

INCEPTION IMPACT ASSESSMENT			
TITLE OF THE INITIATIVE	Review of Directive 2009/50/EC 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)		
LEAD DG – RESPONSIBLE UNIT – AP NUMBER	HOME – B1	DATE OF ROADMAP	16/07/2015
LIKELY TYPE OF INITIATIVE			
INDICATIVE PLANNING			
ADDITIONAL INFORMATION			
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### A. Context, Subsidiarity Check and Objectives

Context
<p>A review of the "EU Blue Card" Directive has been put forward by the Juncker Commission as a first step towards a new European policy on legal migration, one of the ten priorities of this Commission. Such a policy could help to address shortages of specific skills – alongside the development of skills within the existing EU workforce – and attract talent to better cope with the demographic challenge of the EU. Its aim is for Europe to become at least as attractive as the favourite migration destinations such as Australia, Canada and the USA (Political Guidelines for the next European Commission, July 2014), while fully respecting that it is a matter for Member States' to decide on the number of economic migrants they admit.</p> <p>The EU Blue Card Directive was adopted in May 2009 and had to be transposed into national law by June 2011 yet many Member States were late in doing so. The Directive introduced common rules of admission and stay for highly qualified non-EU nationals who request admission to a Member State for the purposes of highly qualified employment. It was the first Directive to be adopted in a series of Directives on economic migration (Seasonal Workers, Single Permit and ICT Directives) following the 2005 Green Paper on an EU approach to managing Economic Migration (COM(2004)811 final).</p> <p>In May 2014, the Commission adopted the first implementation report (COM(2014)0287 final) on the Directive which assessed the transposition of the Directive into national legislation of the 25 participating Member States. It also provided an initial identification of some of the main shortcomings of the Directive.</p> <p>The European Agenda on Migration of 13 May 2015 (COM(2015)240 final) confirmed that a review of the Directive will look at how to make it more effective in attracting talent to Europe. The review will look at the shortcomings of the Directive, including the issue of intra EU mobility for Blue Card holders.</p> <p>The review will also consider two categories of third country nationals currently outside the scope of the Blue Card:</p> <p>The first of these is entrepreneurs. Europe's economic growth and jobs depend on its ability to support the growth of enterprises. Entrepreneurship creates new companies, opens up new markets, and nurtures new skills. Developing the entrepreneurial potential in the EU has been recognized as a priority task. The Entrepreneurship 2020 Action Plan on Reigniting the entrepreneurial spirit in Europe (COM(2012)0795 final) points at specific measures for third-country national entrepreneurs.</p> <p>On the one hand, it is recognized that third-country nationals have great potential for creating innovative businesses, and this is apparent when considering the Silicon Valley example. On the other hand, the potential of third-country nationals is largely untapped in the EU, because qualified third-country nationals often face legal difficulties to access self-employment. At the same time, it is stressed that some third countries have a migration policy particularly attractive to entrepreneurs and that the EU falls short in this respect. In the Action Plan the Commission committed itself to analyse the opportunity of proposing legislation aimed at removing legal obstacles to establishment of businesses and giving qualified third-country national entrepreneurs a stable permit. Since third-country national entrepreneurship has a significant impact in innovative and highly skilled sectors, the review of the Blue Card is an appropriate occasion for analysing current and potential admission schemes for entrepreneurs.</p> <p>The second category is service providers. The European Agenda for Migration noted that services is a sector</p>

with an important economic impact. The services sector includes well-trained, highly-skilled foreign professionals who travel to the EU. The Agenda announced the assessment of possible ways to provide legal certainty to these categories of business persons, also in order to strengthen the EU's position to demand reciprocity when negotiating Free Trade Agreements (FTAs).

Finally, the EU Blue Card Directive is also one of the planned REFIT actions for legal migration in 2016 (Scoreboard Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook, SWD(2014)192).

#### Issue

Europe is competing with other economies to attract workers with the skills it needs. According to OECD, around 25% of migrants currently in the EU are highly-educated compared to more than 35% in non-EU OECD countries<sup>1</sup>. At the same time, recent surveys on immigration intentions point to a relatively strong attractiveness of the EU for highly-educated potential migrants, compared notably to the US<sup>2</sup>.

Changes in the skills required by the EU between 2012 and 2025 are expected to show a sharp increase in the number of jobs employing higher-educated labour (from 68 to 83 million, or +23%)<sup>3</sup>. The further development of knowledge-intensive services, high tech manufacturing, or the "green jobs" that underpin Europe's future competitiveness requires Europe as a whole to "up its game" in terms of skills development. Shortages have already been seen in key sectors such as science, technology, engineering and healthcare.

