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2016/0176 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on the conditions of entry and residence of third-country nationals for the purposes of
highly skilled employment**

{SWD(2016) 193 final}
{SWD(2016) 194 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

This proposal forms part of the EU's efforts to develop a comprehensive migration management policy, based on Article 79 of the Treaty on the Functioning of the European Union (TFEU), and in particular of a new policy on legal migration, and contributes to the EU Growth Strategy, in line with Europe 2020 priorities¹. The 2009 "EU Blue Card" Directive² intended to facilitate the admission and mobility of highly qualified third-country national workers, and their family members, by harmonising entry and residence conditions throughout the EU and by providing for a set of rights. It aimed at making the EU more competitive in attracting highly qualified workers from around the world, thereby contributing to addressing labour and skills shortages within the EU labour market, and strengthening the EU's competitiveness and economic growth. However, the 2009 Directive failed to achieve these objectives.

The current EU Blue Card Directive has demonstrated intrinsic weaknesses such as restrictive admission conditions and very limited facilitation for intra-EU mobility. This, combined with many different sets of parallel rules, conditions and procedures for admitting the same category of highly skilled workers which apply across EU Member States, has limited the EU Blue Card's attractiveness and usage. This is neither efficient, as such fragmentation entails a burden for employers and individual applicants, nor effective, as shown by the very limited overall number of highly skilled permits issued.

For this reason, Commission President Jean-Claude Juncker declared his intention to address the shortcomings of the EU Blue Card Directive and substantially broaden its impact in attracting more highly skilled workers to the EU³. The European Agenda on Migration⁴ announced a review of the EU Blue Card, as part of the new policy on legal migration, to make it more effective in attracting talent to Europe. The Commission Work Programme 2016 announced that *"to meet Europe's future demographic and labour market needs, [the Commission] will present a renewed approach on legal migration, including measures to improve the EU Blue Card Directive"*. This proposal represents the outcome of this review process.

The Communication of 6 April 2016⁵ highlighted the need of sustainable, transparent and accessible legal pathways to Europe as a part of successful migration management. The Commission reinstated its intention to propose changes to the EU Blue Card Directive with the purpose of strengthening it as the single EU-wide scheme for admitting highly skilled workers. In the follow-up discussions the European Parliament has called for the creation of new legal avenues into Europe and urged the Commission to be ambitious in this regard. In its

¹ For an overview, see the website "[Europe 2020 in a nutshell](#)".

² 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 (OJ L 155, 18.6.2009, p. 17).

³ [Political Guidelines Juncker](#); [Priorities for this Commission](#); [Mission letter Commissioner Avramopoulos](#).

⁴ [Commission Communication of 13 May 2015, A European Agenda On Migration, COM\(2015\) 240 final](#).

⁵ [Communication from the Commission to the European Parliament and the Council 'Towards a Reform of the Common European Asylum System and Enhancing Legal Avenues to Europe' COM\(2016\) 197 final](#).

report of 23 March 2016⁶ the Parliament recalled that the revision of the EU Blue Card Directive should be both ambitious and targeted, and notably aim to remove the existing inconsistencies regarding e.g. the parallel national schemes.

The EU already faces structural skills shortages and mismatches in certain sectors that have the potential to limit growth, productivity and innovation (e.g. healthcare, ICT and engineering) and thus slow down Europe's continued economic recovery and limit its competitiveness. Activation, training and up-skilling of the existing labour force must all play a role in countering these shortages, especially at a time when overall unemployment is high. However, these measures are unlikely to be sufficient to fully meet the needs and, in any case, it will take time for them to have an actual effect on the labour market and on productivity. In the future, structural changes in the EU's economies will continue to increase the demand for skills that are not immediately available in the labour market, creating further skills shortages.

The EU's current immigration system for highly skilled workers is not well equipped for the current and future challenges. The overall inflow of highly skilled third-country national workers to the participating Member States⁷ under both the EU Blue Card and national schemes for highly skilled workers was 23 419 in 2012, 34 904 in 2013 and 38 774 in 2014⁸. When compared to the projected needs for highly skilled workers in certain sectors, these numbers are by far insufficient to address the existing and projected future labour and skills shortages in the EU in highly skilled occupations. Moreover, while surveys on intentions of highly educated potential migrants indicate a relatively strong attractiveness of the EU, the EU is not effective enough neither in converting this into higher numbers of highly skilled workers, nor in retaining talents educated in the EU, when compared with other developed economies. Figures show that of all non-EU migrants coming to OECD countries, 48% of low-educated migrants and 31% of high-educated migrants choose an EU destination⁹.

This proposal, which replaces the existing EU Blue Card Directive (2009/50/EC), aims to improve the EU's ability to attract and retain highly skilled third-country nationals, as well as to enhance their mobility and circulation between jobs in different Member States. The objective is to improve the EU's ability to effectively and promptly respond to existing and arising demands for highly skilled third-country nationals, and to offset skill shortages, in order to increase the contribution of economic immigration to enhancing the competitiveness of the EU economy and addressing the consequences of demographic ageing.

