

# Make better use of the Blue Card's Potential

## Four reform proposals for facilitating the immigration of highly qualified employees

RA Klaus-Dieter Sohn & Sebastian Czuratis



Since its replacement by a Regulation seems unlikely to be politically feasible, the announced review of the Blue Card Directive should cause the following changes:

- ▶ Salary thresholds for immigrants from non-EU countries should be abolished.
- ▶ The ability of Member States to refuse Blue Card applications on the basis of a labour market examination should be withdrawn.
- ▶ Issuing the Blue Card should always take precedence over other residence permits.
- ▶ The minimum period of residence in the first host Member State should be withdrawn as a requirement for obtaining a Blue Card in a second Member State.

## Table of Contents

<b>1 Introduction .....</b>	<b>3</b>
<b>2 Provisions of the Blue Card Directive .....</b>	<b>4</b>
2.1 Issuing a Blue Card .....	4
2.1.1 Criteria applicable to the migrant.....	4
2.1.2 Criteria applicable to the employment contract: Salary thresholds.....	5
2.1.3 Grounds for refusal: labour market examination .....	5
2.1.4 Additional grounds for refusal .....	5
2.2 Provisions on cross-border mobility .....	5
2.3 Provisions on family reunification .....	6
2.4 From Blue Card to long-term resident status.....	6
<b>3 Implementation of the Directive and parallel national rights of residency .....</b>	<b>7</b>
3.1 Implementation of the Blue Card Directive in selected countries.....	7
3.1.1 Germany .....	7
3.1.2 France.....	8
3.1.3 Italy.....	8
3.2 National residence permits alongside Blue Card .....	8
<b>4 Assessment .....</b>	<b>9</b>
4.1 Replace the Directive with a Regulation? .....	9
4.2 Improvement of the Blue Card Scheme .....	10
4.2.1 Salary thresholds .....	10
4.2.2 Labour market examination.....	11
4.2.3 Blue Card and other national residence permits .....	11
4.2.4 Cross-border mobility with the Blue Card.....	12

## 1 Introduction

Commission President Jean-Claude Juncker already made it clear, when he presented his political guidelines to the European Parliament on 15 July 2014, that he would like to revise the rules on the immigration to the EU of highly qualified employees from non-EU states.<sup>1</sup> His declared objective is to stand firm against the USA, Canada and Australia in the global competition for the cleverest minds. The Commissioner for Employment and Social Affairs, Marianne Thyssen, has therefore, together with the Commissioner of Migration and Home Affairs, Dimitri Avramopoulos, called for a review of the effectiveness of existing EU law by April 2015. This review will give rise to the development of better regulations on the immigration of highly qualified people from outside the EU.<sup>2</sup>

The Blue Card Directive<sup>3</sup> forms the central pillar of EU law on the immigration of highly qualified people to the EU from non-EU countries. The focus of the Directive is the introduction of an EU-wide residence permit, known as the Blue Card, which allows highly qualified people from non-EU countries to gain access to the labour markets of the Member States and enables them to change jobs across borders. The Blue Card Directive came into force on 19 June 2009, the day after it was published in the Official Journal of the European Union.<sup>4</sup> It had to be implemented by the Member States by 19 June 2011 at the latest. The United Kingdom, Ireland and Denmark are excluded from the scope of the Directive.<sup>5</sup> These Member States have reserved the right to a corresponding get-out clause for individual pieces of legislation relating to the area of freedom, security and justice.<sup>6</sup>

This article looks first at the question of whether and to what extent the Blue Card is used by highly qualified people from non-EU countries. It will then consider whether the provisions on the Blue Card should be revised in order to make Europe more attractive to migrants. Finally, we will offer concrete recommendations for action.

---

<sup>1</sup> Jean-Claude Juncker, Political Guidelines for the next European Commission, available at: [http://ec.europa.eu/about/juncker-commission/docs/pg\\_en.pdf](http://ec.europa.eu/about/juncker-commission/docs/pg_en.pdf) (last retrieved on 27.11.2014).

