

**HOW BLUE
WILL THE NEW CARD BE?**

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PURPOSE & OUTLINE

1. The policy debate
2. Definition of Highly Qualified as an issue?
- 3. European versus national schemes?**
4. Scope of directive
5. Admission rules
6. Mobility
7. Institutional framework

1. THE POLICY DEBATE

- Failure of Directive 2009/50 (actually EU Card for HS on top of national cards for HS and not replacing them)
- Political input of new Commission despite evaluation of DG Home in favor of statu quo in 2014
- Ambitious Commission proposal on 7 June 2016
- Aim of presentation = review of most important points of disagreement between EP and Council
- What is at stake? The EU added value of the future directive (may clauses = almost fake EU law)
- Policy / political debate rather than technical / legal (in JHA Council configuration)

2. DEFINITION OF HIGHLY QUALIFIED

- “Highly skilled employment” referring to “Higher education qualifications” meaning a Bachelor degree after 3 years of post-secondary education
- Adequacy:
 - High for EU or for third countries ?
 - Very large target
 - With repercussions on level of ambition of directive
- Not about the brightest in “knowledge based economy”

3. EUROPEAN VERSUS NATIONAL SCHEMES?

- Commission proposal:
 - Article 3, §4: *MS shall not issue any other permit than an EU Blue Card to TCNs for the purpose of highly skilled employment*
 - Article 4, §2: *The directive shall not affect the right of MS to adopt or retain more favorable provisions in respect of art. 10, 14, 15, 16 & 17(5)*
- EP for Commission proposal / Council for keeping national schemes
- The key debate!

4. SCOPE OF DIRECTIVE: INTERNATIONAL PROTECTION

	Directive 2009	Commission Proposal	Council	EP
Applicants	OUT	OUT	OUT !	IN
Protected persons	OUT	IN	OUT?	IN !

5. ADMISSION RULES: SALARY THRESHOLD

- Commission proposal:
 - at least the gross annual salary and not higher than 1,4 times (instead of 1,5 currently)
 - reduction to 0,80% for professions in need and students graduated since 3 years
- Council: reservations and even opposition to lowering
- EP: prefers obligations that national conditions are met

5. ADMISSION RULES: LABOUR MARKET TEST (LMT)

- System driven by demand
- LMT still possible for 12 months (renewable) but in a limited way (inspired by rules for transition period in case of EU enlargement)
 - Serious disturbances of labour market (like high unemployment in occupation or sector)
 - Obligation of notification of intention to COM
 - with justification that can be checked by COM

6. MOBILITY

- Almost no facilitation in 2009 Directive like (less than LTR directive; old fashioned instruments of 1st generation)
- Commission proposal:
 - Short-term stays: right to exercise business activity in 2nd MS on basis of BC (why only these activities?)
 - Long-term stays: after 12 months in 1st MS:
 - submission of application for another BC but right to work in highly skilled employment immediately after
 - limited LMT possible if foreseen for TCN coming from TC
 - answer within 30 days

6. MOBILITY

- EP: replace second BC application by simple system of notification
- Council: ?
 - Transformation in a “may clause” of right to work immediately after submission (the period of 30 days)
 - Keep possibility of limited LMT
- **The other key issue for added value of directive:** finally opening of European debate over mobility of important category of TCNs
- Interesting to compare with articles 21 and 22 of Directive 2014/66 on ICTs

6. MOBILITY

	ICTs	Com proposal
Short-term	Notification	Mutual recognition
Long-term	Notification or New application	New Application

6. MOBILITY

- Keep in mind objective of article 79, §2, (b) TFEU:

*“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**” (not mobility!)*

7. BACK TO INSTITUTIONAL FRAMEWORK

- False harmonisation with Directive 2009/50
- Institutional change with Lisbon!
- What about policy change?
- Remember debate about Return Directive (shame / pride)
- Debate on blue card = occasion:
 - To evaluate dominant role of Council in JHA (actually key role of some big MS; threat of status quo?)
 - To measure capacity of resistance of EP as support of Commission in front of Council (classical)
- Elements of intergovernmentalism remains after Lisbon in JHA: but how much?