For example, the number of "digital jobs" is growing by about 100.000 every year, yet the number of skilled IT graduates is not keeping pace. By 2020, the EU economy would be able to absorb 825.000 additional workers in ICT jobs, if demand is not hampered by supply bottlenecks<sup>4</sup>. In the health sector, a potential shortfall of around 1 million workers is estimated by 2020, rising up to 2 million if long term care and ancillary professions are taken into account. This means that around 15% of total care would not be covered compared to 2010<sup>5</sup>. In fact, migration has already helped to fill the gaps in EU labour markets: new migrants in the EU represented 15% of the entries into strongly growing occupations<sup>6</sup>, such as science, technology and engineering as well as the health and education professions.

While its economy is increasingly dependent on highly-skilled jobs, the EU will also have to face demographic challenges. The working-age population in the EU started to decline in 2014, posing challenges for sustainable growth. In the next decade, Eurostat demographic projections indicate that the working-age population in the EU-28 will decline by almost 10 million (or -2.9%) but without the positive net migration from outside the EU, this decline would be even stronger with a drop by 17.5 million in the next decade (or -5.3%). In the longer run, the EU's working-age population would decline very sharply without the contribution of migration, i.e. by 66 million between 2015 and 2045.

Moreover, the EU population will age significantly: the old-age dependency ratio – i.e. the ratio between the population aged 65 years and over, on the one hand, and the working age population (15-64 years old), on the other hand – will increase from 28.2 % in 2014 to 50.0 % in 2054<sup>7</sup>. This increase would be much more severe (up to 59.2% in 2054) in a scenario where there would be no net migration to the EU. Migration will thus be an increasingly important way to enhance the sustainability of our welfare system and to ensure sustainable growth of the EU economy.

The EU Blue Card Directive already provides a scheme that was intended to be an attractive EU-wide scheme

<sup>1</sup> OECD, "A descriptive analysis of immigration to and emigration from the European Union: where does the EU stand within OECD", 2015, *forthcoming*.

<sup>2</sup> Based on Gallup Surveys 2011-2014 analysed in OECD, "Is the European Union attractive for potential migrants? An investigation of migration intentions across the world", 2015, *forthcoming*.

<sup>3</sup> CEDEFOP projections.

<sup>4</sup> Empirica, "E-skills and e-leadership skills 2020", Working Paper, May 2015.

<sup>5</sup> Commission estimates, "Action Plan for the EU health workforce", Commission Staff Working Paper (SWD (2012)93 final).

<sup>6</sup> EU-OECD, "Matching economic migration with labour market needs", 2014.

<sup>7</sup> Eurostat Population projections (Europop 2013) <http://ec.europa.eu/eurostat/web/population-demography-migration-projections/population-projections-data>

for highly qualified third-country nationals. However, while further assessment is necessary, the number of EU Blue Cards issued remains limited and highly differentiated across Member States. In 2013, about 90 percent of the Blue Cards were issued by one Member State (Germany) and many other Member States issued very few to none.

The first implementation report on the EU Blue Card shows a fragmented implementation by Member States with widely diverging rules. The current Directive sets only minimum standards, provides only a limited set of rights, and leaves much leeway to Member States through many 'may' clauses and references to national legislation. Consequently, the level of coherence and harmonisation across Member States remains low and the facilitation of intra-EU mobility – a clear EU-added value – remains limited.

In addition, many Member States continue to run parallel national schemes to attract highly qualified third-country nationals that compete with the EU Blue Card and with each other. This creates a fragmented and complex landscape of many different regimes for admitting highly qualified third-country nationals.

Finally, the EU Blue Card Directive only applies to third-country national employees. It does not include two significant sectors: entrepreneurs and service providers.

Third country entrepreneurs have a high potential to provide innovation<sup>8</sup> and job creation. OECD (2011) figures<sup>8</sup> show that third-country migrants are more likely to start a new business (13.5 % self-employed versus 12.6 % for natives). Third-country national entrepreneurs are often highly educated and contribute to the development both of the host and of the origin countries: in terms of employment, foreign-born self-employed people who own a small or medium firm create between 1.4 and 2.1 additional jobs.

The 2020 Action Plan on Entrepreneurship (COM(2012)0795 final) identified specific obstacles for starting a business. These obstacles include the absence of admission schemes for entrepreneurs and the difficulties they may encounter in moving across the EU. The Action Plan noted that many third countries are setting up attractive regimes for entrepreneurs, whereas the Member States had a variety of national schemes in place, reducing the attractiveness for the EU as a whole.

Admission rules, or the absence thereof, should not be an obstacle to starting an innovative business. Successful programmes to attract international innovators might also include access to support services such as incubators, accelerators, coaching and financial help for setting up a business. These might be seen as an essential complement to a flexible EU-wide entry and residence scheme for entrepreneurs.