<sup>2</sup> Mission Letters to the respective Commissioners available at: [http://ec.europa.eu/about/juncker-commission/docs/pg\\_en.pdf](http://ec.europa.eu/about/juncker-commission/docs/pg_en.pdf) (last retrieved on 27.11.2014).

<sup>3</sup> Council 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.

<sup>4</sup> Art. 24 Directive 2009/50/EC.

<sup>5</sup> Recitals 28 and 29 Directive 2009/50/EC.

<sup>6</sup> The UK and Ireland are subject to the exemption under the Protocol (No. 21) on the position of the United Kingdom and Ireland with regard to the area of freedom, security and justice. Denmark is subject to the exemption under the Protocol (No. 22) on the position of Denmark.

## 2 Provisions of the Blue Card Directive

The Blue Card Directive provides for uniform, EU-wide conditions of entry into the EU for non-EU citizens for the purpose of undertaking highly qualified work, and includes provisions on family reunification. In addition, the Blue Card Directive contains conditions for the cross-border mobility of Blue Card holders and their family members within the EU.

### 2.1 Issuing a Blue Card

The Blue Card is only issued on application. National authorities must rule on the application within 90 days.<sup>7</sup> It is for the Member States to determine whether the application has to be made by the applicant or his employer.<sup>8</sup> Member States may set the standard period of validity of the Blue Card between one and four years. Where the employment contract is for less than the standard period of validity, the Blue Card must be issued for the period of the employment contract plus three months.<sup>9</sup>

#### 2.1.1 Criteria applicable to the migrant

The migrant must satisfy the following criteria: He must

- present a valid employment contract lasting at least one year; Member States can also provide that a binding job offer will suffice;
- in the case of a regulated profession, provide proof that the national conditions for exercising this profession are fulfilled;
- in the case of an unregulated profession, provide proof that he has a higher professional qualification enabling him to exercise the occupation specified in the employment contract or in the binding job offer;
- hold a valid travel document or, if required, a valid application for a visa or a valid visa or a valid residence permit; Member States may require the period of validity of the travel document to cover at least the duration of the residence permit;
- must have taken out or – where the Member State thinks fit – at least applied for health insurance, with cover equivalent to that applicable to nationals, for periods in which he has no entitlement to benefits or social protection based on the employment contract.<sup>10</sup>

The Blue Card must be refused if one of the criteria is not met.

---

<sup>7</sup> Art. 11 (1), sub-para. 1 Directive 2009/50/EC.

<sup>8</sup> Art. 10 (1) Directive 2009/50/EC

<sup>9</sup> Art. 7 (2) Directive 2009/50/EC

<sup>10</sup> Art. 5 (1) (a) to (e) Directive 2009/50/EC.

### 2.1.2 Criteria applicable to the employment contract: Salary thresholds

The Member States must prescribe a salary threshold in the form of a minimum gross annual salary for the Blue Card holder corresponding to at least one and a half times the national average gross annual salary.<sup>11</sup> The salary threshold for professions where there is particular need amounts to 1.2 times the average gross annual salary.<sup>12,13</sup> The Blue Card must be refused if the salary threshold is not met.

### 2.1.3 Grounds for refusal: labour market examination

Before taking the decision on an application for a Blue Card, a Member State may undertake what is known as a labour market examination to clarify whether the position could also be filled by a national, an employee from another Member State or a third-country national lawfully resident in the EU. If this is the case, the application for a Blue Card may be refused.<sup>14</sup> The possibility of a labour market examination is also available to the Member States where an application is made to renew the Blue Card within the first two years.

### 2.1.4 Additional grounds for refusal

The Member States may also restrict the number of Blue Cards available. Where they make use of this possibility, the Blue Card may be refused if the maximum number is exceeded.<sup>15</sup>

The Member States may also refuse to issue the Blue Card if

- there is a lack of workers in the applicant's profession in the country of origin or
- the employer has been sanctioned for undeclared or illegal employment.<sup>16</sup>

## 2.2 Provisions on cross-border mobility

The Blue Card holder and his family can take up residence in another Member State after 18 months of lawful residence in another Member State. No later than one month after entry into the second Member State, the card holder or his employer must provide proof that the criteria applicable to the migrant in the second Member State have been met, and must apply for a residence permit in that Member State. The second Member State may specify that the occupation can only be commenced when the competent authority has given a positive ruling on the application.

