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WORLDWIDE

Proposal for a new EU BLUE Card Scheme:  
Fragomen views

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# Fragomen and the EU BLUE Card Scheme

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In June 2016, the European Commission published its proposal on a new Blue Card scheme. This initiative aims to boost the European Union's attractiveness for highly skilled migrants by providing more flexible admission conditions, enhancing the rights of Blue Card holders and encouraging special fast track procedures for employers. Fragomen was part of the Expert Group on Economic Migration and, in this context, was consulted by the European Commission while drafting the new proposal.

Fragomen generally supports the Commission's proposed scheme but believes some amendments could contribute to a good compromise between national representations, as well as an agreement with the European Parliament. Therefore this paper provides arguments to support the changes we consider necessary. This paper also aims to encourage member states to make use of some non-compulsory provisions of the new Directive.

## 1. BUSINESS ACTIVITY IN A SECOND MEMBER STATE

The possibility to conduct a business activity in a second member state for 90 days in any 180-day period without prior authorisation is very beneficial both for the employee and the employer. It enables worker mobility, ensures the continuity and development of the economic activity and highlights the added value of having an EU-wide scheme.

This option also exists for ICT permit (intra-corporate transferees) holders. However, the ICT Directive (to be transposed by member states by the end of November 2016) has more advantageous short term mobility provisions, allowing ICT permit holders to travel 90 days in any 180-day period per member state (with certain notification requirements). To ensure coherence between the two pieces of legislation, that after all, are both part of EU's ambition to boost the so-called 'legal migration' towards the EU, it would be preferable to have the same rules apply also for Blue Card holders. Equally favourable intra-EU mobility for Blue Card holders would be appropriate especially because – unlike ICT permit holders – they have local employment contracts and contribute to the host country's social security scheme. The more economically integrated a foreigner is, the greater the scope of his rights should be. This has always been the logic followed by the EU integration process (both for mobile EU citizens and for third country nationals).

In addition, the term 'business activity' should be defined as clearly and as comprehensively as possible. In its current state, the definition provided in Article 2 of the proposal does not cover the great variety of business activities Blue Card holders may be asked to conduct given their high degree of qualification. For instance, the following activities (in blue) could be added. The term "business activity" means a temporary activity related to the business interests of the employer, such as:

- Attending internal and external business meetings,

- Attending, organising and speaking at conferences and seminars, trade exhibitions and other expositions
- Negotiating business deals
- Undertaking sales or marketing activities
- Performing internal or client audits
- Exploring business opportunities (attending networking events, developing and maintaining business contacts)
- Giving, attending and receiving training
- Testing/maintenance of software/hardware
- Gathering data, conducting research
- Business process analysis
- Conducting interviews in view of recruiting employees
- Attending and participating in job fairs
- The directive should also mention that this list is not exhaustive and that member states can add other business activities they consider relevant

## **2. EQUIVALENCE OF PROFESSIONAL EXPERIENCE AND FORMAL QUALIFICATIONS (DIPLOMAS, CERTIFICATES)**

By obliging Member States to take into account the relevant professional experience of the Blue Card permit applicants, the Commission widens the pool of candidates that could qualify for an EU Blue Card. This novelty – together with the lower salary requirement, the shorter duration of the work contract, etc. – is part of the Commission’s attempt to create more flexible admission conditions for the new scheme.

This possibility already existed in the previous version of the Directive, but very few EU countries implemented it. Therefore, reluctance from national authorities to accept such a constraint in the new Blue Card is to be expected as it may seem difficult in practice to prove the foreigners’ professional experience in an equivalent position.

Yet, similar provisions already exist in certain Member States. For instance, in Belgium equivalent level of professional experience is taken into account for executive staff and managerial employees. In this case, professional experience is proven by means of a very detailed CV that must match the job description of the position to be held in Belgium by the third country national, as well as an employer declaration. Furthermore, European ICT permit applications also require national administrations, in some cases, to evaluate an individual’s professional experience and highly skilled position. Therefore, employment equivalence would not be a completely new process for immigration officers to get acquainted with.

Should the parity between professional experience and official diplomas/certificates be maintained in the new Blue Card directive – which would be a positive development – supporting documents such as a CV, job description or letter from the hiring company attesting the candidates' relevant experience, could be required by national administrations. In addition, a high salary level is also a way of confirming the length and relevance of an individual's professional experience. In the absence of a higher education diploma, it is very likely that the high salary level is justified by significant professional experience.

### **3. YOUNG GRADUATES**

Another novelty brought about by the new Blue Card Proposal is the flexibility introduced in terms of salary threshold for young graduates: 80% of the general threshold. This is a very positive development. Due to their lack of professional experience, young graduates often do not qualify for Blue Cards because of the high salary threshold. Taking this into consideration is thus crucial for the success of the scheme.