An input of well-trained, high skilled and qualified foreign professionals who move to the EU to provide services would also contribute to enhance EU competitiveness. However, at present, those who enter a Member State under commitments contained in an international agreement facilitating the entry and temporary stay of certain categories of trade and investment-related business persons (so called "mode 4") face a legislative gap. The European Migration Network study on admitting third-country nationals for business purposes revealed that mode 4 categories included in the EU's free trade agreements (FTAs) are not recognised by all Member States: existing definitions do not always clearly distinguish between the various types of business persons and can overlap in several cases. The work has been started with the adoption of a Directive on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (ICT Directive). However, this is only one of the categories covered under "mode 4". Creating an attractive scheme for highly qualified service providers might not only bring growth-creating potential to the EU, it would also help to strengthen the EU's position to demand reciprocity when negotiating FTAs.

## **Stakeholders**

### Directly affected stakeholders:

- (1) Third-country national migrant workers (with an emphasis on the highly qualified), entrepreneurs, and service providers already residing –or having previously resided – legally in the EU;
- (2) Third-country national migrant workers (with an emphasis on the highly qualified) currently outside the European Union but considering or having considered to migrate to the EU;
- (3) Representatives of public and private sector employers, and the business community, including employers and employers' associations (both large employers, startups and SMEs);

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<sup>8</sup> Part II "Migrant Entrepreneurship in OECD Countries" in OECD, Migrant Entrepreneurship in OECD Countries, 12 July 2011.

- (4) Private and public employment matching organisations,
- (5) National and international recruitment organisations;
- Relevant national authorities of Member States (Ministries of the Interior, Employment, , and Economy or Business);

Indirectly affected stakeholders:

- (6) Other relevant authorities of Member States, such as regional & local authorities, Consulates/embassies, statistical offices;
- (7) Relevant international organisations (IOM, ILO, OECD, WTO etc.) that have an interest in economic migration, and in particular highly qualified migration;
- (8) Organisations and authorities of the countries of origin<sup>9</sup>;
- (9) Representatives of support systems for entrepreneurs (accelerators, incubators, venture capitalists, etc.);
- (10) EU citizens who work or are self-employed;
- (11) Economic sectors in the countries of origin, especially in least developed countries, that require skilled workers, scientists, engineers, doctors, etc. within their own economies
- (12) Student, alumni, and researchers into the obstacles met by third-country students/researchers wanting to work/create businesses in the EU;
- (13) European Parliamentary Committee (LIBE members)/ MEPs that have acted as rapporteur and shadow rapporteurs on the Blue Card Directive, on other legal migration Directives or have a special interest in highly qualified migration;
- (14) NGOs (advocacy, support network, (legal) assistance, services), migrants' organisations and other sectors as appropriate;
- (15) Trade unions, at national and EU level;

At a general level, the EU society as a whole is affected, because of the potential impact of migration on the EU economy and society at large:

- (16) Media,;
- (17) Wider public;
- (18) Academia.

If the review concludes that the system must be improved, to increase the EU's attractiveness for highly skilled foreign workers, proposals by the Commission to amend the Blue Card Directive would be a natural option to explore. Complementary outcomes, such as better implementation, would also point to action at EU level.

If the EU aims at being as attractive as traditional immigration countries and compete with these with regard to highly skilled migration, this goal can arguably be better achieved if the EU plays internationally as a single player. If Member States act alone, especially smaller Member States, they may not be able to face international competition for highly skilled third-country workers. If the review concludes to amendments to the current Blue Card Directive in order to achieve this, this would require no additional transfer of competencies from Member States to EU level as this is an existing and already exercised EU competence. It would however lead to further harmonisation of the existing rules<sup>10</sup>.

<sup>9</sup> With a particular focus on, but not only, third countries that signed a mobility partnership with the EU and neighbourhood countries.

<sup>10</sup> Only if amendments to the Blue Card scheme would be combined with an abolition or limitation of parallel national schemes that target a similar group, this might affect Member States' competencies.

From the immigrant point of view, granting the possibility of intra-EU mobility for third country nationals before EU long-term residence could represent an incentive for highly skilled workers and business persons in their decision of entering the EU economy. This could only be ensured through EU action.

### **Subsidiarity check**

A subsidiarity and EU added value test was already carried out in the impact assessment at the moment of first proposal on the Blue Card in 2007. This will be done again in view of the new context<sup>11</sup> in which the impact assessment and possible revision of the legislation are placed.

The legal basis for Community action in the area is established in Article 79.2 TFEU:

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures in the following areas:

(a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification;

(b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States;

[...]

5. This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.

The principle of subsidiarity applies since this is an area of shared competence. For this reason, any measure proposed will respect the competence of the Member States to determine the numbers of economic third-country nationals seeking access to the EU, including by means of national quotas (i.e. volumes of admission).

#### *European added value*

The EU added-value of a well-functioning Blue Card is based on providing one, flexible, attractive and clear scheme for highly qualified workers, that can better compete with schemes in traditional immigration countries, such as US, Canada and Australia. Moreover, intra-EU mobility is important both as an element to attract third-country nationals, and as a means to make the labour market more efficient.