If the application is rejected, the first Member State must readmit the migrant and his family without formalities. Any repatriation costs may be borne by the applicant and/or the employer. The conditions apply with respect to any further migration to another Member State.<sup>17</sup>

---

<sup>11</sup> Art. 5 (3) Directive 2009/50/EC

<sup>12</sup> In addition, the profession must be one of those contained in major group 1 or 2 of the International Standard Classification of Occupation (ISCO-08).

<sup>13</sup> Art. 5 (5) Directive 2009/50/EC

<sup>14</sup> Art. 8 (2) Directive 2009/50/EC

<sup>15</sup> Art. 8 (3) in conjunction with Art. 6 Directive 2009/50/EC.

<sup>16</sup> Art. 8 (4) and (5) Directive 2009/50/EC.

### 2.3 Provisions on family reunification

The immigration of family members is basically regulated by the Family Reunification Directive<sup>18</sup> applicable to all family members of third-country nationals with a residence permit. This Directive has been extended to cover Blue Card holders by way of some derogations from the Blue Card Directive.<sup>19</sup> These state that Member States must allow entry to the spouse<sup>20</sup>, minor<sup>21</sup> children<sup>22</sup> of the Blue Card holder and minor children of the spouse.<sup>23</sup> In addition, Member States may, under certain circumstances, permit the immigration of additional persons, in particular the parents and adult, unmarried children of the Blue Card holder and his spouse.<sup>24</sup>

Where the conditions are met for a family reunification, the corresponding residence permits must be issued no later than six months after application and for the same period as that applicable to the Blue Card holder.<sup>25</sup> Immediately after the residence permit has been issued, the family members will have access to the national labour market.<sup>26</sup>

### 2.4 From Blue Card to long-term resident status

The Blue Card holder may apply for long-term resident status for non-EU nationals if he inter alia lawfully resides for a continuous period of at least five years in a Member State and can show sufficient income and health insurance cover for himself and his dependent family members.<sup>27</sup> In this regard, periods of residence in various Member States may be accumulated if the Blue Card holder has resided continuously and lawfully in the EU for five years and spent the last two of these in the Member State in which he is making the application.<sup>28</sup>

The five-year period is deemed not to have been interrupted if, during this period, the Blue Card holder lives outside the EU for no more than 18 months, of which no more than twelve consecutively.<sup>29</sup> The Member States can restrict this allowance to absences from the EU for professional reasons, voluntary service, or study.<sup>30</sup>

---

<sup>17</sup> Art. 18 Directive 2009/50/EC.

<sup>18</sup> Council Directive 2003/86/EC of 22 September 2003 concerning the right of family reunification.

<sup>19</sup> Art. 15 Directive 2009/50/EC.

<sup>20</sup> In the case of polygamous marriage, only one spouse may be permitted entry (Art. 4 (1) and (4) Directive 2003/86/EC).

<sup>21</sup> Minor children must be below the age of majority in the receiving Member State and must not be married (Art. 4 (1) sub-para. 2 Directive 2003/86/EC).

<sup>22</sup> This includes biological and adopted children and those over whom the Blue Card holder has custody. In the case of shared custody, the party sharing custody must give their consent (Art. 4 (1) sub-para. 1 (b), (c) and (d) Directive 2003/86/EC).

<sup>23</sup> Entry may always be refused on grounds of public policy, public security or public health (Art. 6 Directive 2003/86/EC).

<sup>24</sup> Art. 4 (2) and (3) Directive 2003/86/EC.

<sup>25</sup> Art. 15 (4) and (5) Directive 2009/50/EC.

<sup>26</sup> Although the Directive on Family Reunification provides for the possibility of an examination of the labour market with a procedure lasting a maximum of twelve months, this provision is removed as regards the family members of Blue Card holders (Art. 15 (6) sub-para. 1 Directive 2009/50/EC).

<sup>27</sup> Contained in Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.