This development is consistent with the provisions of another newly adopted EU legal migration instrument, the Students and Researchers Directive, allowing foreign students to stay in an EU country for up to nine months after their graduation in order to search for a job or open a business. Furthermore, it is consistent with the EU's intention to attract highly qualified entrepreneurial innovators, also because the new Blue Card allows Blue Card holders to set up a business activity in parallel with their employment.

### **4. ACCESS TO EU LONG TERM RESIDENT STATUS FOR EU BLUE CARD HOLDERS**

The provision enabling Blue Card holders to access EU long term residence after three years of legal and continuous residence certainly has potential to make the EU scheme more attractive for highly skilled third country nationals. Therefore, it should be maintained in the final version of the Directive.

Nevertheless, if national authorities are worried about foreigners becoming a burden to the social security system of the host country, access to long term residency should be conditional upon the capacity of the Blue Card holder to prove he/she is in possession of a work contract that is valid for at least another two years. This safeguard should avoid cases of abuse and/or fraud and ensure the financial self sufficiency of those who apply and get EU permanent residence as well as that of their family members.

### **5. PARALLEL NATIONAL SCHEMES**

The Commission's proposal makes a bold step toward eliminating parallel national schemes dedicated to highly skilled migrants to increase the number of EU Blue Cards issued. Whereas competition between the national and EU schemes should indeed be avoided – the ultimate goal is to attract highly skilled individuals to the EU as a whole – eliminating national schemes altogether would not contribute to attaining this objective. Quite the opposite in fact. National schemes are often more flexible than the EU Blue Card and more foreigners tend to qualify under national admission criteria. Furthermore, labour market realities change very rapidly and

EU instruments take very long to negotiate. EU and national authorities' ability to respond to these changes in due time would thus be affected dramatically.

Nevertheless, to avoid duplication, the Directive could oblige member states to automatically deliver an EU Blue Card to all the candidates who qualify for the scheme. This would imply that national administrations analyse applications of highly skilled candidates in two stages. First, they would check if the applicant fulfils the conditions to obtain an EU Blue Card and, if so, they deliver one. Second, if the applicant does not qualify for a Blue Card, administrations would check eligibility under the national scheme and deliver a national permit if the candidate qualifies. If an applicant qualifies for both schemes, the EU Blue Card should be given priority.

This solution could both increase the numbers and visibility of the Blue Card and preserve the flexibility of the national schemes. Furthermore, member states would still have the possibility to determine the volumes of admission of third-country nationals coming from third countries to their territory in order to seek work (be it via the national or the Blue Card scheme), enshrined in Article 79 TFEU. This means that, even if the European scheme is given priority, EU law cannot oblige national administrations to deliver an unlimited number of Blue Cards.

## **OTHER (DISCRETIONARY) PROVISIONS**

Despite the fact that they are not compulsory, several other dispositions of this proposal could prove very efficient in making the EU an attractive destination for foreign talent. Member States should therefore take full advantage of them when transposing the Directive into their domestic legislation.

### **1. Recognised employers system**

For instance, the proposal allows member states to introduce simplified procedures for recognised employers. If applied by the member state, this means that employers can go through a recognition procedure, which will then allow them to submit less documents and make use of processing times of maximum 30 days per application. This can be very beneficial to employers, as it decreases processing times and minimises the administrative burden.

Such a system is for instance used in the Netherlands, for the national highly skilled migrants scheme and the soon to be implemented ICT Directive. In the Netherlands, this system that has been a proven success is based on trust and responsibility on the one hand, and checks and sanctions on the other. The employer is responsible for selecting appropriate candidates and submitting correct applications, which means that less documents need to be submitted and the government can approve the applications more quickly, as a thorough check is not required. However, if companies are not compliant, they will be sanctioned and may lose their privileged status.

A simplified process makes it more attractive for employers to recruit talent from abroad and this provision can contribute to the overall goal of the Blue Card, to make the EU a more attractive destination for foreign highly skilled workers.

## 2. Validation and recognition of diplomas and certificates

Generally, EU law encourages national administrations to facilitate the recognition and validation of diplomas and certificates, but, as education is not an EU competence, it cannot go further than that. Nevertheless, in order to save time and money both for the national administrations and for the employer, the validation and recognition procedure should be fast and easy to accomplish.

In this sense, a list of recognised diplomas and certifications not requiring a thorough examination could be set up by each member state. National administrations could use their previous experience and set this list up starting from the type of diplomas and certificates they have been delivering Blue Cards or national work permits for highly skilled individuals in the past. This list could be reviewed and amended on a regular basis. For information purposes, these national lists could be included in a common database accessible to all EU member states.

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