A well-functioning Blue Card would also send a clear message to third-country highly qualified workers and business persons that the EU welcomes them to help sustain economic growth and competitiveness, and that it is ready to set up quick admission procedures and attractive conditions for residence for them and their families.

It would create a common system that would be easily understandable for potential employers and highly qualified workers and business persons. They would no longer have to deal potentially with 25 quite different systems<sup>12</sup>. Transparency in the admission and residence conditions would be therefore improved,

For third-country nationals, one of the main elements of attractiveness of the EU compared to its competitors is the possibility of access to an EU-wide labour market, which provides unique opportunities for professional and personal growth and experience while responding to concrete needs of EU companies in the different Member States. This possibility can only be granted through Union action and can be enacted only if there is a common system that operates across EU Member States to admit these workers and business persons. This would require no additional transfer of competencies from Member States to the EU level as easier intra-EU mobility is already part of the EU Blue Card Directive; instead the review might conclude that there is a need for further harmonisation the rules in this respect.

<sup>11</sup> Post-Treaty of Lisbon: under the former system unanimity was required in the Council, instead of the current qualified majority, and the European Parliament was not co-legislator.

<sup>12</sup> EU-25 = EU-28 minus United Kingdom, Ireland and Denmark. The Union's common policy on asylum, immigration, visa and external border controls is based on Title V (Area of freedom, security and Justice) of the Treaty on the functioning of the European Union (TFEU). Under Protocols 21 and 22 to the Treaties, the United Kingdom, Ireland and Denmark shall not take part in the adoption by the Council of proposed measures pursuant to Title V TFEU. The United Kingdom and Ireland may notify the Council, within three months after a proposal or initiative has been presented, or at any time after its adoption, that they wish to take part in the adoption and application of any such proposed measure. At any time Denmark may, in accordance with its constitutional requirements, notify the other Member States that it wishes to apply in full all relevant measures adopted on the basis of Title V TFEU.

<b>Main policy objectives</b>
<p>A. The general objectives of the review of the EU legal framework on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment are:</p> <ol style="list-style-type: none"> <li>(1) to improve EU ability to attract and retain third-country highly skilled workers as one of the conditions for increasing the contribution of economic immigration within the set of policies and measures aimed at enhancing the competitiveness of the EU economy and addressing the consequences of demographic ageing;</li> <li>(2) to effectively and promptly respond to existing and arising demands for highly qualified labour, and to offset skill shortages, by enhancing the inflows and circulation of third-countries highly skilled workers between jobs and Member States and promoting their efficient allocation and re-allocation on the EU labour market;</li> <li>(3) to examine the potential extension of the scope of the current scheme..</li> </ol> <p>B. The specific objectives are to:</p> <ol style="list-style-type: none"> <li>(1) develop a coherent approach and common immigration policy on third-country highly skilled third country nationals;</li> <li>(2) increase the numbers of third-country highly skilled workers immigrating to the EU;</li> <li>(3) simplify and harmonise admission procedures for third-country highly skilled workers;</li> <li>(4) promote third-country highly skilled workers' social and economic integration, including labour market integration, and rights;</li> <li>(5) foster intra-EU mobility, remove unnecessary barriers and allow a more efficient allocation of third country highly skilled workers through the EU;</li> <li>(6) further develop and capitalize on the 'EU Blue Card' brand in order to improve the image of the EU as an attractive destination;</li> <li>(7) if the EU added-value is proven, consider developing a coherent approach and common immigration policy on third-country highly skilled business persons and entrepreneurs who are willing to invest in Europe and/or service providers;</li> </ol>
<b>B. Option Mapping</b>
<b>Baseline scenario – no EU policy change</b>
<p>No policy change at the EU level would mean that the existing EU Blue Card would remain as a scheme available in 25 Member States but would be used and promoted in various ways according to national specificities. In some Member States, it will be the main entry scheme for highly skilled workers; in others it would be secondary to the national parallel scheme. This would mean that Member States continue to act as individual players in the `global competition for talent`. This would mean that highly skilled third-country nationals, both those with a national permit and those with an EU Blue Card, would continue to face different regulatory systems and barriers for intra-EU mobility. Those who enter a Member State under commitments contained in an international agreement facilitating the entry and temporary stay of certain categories of trade and investment-related business persons would continue to be excluded from the scheme.</p>
<b>Options of improving implementation and enforcement of existing legislation or doing less/simplifying existing legislation</b>
<p>The existing EU Blue Card Directive could be repealed and Member States could go back to strictly national legislation. This would mean that some Member States would have their national schemes for attracting highly skilled third-country nationals, other Member States would have only specific provisions in a general migration scheme, and others would have only their general migration scheme for all skills levels.</p> <p>Non-legislative initiatives could be undertaken to optimise the status quo through enhanced implementation and enforcement of the current Blue Card Directive via increased monitoring by the Commission.</p> <p>Other non-legislative initiatives could include increased communication, coordination and cooperation at the EU level, national level and/or with third countries. This would involve promotion and advertising, the development of guidelines, expert group meetings to support practical cooperation and exchange of information and recognition of qualifications.</p>