<sup>28</sup> Art. 16 (2) Directive 2009/50/EC

<sup>29</sup> Art. 16 (3) Directive 2009/50/EC

<sup>30</sup> Art. 16 (5) Directive 2009/50/EC

### 3 Implementation of the Directive and parallel national rights of residency

The Member States had to transpose the Blue Card Directive into national law by 19 June 2011.<sup>31</sup> However, only four of the 24 Member States adopted the Directive on time, namely Estonia, Netherlands, Spain and Czech Republic.<sup>32</sup> The Commission instituted infringement proceedings against the other 20 Member States. The proceedings have now been concluded<sup>33</sup> and all Member States have implemented the Directive.

#### 3.1 Implementation of the Blue Card Directive in selected countries

The following section provides a summary of how the Blue Card Directive has been implemented in Germany, France and Italy.

##### 3.1.1 Germany

In Germany, the Blue Card is issued where the applicant has a German or equivalent foreign university degree, receives the minimum gross annual salary prescribed by the Federal Ministry for Employment and Social Affairs (BMAS) and the Federal Employment Agency gives its consent.<sup>34</sup> The BMAS can also provide by way of statutory instrument that a minimum of five years' experience is sufficient instead of a university degree.<sup>35</sup>

No consent is required if<sup>36</sup>

- the income is at least two thirds of the income limit for the assessment of statutory pension contributions (in 2014, the gross annual salary would thus have had to be at least € 47,600) or
- the applicant has a German university degree<sup>37</sup>, he will be working in a profession where there is a shortage of manpower (MINT<sup>38</sup> and IT professions and doctors)<sup>39</sup> and his income is at least 52% of the limit for the assessment of statutory pension contributions (in 2014, the gross annual salary would thus have had to be at least € 37,128).

<sup>31</sup> Art. 23 Directive 2009/50/EC.

<sup>32</sup> COM(2014) 287.

<sup>33</sup> See Commission Communication to the European Parliament and the Council on the application of Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment [COM(2014) 287, p. 2].

<sup>34</sup> Section 19a (1) of the law on the residence, employment and integration of foreigners in Germany (*Aufenthaltsgesetz - AufenthG*).

<sup>35</sup> Until now, BMAS has not issued any such statutory instruments.

<sup>36</sup> Section 19a AufenthG in conjunction with Section 2 of the Regulation relating to the employment of foreigners (*Beschäftigungsverordnung - BeschV*).

<sup>37</sup> § 2 (1) No. 2 (b) BeschV.

<sup>38</sup> MINT professions refers to professions in the fields of mathematics, informatics, natural sciences and technology.

<sup>39</sup> These are professions in Groups 21, 221 and 25 of the International Standard Classification of Professions (ISCO-08).

### 3.1.2 France

In France, the following requirements apply:<sup>40</sup>

- an employment contract for a period of at least one year,
- proof of having undergone advanced training for a period of at least three years or at least five years' professional experience at a comparable level,
- income of at least 1.5 times the average income (2014: minimum gross annual salary of € 52,750.50).

### 3.1.3 Italy

In Italy, the following requirements apply:<sup>41</sup>

- an employment contract or binding job offer for a period of at least one year,
- a completed course of advanced training lasting for a period of at least three years,
- minimum income of three times the amount of income required for exemption from compulsory health insurance (2014: minimum gross annual salary of € 24,789), and
- in the case of a regulated profession, the qualifications required to exercise such profession.

## 3.2 National residence permits alongside Blue Card

In addition to issuing the Blue Card, Member States may also grant national residence permits to non-EU nationals for "any purpose of employment".<sup>42</sup> The criteria for issue may be determined by the Member States themselves. By contrast with the Blue Card, however, national residence permits do not confer the right of residence in the other Member States.<sup>43</sup>

---

<sup>40</sup> Statute No. 2011-672 of 16 June 2011, as amended by Regulation No. 2011-1049 of 6 September 2011. Source: [www.immigration-professionnelle.gouv.fr/en/procedures/sheet/european-blue-card](http://www.immigration-professionnelle.gouv.fr/en/procedures/sheet/european-blue-card).

