenia, asylum seekers can work after nine months with peculiar conditions. In Bulgaria, the Czech Republic, Estonia, Romania and Slovakia after twelve months. In France, Germany, Hungary and Latvia however they are subject to a resident labour market test to ensure that the position could not be filled by a member of the domestic labour force.

Additionally, as the current pandemic [highlighted](#), third-country workers are overrepresented in a number of key sectors (agriculture, health care, domestic workers). If under normal circumstances they have to cope with several [barriers](#) to labour market integration, conversely asylum seekers and refugees have proven to be crucial during the [pandemic](#) in the support of local communities.

#### ***4. Final remarks***

The European Union has a relatively strong attractiveness for highly educated potential migrants; however, it counts low numbers of highly skilled workers attracted to EU and low retention rates of talent. To fill this gap, policies might consider [attractiveness as multifaceted](#), therefore addressing multiple factors and components such as, not only wages and working conditions, but also social security, tax regimes, educational systems – especially if families are involved – administrative burden, a society's attitude towards immigrants, security and long-term career and residence prospects.

Since the EU is currently losing the [global race for talent](#), falling behind other OECD countries (such as USA, Canada, and Australia), the expectations on the impact of this reformed Directive are very high, also considering the Global labour migration [trends](#) – between 2017 and 2019 the number of people migrating for work internationally increased from 164 to 169 million. [Brexit](#) is also relevant in this respect: since British citizens no longer benefit from the freedom of movement within the European Union, various Member States (e.g. Germany) are encouraging them to come and work there, by applying for a EU Blue Card, which can now be regarded as one of the most attractive residence permits.

Member States will have a two-year period to bring their national legislation in line with the Directive. Yet, national schemes tailored to domestic needs might offer greater flexibility. According to this, the competition and differences between the Member States are not an obstacle. They might be rather engaged in a sort of “reinforced and integrated” cooperation between different subsets of members, offering beneficial packages amongst themselves<sup>4</sup>.

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<sup>4</sup> The causes of failure are not to search in the Blue Card instrument *per se*, but rather in the ways this has been implemented in the single Member States. To give some examples of the competition intra-EU before the reform, see the Austrian [Red-White-Red Card](#); the French “[Passeport Talent](#)”; the Portuguese “[Tech Visa](#)” in the area of technology and innovation. Interesting the experience in [Sweden](#), where there is no difference between unskilled and skilled worker immigration, the Immigration Office encourages to use the national standard work permit, since the EU blue Card «in other EU countries [these permits] can have certain perks but in Sweden there are no additional perks and only extra requirements. As such most people choose to apply for a standard work permit». Conversely, in [Germany](#), where the largest share of EU Blue Cards among EU countries is issued (some 84%<sup>3</sup>) there are no other national immigration programmes competing with the EU Blue Card. The proliferation of parallel national admission schemes has offered some [inventive ideas](#) to refine and advance the current system and to

To conclude, the overall impression is that not much is to be expected in the months to come as long as the revision of the Long-Term Residents Directive 2003/109/EC and a review of the Single Permit Directive 2011/98/EU will not be completed, as well as the other measures put forward by the [Communication on a New Pact on Migration and Asylum](#) in a more comprehensive policy approach.

#### FURHTER READINGS

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