### Alternative policy approaches

Comprehensive legislative action at EU level that amends the existing legislation and proposes new avenues that would reinforce the policy objectives, such as:

- possible abolition or limitation of parallel national schemes that target a similar group as EU Blue Card Directive;
- further fostering intra-EU mobility, e.g.:
  - extending to highly qualified workers the provisions on intra-EU mobility contained in Directive 2014/66/EU (intra-corporate transfers); or
  - considering other alternative solutions to facilitate intra-EU mobility.
- creating national priority lists of labour shortages in certain areas/sectors combined with an EU-wide database for Blue Card holders combined with a lower limitation on residence in a second Member State;
- improving residence conditions (e.g. working and residence rights, immediate family reunification, quicker acquisition of EC long-term status, accumulation of periods in different Member States for the acquisition of EC long-term status, further facilitating circular migration and periods of absence);
- Combinations of the above.

### Alternative policy instruments

Comprehensive legislative solution at EU level that amends the existing legislation and changes the admission system

- by setting up an EU-wide point-system and a fast-track admission procedure, and creating a skill-matching database;
- by increasing the role for employers in the admission process;
- by developing an EU-wide "expression of interest system" by the Commission, with the Member States, using verifiable criteria to automatically make an initial selection of potential third-country nationals, with employers invited to identify priority applicants from the pool of candidates, and migration taking place after the third-country national is offered a job.
- Combinations of the above.

### Alternative/differentiated scope

The scope of the current Blue Card Directive is set to third-country national highly qualified employees who fulfil the main conditions:

(1) presenting a valid work contract or, as provided for in national law, a binding job offer for highly qualified employment, of at least one year in the Member State concerned;

(2a) for *regulated* professions, presenting a document attesting fulfilment of the conditions set out under national law for the exercise by Union citizens of the regulated profession specified in the work contract or binding job offer as provided for in national law;

(2b) or, for *unregulated* professions, present the documents attesting the relevant higher professional qualifications in the occupation or sector specified in the work contract or in the binding job offer as provided for in national law;

(3a) meeting the minimum salary threshold of at least 1,5 times the average gross annual salary in the Member State concerned.

(3b) or, by way of derogation, the lower salary threshold of at least 1,2 times the average gross annual salary in the Member State concerned, 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,

The review will also assess the possibility and opportunity of expanding the scope beyond highly qualified third-

country national employees to cover other categories such as:

- entrepreneurs who are willing to invest in Europe (including start-ups);
- business persons supplying services not linked to commercial presence (contractual service suppliers and independent professionals);
  - expanding the scope to beyond highly qualified third-country national workers to certain categories of medium skilled workers facilitating the access for recent graduates<sup>13</sup> with higher education and/or with vocational education and training qualifications;
  - facilitating the access to the labour market of recent graduates of higher education institutions and long-term trainees who finished their traineeship

This assessment will include the consideration whether the Blue Card Directive is the opportune instrument for such potential expansion of scope or whether a separate initiative focussed on such categories might be more opportune.

In addition, as to the possible expansion to entrepreneurs who are willing to invest in Europe (including start-ups), the possibility and opportunity of complementing such a scheme for entry and stay for entrepreneurs with an EU support scheme for highly-skilled entrepreneurial innovators could be explored

### **Options that take account of new technological developments**

Amongst the options, the following ones would be devised as a digital and internet-based options:

- by setting up an EU-wide point-system and a fast-track admission procedure, and creating a skill-matching database;
- by increasing the role for employers in the admission process;
- by developing an EU-wide "expression of interest system" by the Commission, with the Member States, using verifiable criteria to automatically make an initial selection of potential third-country nationals, with employers invited to identify priority applicants from the pool of candidates, and migration taking place after the third-country national is offered a job.

Also, the non-legislative option of increased communication, coordination and cooperation would involve digital and internet-based aspects. This would involve online promotion and advertising, the development of guidelines, expert group meetings to support practical cooperation and exchange of information and recognition of qualifications.

### **Preliminary proportionality check**

A proportionality test was already carried out in the impact assessment at the moment of first proposal on the Blue Card in 2007. With regards to the preferred option it stated:

The instrument chosen is a directive, which gives Member States a high degree of flexibility in terms of implementation. The preferred option would be designed as to allow Member States to quickly and flexibly react to existing and arising demands for highly qualified labour on their labour markets. It would not affect their decisions on whether or not to admit a HSW who meets the conditions or their competence in determining the volumes of admission, as it does not foresee any right of residence, apart from those already foreseen in EC legislation. Intra-EU mobility would be subject to conditions which allow Member States to maintain the control on the access to their labour markets.