<sup>41</sup> Statute 286/1998 and Statute 108/2012, [www.poliziadistato.it/articolo/view/36666/](http://www.poliziadistato.it/articolo/view/36666/) and [www.balglobal.com/News/NewsDetail/tabid/266/id/786/language/en-US/ITALY--Italien-Government-to-implement-EU-Blue-Card.aspx](http://www.balglobal.com/News/NewsDetail/tabid/266/id/786/language/en-US/ITALY--Italien-Government-to-implement-EU-Blue-Card.aspx).

<sup>42</sup> Art. 3 (4), sentence 1 Directive 2009/50/EC.

<sup>43</sup> Art. 3 (4), sentence 2 Directive 2009/50/EC.

## 4 Assessment

In assessing the current rules on the Blue Card we have to bear in mind that it was introduced by the Barroso Commission as a way of competing with the US Green Card and with the rules on immigration in Canada and Australia. Commission President Jean-Claude Juncker also called for Europe to become at least as attractive to migrants as the US, Canada and Australia and announced that the Blue Card Directive would be reviewed with this in mind.<sup>44</sup>

Such a review will not be easy. The lack of available statistical data (see Table 1), due to the short period of application of the Directive, means that it is not possible to establish any links between the various national implementation provisions and the number of Blue Cards issued.<sup>45</sup> A proper review needs to cover a longer period and take account at the impact on economic development because the current economic crisis and high level of unemployment in many Member States distort the picture.

**Tab. 1: Blue Cards issued and other national residence permits in Germany, France and Italy**

	Blue Cards issued <sup>46</sup>			National residence permits issued		
	Germany	France	Italy	Germany	France	Italy
2011	–	–	–	177	3,148	1,563
2012	2,584 <sup>47</sup>	126	6	210	3,030	1,695
2013	11,580	371	87	n/a	n/a	n/a
2014	5,946 <sup>48</sup>	n/a	n/a	n/a	n/a	n/a

However, there are structural problems, as will be seen in the following chapters, which can be inferred from general principles of ordo-liberalism and law. These structural problems can be highlighted without having reviewed the Blue Card Directive over a whole business cycle. The starting point in this respect is the fragmentation of legislation arising from the 28 divergent national measures to implement the EU rules which makes the EU less attractive to migrants than the competing migration destinations of USA, Canada and Australia.

### 4.1 Replace the Directive with a Regulation?

If the EU wants to stand firm in the global competition for the cleverest minds, the best approach would be to have a uniform EU immigration regulation which would be comprehensive and allow the Member States as little room as possible for making their own rules. The reason for this is, firstly, that the ability to pass individual national rules can be used to partition parts of national labour markets and secondly, being confronted by 28 different national systems within one internal market is off-putting for migrants. In this respect, changing to a Regulation with comprehensive provisions which is directly applicable in all Member States is appropriate since it would put an end to the hotchpotch created by 28 systems, in favour of one uniform system.

<sup>44</sup> Mission Letters to the respective Commissioners available at: [http://ec.europa.eu/about/juncker-commission/docs/pg\\_en.pdf](http://ec.europa.eu/about/juncker-commission/docs/pg_en.pdf) (last retrieved on 27.11.2014).

<sup>45</sup> COM(2014) 287 p. 11.

<sup>46</sup> Source: Eurostat, EU Blue Card according to type of decision, employment and nationality [migr\_resbc1].

<sup>47</sup> Since 1 August 2012.

<sup>48</sup> 1st half of 2014; Federal Office for Migration and Federal Office for Migration and Refugees, "Wanderungsmonitoring: Migration nach Deutschland".

The economic advantages should not, however, blind us to the fact that there is real justification for having stricter national immigration rules since, under the principles of constitutional law, it is for a sovereign state to decide who can reside within its territory. Although the EU Member States have agreed to guarantee individual freedom of movement and have thus transferred their sovereignty in this respect, freedom of movement only applies to the nationals of the Member States. Granting a residence permit to a third-country national, on the other hand, remains the responsibility of the Member States. The introduction of comprehensive binding provisions on the Blue Card, for example in the form of a Regulation, would therefore result in a loss of state sovereignty which the Member States were not prepared to accept when the Directive was passed.