The preferred option should be seen as a contribution to achieving the Lisbon objectives and to counterbalancing the negative effects of demographic ageing on a highly qualified sector of the labour market, as well as to reply to the objective of efficiently responding to existing and arising demands for highly qualified labour and of offset skill shortages, also in a long-term perspective.

Proportionality tests of the various options, and in-depth of the preferred option, will be done again in view of the new context in which the impact assessment and possible revision of the legislation are placed.

<sup>13</sup> Differentiated according to whether graduate of a study programme of the same Member State, another EU country, or a non-EU country.



Most policy options that aim at improving the Blue Card Directive would require no additional transfer of competencies from Member States to EU level as this is an existing EU competency. If the review concludes to amendments to the current Blue Card Directive, this could potentially mean increasing the level of coherence or further harmonising existing rules at EU level. Potential amendments that would aim at addressing the shortcomings of the existing Directive and improving its performance are likely to be proportionate to ensure the EU's attractiveness and competitiveness.

Only if the review would conclude to combining amendments with an abolition or limitation of parallel national schemes that target a similar group, this might affect Member States' competencies. Extending the scope of the Directive to include other categories such as entrepreneurs or service providers could also potentially affect Member States' competencies. The proportionality of such potential measures is to be assessed further in detail.

## C. Data Collection and Better Regulation Instruments

### Data collection

Several existing studies and data sets can be used for the assessment of the EU Blue Card Directive and the impact assessment of the policy options, such as:

- Impact Assessment of the current EU Blue Card Directive: Commission SWD, Accompanying document to the Proposal for a Council Directive on the conditions for entry and residence of third country nationals for the purpose of highly qualified employment, COM(2007)637 final;
- A study on a conformity assessment of the legal transposition of Directive 2009/50/EC, carried out by an external contractor (June 2013);
- The Commission's first Implementation report: Communication of 22 May 2014 from the Commission to the European Parliament and the Council on the implementation of Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment ("EU Blue Card") COM(2014)0287 final;
- EUROSTAT data sets on the EU Blue Card and on other national and EU schemes for residence permits for remunerated activities;
- Information collected by the Commission from the National Contact Points on the Blue Card Directive;
- Any materials produced for and by the Expert Group on Economic Migration (EGEM);
- Joint OECD-EU studies such as a study on Matching Economic Migration with Labour Market Needs (2014), and a Review of Labour Migration Policy in Europe (forthcoming);
- EMN Studies and Ad-Hoc queries on economic migration;
- Data collected via the Expert Group on Economic Migration.

Furthermore, information will be gathered by the contractor for a study to support the impact assessment, with the support of the Commission as needed and in particular in facilitating contacts with national authorities through established networks such as for instance the Member States' Expert Contact Committee on Legal Migration and the National Contact Points on the Blue Card Directive.

### Consultation approach

#### • Online open public consultation

On 27 May 2015, the Commission launched an online public consultation on the EU Blue Card and the EU's labour migration policies as part of the first package of measures in follow-up to the European Agenda on Migration, adopted by the Commission on 13 May 2015.

#### Goals:

The aim of the consultation is to collect opinions on a range of issues related to economic migration with a view to contribute to the elaboration of a new European policy on legal migration and a review of the EU Blue Card Directive.

The questions seek to elicit opinions and thoughts on a range of issues relating to economic migration, such as

how employers can find the skills they need, how third-country nationals find out about jobs, procedures for third-country nationals entering the EU, how quickly and easily third-country nationals' qualifications are recognised, etc. Input on these issues sought to gather opinions on how to help promote an effective EU policy approach on economic migration that contributes to the EU's employment goals, on how to help the EU address specific skills shortages and become a more attractive destination for talented third-country national workers and entrepreneurs who are willing to invest in Europe. In addition, the consultation includes a specific section on the EU Blue Card which intends to gather opinions on how the shortcomings of this scheme can best be addressed, and how it can be made more effective and attractive.

#### Target audience:

The public consultation is addressed to the broadest public possible, as it is important to get views and input from all stakeholders on these issues. All citizens, organisations and third-country nationals (inside and outside the EU) are welcome to contribute. Contributions are sought from employers (large and Small and Medium Enterprises), employers' associations, third-country national workers, business persons and entrepreneurs already legally residing in the EU, potential third-country national workers and entrepreneurs outside the EU, private/public employment matching organizations, trade unions, ministries and employment agencies of Member States, regional and local authorities, statistical offices, media, academia, international organisations, organisations or authorities of the countries of origin, social partners and civil society in general.

#### Availability, languages and timing:

Contributions to the public consultation can be submitted by filling out an [online form](#). More information is available at a [dedicated page](#) on the website of the European Commission's Directorate-General for Migration and Home Affairs.

The consultation and its supporting documents are available in all official EU languages. The consultation is open for 12 weeks until 21/08/2015.

#### Dissemination:

DG HOME is spreading the public consultation as widely as possible, using various communication channels to try to reach the target audience.

The public consultation was announced by Commissioner Avramopoulos to the press and in a press release on 27 May 2015 as part of the first package of measures in follow-up to the European Agenda on Migration.

Furthermore, DG HOME has disseminated it by email and newsletters to its regular contacts and via various networks involved in immigration policy, such as the European Migration Network, Expert Group on Economic Migration, National Contact Points on legal migration Directives, etc with the request to further disseminate via their networks.

DG HOME also uses the websites at its disposal, such as DG HOME website, European Web Site on Integration and the EU Immigration Portal, and social media channels, e.g. Twitter, to advertise the public consultation.

DG HOME intends to disseminate the consultation further via the Commission representations in the Member States and involve the EEAS to target third countries via the EU delegations.

The responsible spokesperson and press officers for Home Affairs have been requested to further disseminate the public consultation via the communication channels at their disposition including via social media and contacts with the press.

#### • **Expert Group on Economic Migration (EGEM)**

The DG HOME established an Expert Group on Economic Migration (EGEM) whose mission it is to support the future policy development in the field of economic migration, for instance skills, labour shortage, economic migration Directives, such as the EU Blue Card, including the assessment of shortcomings and further improvement (Register of Commission Expert Groups: [Expert Group Economic Migration \(E03253\)](#))

The identification of experts for the Economic Migration Expert Group has been undertaken in three steps:

**Step I:** Establishment of a list of criteria in terms of expertise sought for the specific remit of the group:

- knowledge of the legislative framework for admission of labour migrants in the EU;
- knowledge of the legislative framework for admission of labour migrants in the Member States;
- knowledge of the legislative framework for admission of labour migrants in third countries;
- knowledge of policies which affect the effectiveness of labour migration policies and the attractiveness of a

destination country;

- practical experience with international recruitment processes practical experience with the administration of labour migration policy;
- expertise in the domain of labour market analysis, skills analysis and skills needs forecasting;
- expertise in assessing the economic and social impact of labour migration on the domestic workforce and the economy;
- general economic and/or statistics expertise;
- knowledge of circular migration schemes and ethical recruitment policies
- demographic expertise

**Step II:** Launch of open call for applications (on DG HOME webpage and Expert Group registry) and the call was also announced by responsible Spokesperson and sent to potential experts and organisations previously identified by DG HOME and other DGs.

102 expert applications were received, including from organisations who submitted multiple CVs.

**Step III:** Selection of experts to establish the group representing :

A. a balanced set of interests at European and international level;

B. the specific expertise sought is represented by these individuals or organisations.

Each organisation's and individual expert's application letter and application forms, including CVs, were assessed and experts were selected according to width and specificity of expertise.

**Result:** 4 experts in a personal capacity were selected and 17 organisations; these include academics, recruitment and immigration law practitioners, and representatives of the private sector, trade unions and migrants' organisations.

**Activities:** The first meeting of the EGEM took place on 25 March 2015 to discuss specific questions related to the themes: "Better managing Labour Migration at the EU level" and "Reviewing the EU Blue Card". In follow-up to this meeting experts were also invited to submit written input which over half of the experts did.

It is DG HOME's intention to involve the EGEM and make use of its expertise at several stages of the review process, notably in relation to the study to support the impact assessment to discuss its findings and submit suggestions. Input will be sought in writing and in further meetings. It is DG HOME's intention to publish the minutes of the EGEM's meetings and written contributions on the Register of Commission Expert Groups.

A second meeting is tentatively foreseen for Q4 2015 (date tbc) to provide further advice and analyse and exchange information on the conclusions of the public consultation, the study, and other developments.

#### • **Member States**

Besides via the open public consultation, Member States will be informed and consulted of the progress of the review the context of meetings of existing fora such as the Contact Group Legal Migration, the Trade Policy Committee (Services and Investment) the Committee on Immigration and Asylum (CIA), or the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA).

In 2013-2014, Member States were consulted on the conformity assessment of the Blue Card directive and on the factual information contained in the first implementation report on the Directive, prior to its adoption.

#### • **Businesses**

Besides the involvement of representatives of the private sector in the EGEM, the specific consultation of business actors may also be foreseen at a later stage, for instance through a tool such as the former European Business Test Panel (EBTP), to get targeted feedback from individual companies on the proposed initiative.

**Will an Implementation plan be established?**

Yes  No

An implementation plan may be established building on the existing support actions such as a Contact Committee on Legal Migration, a network of National Contact Points on the Blue Card Directive, regular and standardised exchanges of information, provision of information and promotion via the EU Immigration Portal.