## 4.2 Improvement of the Blue Card Scheme

Changing from a Directive with 28 different implementation laws to one Regulation with a single, comprehensive and directly applicable immigration scheme is the most reasonable option from the ordo-liberal perspective. In view of the debate about returning powers to national level<sup>49</sup> and the call for greater consideration to be given to the principle of subsidiarity,<sup>50</sup> the national willingness for further transfer of sovereignty – particularly in the politically sensitive area of immigration – does not yet appear to have reached a sufficient level to allow the introduction of a uniform immigration scheme. However, if a uniform immigration scheme cannot be created in the near future, then the review of the Directive announced by Jean-Claude Juncker should at least concentrate on improving the attractiveness of the Blue Card, in the context of what is currently possible in policy terms and, in particular, on removing barriers to immigration.

Modifications are required as regards the salary thresholds, the labour market examination, the coexistence of Blue Card and national residence permits and with regard to the requirements for Blue Card applications in a second Member State. The other provisions, including those on family reunification and the long-term residence permit can be retained.

### 4.2.1 Salary thresholds

State salary thresholds in employment contracts for immigrants restrict freedom of contract and reduce the effectiveness of the wage and price system as an indicator of the scarcity.

Although it is said that the removal of salary thresholds would result in wage dumping in relation to highly qualified employees, this argument is unconvincing for several reasons. Firstly, there are collective agreements in many countries that regulate remuneration making wage dumping impossible there. Secondly, the argument also contradicts the experience of the European internal market. There are, in some cases significant, differences between the Member States in relation to the level of salaries paid to highly qualified employees which results in migration within the internal market to the economically stronger countries. There is, however, no evidence of wage dumping among highly qualified employees in those countries. Thirdly, immigration from non-EU countries is supposed to counteract the reduction in available manpower caused by demographic factors. Where a resource becomes scarcer this inevitably leads to higher prices and/or wages. Thus the wage dumping argument does not apply.

---

<sup>49</sup> Stiftung Familienunternehmen in: Reform der Europäischen Union: Bereitschaft in den zehn größten Mitgliedstaaten.

<sup>50</sup> Mission Letter from the Commission President to the First Vice President, Frans Timmermans, available for download at: [http://ec.europa.eu/about/juncker-commission/mission/index\\_en.htm](http://ec.europa.eu/about/juncker-commission/mission/index_en.htm) (last retrieved on 27.11.2014).

**Recommendation 1:** Salary thresholds for employment contracts with immigrants from non-EU countries should be abolished.

#### 4.2.2 Labour market examination

Labour market examinations generally amount to no more than an assessment of whether a job vacancy could be filled by a domestic employee from the EU. This measure can be omitted because the employment contract with the Blue Card applicant itself indicates that applicants from the EU do not sufficiently meet the employer's expectations and requirements, i.e. there were obviously no suitable applicants in the EU internal market.

A reliable labour market examination would require a vacant position to be advertised publicly EU-wide for a minimum period. After expiry of this minimum period it would have to be established whether there was a suitable European candidate in the internal market. This sort of market examination would certainly burden employers and employment offices with bureaucracy and significantly delay the filling of vacancies and, in some cases even prevent it altogether.

The rule that Member States can even provide for a labour market examination on renewal of the Blue Card within the first two years is particularly misguided.<sup>51</sup> This rule – even if it is only applied as an exception – makes the immigration of highly qualified third-country nationals unnecessarily precarious and thus unattractive.

**Recommendation 2:** The ability of Member States to refuse Blue Card applications on the basis of a labour market examination should be withdrawn.

#### 4.2.3 Blue Card and other national residence permits

The authorization of Member States to issue their own national residence permits as an alternative to the Blue Card for "any purpose of employment" means that potential immigrants from non-EU countries are faced with a greater informational barrier than would be the case if there were a uniform EU scheme. This makes the EU less attractive as a migration destination than the USA, Canada and Australia.