Further support actions may include increased communication, coordination and cooperation at the EU level, national level and/or with third countries. This could also involve stepping up the promotion and advertising, improving the availability and comparability of information, the development of guidelines, expert group meetings to support practical cooperation and exchange of information and recognition of qualifications.

#### **D. Information on the Impact Assessment Process**

The IA work has started soon after the adoption of the European Agenda on Migration of 13 May 2015.

An Inter-service Steering Group will be set up and will be chaired by the Secretariat-General in conjunction with DG HOME. The following DGs will be invited

:

- Legal Service of the Commission,
- DG Migration and Home Affairs (HOME),
- DG Communications Networks, Content and Technology (CNECT),
- European External Action Service (EEAS),
- DG International Cooperation and Development (DEVCO),
- DG Education and Culture (EAC),
- DG Employment, Social Affairs and Inclusion (EMPL),
- European Political Strategy Centre (EPSC),
- DG Internal Market, Industry, Entrepreneurship and SMEs (GROWTH),
- DG Justice and Consumers (JUST),
- DG Neighbourhood and Enlargement Negotiations (NEAR),
- DG Research and Innovation (RTD),
- DG Trade (TRADE).

#### **E. Preliminary Assessment of Expected Impacts**

##### **Likely economic impacts**

- The proposed policy options are quite different in scope and nature. In addition, the potential outcome of the review may be a combination of options. Therefore, the expected impacts of all options and their significance cannot be assessed fully at this stage. However, the options are likely to have an impact on:
- Growth and investment: highly skilled migration for employment and self-employment purposes may have a positive impact on the economic growth and, specifically, in filling labour shortages.
- Achievement of the Single Market: the Blue Card already incorporates a mobility provision for highly skilled workers who want to take up employment in a second Member State, i.e. a Member State which is different from the one they migrate to in the first place. The impact assessment will analyse mechanisms to ease labour market mobility of employed and self-employed workers. These have a positive impact in achieving the single market.
- Technological development / Digital economy: highly skilled third-country nationals often work in the high-tech and digital sectors and may thus contribute to more technological development and further the digital

economy.

#### **Likely social impacts**

Employment: highly skilled migration for employment and self-employment purposes may have a positive impact on the economic growth and, specifically, in filling labour shortages, and may contribute to job creation.

#### **Likely environmental impacts**

Very limited to none.

#### **Likely impacts on simplification and/or administrative burden**

- An effective EU-wide scheme for highly qualified third-country nationals may increase the coherence and harmonisation of the regimes for admitting highly qualified third-country nationals across Member States. This would simplify the current fragmented and complex landscape of many different regimes that businesses and third-country nationals face for the admission and stay to the EU and for intra-EU mobility of highly qualified third-country nationals.
- At the same time it would also lower the administrative burden for highly qualified third country nationals and businesses recruiting them of navigating and having to apply for a completely new permit each time a highly qualified third-country national would be needed in one of the 25 national labour markets in the EU where the Blue Card Directive is applicable to fill business and economic needs.

#### **Likely impacts on SMEs**

- Facilitating SMEs growth: SMEs report skill shortages and face more difficulties in attracting foreign workforce than large enterprises. This is due to the lack of information and intermediary services that can be more easily accessed by larger companies. Providing an admission scheme for highly skilled foreign workers and business persons and parallel initiatives foreseen in the impact assessment (e.g. mechanisms to recognise qualifications and improve labour market matching) may have a positive impact on SMEs growth perspectives.

#### **Likely impacts on competitiveness and innovation**

- Increased innovation and research: Highly skilled third-country nationals often work in research-intensive and innovative positions and may thus contribute to more innovation and research.
- Sectoral competitiveness: Some sectors, notably health care, science and engineering, ICT suffer from skills shortages. Providing a well-functioning scheme for attracting foreign labour force may have a positive impact on their competitiveness.

#### **Likely impacts on public administrations**

- Potential new rules in the form of a Directive would require the transposition into national law by the Member States. This would require a subsequent transposition and conformity check by the Commission.

#### **Likely impacts on third countries, international trade or investment**

- Impacts in developing countries: increased highly skilled migration for employment and self-employment purposes may either have negative effects on developing countries, e.g. brain drain in economic sectors that require skilled workers, scientists, engineers, doctors, etc. (certain safeguards and control mechanisms are built in the current Blue Card Directive), or positive effects, e.g. brain gain via circular migration, economic effects via increased remittance payments.
- Creation of an EU wide scheme covering business persons supplying services not linked to commercial presence (contractual service suppliers and independent professionals) would ensure legal certainty and proper compliance with our international commitments, improve the economic and political relations with partners already having free trade agreements with the EU and would strengthen the EU leverage in the ongoing trade negotiations, in particular with the US.