The authorization to grant national residence permits does give rise to competition between national residence permits and the Blue Card. However, it is questionable whether this "competition between the schemes" will result in an optimum immigration system because – despite the wide scope for implementation of the Blue Card Directive – the Member States have political and economic incentives to establish national residence permits. Firstly, national residence permits allow more tailored recruitment of the required immigrants. Secondly, national residence permits tie the immigrants to the respective Member State because they are unable to avail themselves of the better cross-border mobility offered by the Blue Card.<sup>52</sup>

In the interests of the internal labour market, Member States should be obliged to issue the Blue Card when the conditions are met. This should also apply where alternatively a national residence permit could be issued. Only where the conditions for issuing a Blue Card are not met should there be an assessment of whether the requirements of other EU residence permits are met. Only where

<sup>51</sup> Art. 8 (2) Directive 2009/50/EC

<sup>52</sup> See Chapter 4.2.4 on the incentivising effect and problems of cross-border mobility of Blue Card holders based on the provisions of the Blue Card Directive.

there is no suitable EU residence permit should there be any recourse to national residence permits.

**Recommendation 3:** Issuing the Blue Card should always take precedence over other national residence permits.

#### 4.2.4 Cross-border mobility with the Blue Card

The greatest potential of the Blue Card lies in the greater cross-border mobility which it offers the Blue Card holder. And this is precisely where there is plenty of unused potential for greater efficiency. Where a Blue Card holder wishes to work in another Member State, under existing law he has to resubmit all the documents relating to the initial application.<sup>53</sup> It would be much better if the Blue Card holder only had to submit his Blue Card and the new employment contract in the new Member State. There are however obstacles in the way of this based on the Member State's right to sovereignty. The criteria for obtaining a Blue Card are subject to the Member States' broad scope for implementation so that a Blue Card issued in one Member State is not automatically valid in another. Thus there are varying rules on regulated professions in the Member States or on the prescribed validity of travel documents.

The provision that a Blue Card holder can only apply for a Blue Card in a second Member State if he has worked for at least 18 months in the first Member State<sup>54</sup> runs counter to the objective of establishing the Blue Card as an EU-wide uniform right for highly qualified employees from non-EU countries to migrate to the EU. This is because – if a Blue Card holder wants to change to another Member State before eighteen months have passed – it will create an incentive to change to a national immigration system other than the Blue Card. Furthermore, there is in any case no *ordo-liberal* justification for the eighteen month commitment period<sup>55</sup> because the aim of the commitment is protectionism: companies that have acquired employees from non-EU states are rewarded for their efforts for at least 18 months and protected from recruitment competition from other Member States. In addition, the minimum commitment period contradicts the ideas behind a Single European Labour Market.

**Recommendation 4:** The minimum period of residence in the first host Member State should be withdrawn as a requirement for obtaining a Blue Card in a second Member State.

---

<sup>53</sup> See Chapter 2.1.1.

<sup>54</sup> Art. 18 Directive 2009/50/EC.

<sup>55</sup> The original proposed Directive even provided for a 2-year commitment period [see Art. 19 COM(2007) 637].



**Published in this series so far:**

- 01/2014: The ESM's direct recapitalisation of banks – Looking forward in backstop questions (August 2014)
- 02/2014: Die neuen Mehrheitsregeln im Rat ab 1. November 2014: weniger demokratisch und weniger effizient (October 2014, in German only)
- 03/2014: Was die EU nicht beschließen sollte (December 2014, in German only)
- 04/2014: The Review of the European Supervisory Authorities – 12 Recommendations (December 2014)
- 05/2014: The Investment Plan for Europe. Leveraging three Facts to five Recommendations (December 2014)
- 01/2015: cepDefault-Index Griechenland (January 2015, in German only)
- 02/2015: Klima- und Energieziele 2030 (February 2015, in German only)

**The Authors:**

RA Klaus-Dieter Sohn is head of the cep Employment and Social Affairs Department.

Sebastian Czuratis is policy analyst at the cep Employment and Social Affairs Department.

**cep | Centrum für Europäische Politik**

Kaiser-Joseph-Strasse 266 | 79098 Freiburg | Germany

Telephone +49 761 38693-0 | [www.cep.eu](http://www.cep.eu)

cep is the European-policy think tank of the non-profit-making foundation Stiftung Ordnungspolitik. It is an independent centre of excellence for the examination, analysis and evaluation of EU policy.