- **Consistency with existing policy provisions in the policy area**

The European Agenda on Migration confirmed the need to use the EU Blue Card for setting up an attractive EU-wide scheme for highly skilled third-country nationals. In the Communication of 6 April 2016 it was further specified that this would be achieved by developing a harmonised EU common approach, which would include more flexible admission conditions, improved admission procedures and enhanced rights, including intra-EU mobility.

⁶ [Report on the situation in the Mediterranean and the need for a holistic EU approach to migration, 23 March 2016, \(2015/2095\(INI\)\).](#)

⁷ The UK, Ireland and Denmark do not participate in the EU Blue Card Directive, in line with respective Protocols annexed to the Treaties.

⁸ Eurostat statistics: National permits for highly skilled went up from 19 755 in 2012, to 21 940 in 2013 and 24 922 in 2014 while EU Blue Cards rose from 3 664 in 2012, to 12 964 in 2013 and 13 852 in 2014.

⁹ Senne, J.-N. and David, A., 'General Context and Contribution of Labour Migration in Europe', OECD 2016, forthcoming.

This initiative is complementary to other instruments adopted in the area of legal migration. In particular, it is complementary to the Directive on intra-corporate transferees¹⁰, which facilitates the entry and intra-EU mobility of highly skilled employees (managers, specialists) employed by non-EU companies who are temporarily assigned to subsidiaries situated in the EU. It is also complementary to Directive (EU) 2016/801, which regulates admission and rights for students and researchers, as well as e.g. for trainees and volunteers under the European Voluntary System. The proposal also complements and derogates from Council Directives 2003/86/EC of 22 September 2003, which lays down the conditions under which the right to family reunification can be exercised, and 2003/109/EC of 25 November 2003, concerning the status of third-country nationals who are long-term residents. The present proposal goes further than these Directives in that it provides for more favourable conditions for family reunification and more facilitated access to long-term resident status. Moreover, it complements Directive 2011/95/EU ("Qualification Directive")¹¹ to the extent that the scope of this proposal is extended to highly skilled beneficiaries of international protection. They will be able to take up employment across Member States in accordance with their skills and education and fill occupational shortages in particular regions. This allows them to be active in the labour market also in cases where there are no vacancies in their specific field in the Member State that granted them protection.

This proposal is consistent with the 'Action Plan on the integration of third-country nationals'¹² providing a common policy framework which could help Member States as they further develop and strengthen their national integration policies for third-country nationals, including highly skilled ones.

The format of residence permits for third-country nationals is laid down in Regulation (EC) No 1030/2002 and applies to this proposal.

- **Consistency with other Union policies**

This proposal aims to provide an attractive EU-wide scheme for highly skilled workers in line with the EU policies aiming at deepening and upgrading the Single Market¹³. A policy on attracting highly skilled workers is consistent with and also complementary to policies to facilitate the mobility of EU nationals within the EU supported by Regulation 492/2011¹⁴, Regulation 2016/589 ('EURES')¹⁵ and the forthcoming Labour Mobility package as regards the coordination of social security. It also complements policies improving and upgrading the skills of EU workers, and the recognition of qualifications, in view of their better labour market integration. A larger pool of available talent benefits the EU economy as a whole and the displacement effect of EU workers is expected to be low in the case of highly skilled

¹⁰ Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (OJ L 157, 27.5.2014, p. 1).

¹¹ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (OJ L 337, 20.12.2011, p. 9).

¹² [COM\(2016\)377 final](#).

¹³ Communication of 28 October 2015, "Upgrading the Single Market", [COM\(2015\) 550 final](#).

¹⁴ Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ L 141, 27.5.2011, p. 1).

¹⁵ Regulation (EU) 2016/589 of the European Parliament and of the Council of 13 April 2016 on a European network of employment services (EURES), workers' access to mobility services and the further integration of labour markets, and amending Regulations (EU) No 492/2011 and (EU) No 1296/2013 (OJ L107 of 22.04.2016, p.1).

workers. The [forthcoming](#) New Skills Agenda for Europe¹⁶ deals with the broad issue of recognition of qualifications and is thus also relevant for the admission of highly skilled workers under the EU Blue Card, as these persons often face barriers and high costs when getting qualifications obtained in third countries recognised. All of these initiatives contribute to the EU Growth Strategy, in line with Europe 2020 priorities.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

This proposal concerns conditions of entry and residence for third-country nationals and procedures for issuing the necessary permits linked to highly skilled work. It also lays down the conditions under which a third-country national may reside in a second Member State. Consequently, the appropriate legal basis is Article 79(2)(a) and (b) of the Treaty on the Functioning of the European Union (TFEU), in connection with Article 79(1) of the same Treaty.

According to Protocol 21 annexed to the Treaties, 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. Neither Member State has exercised their right to opt into the EU Blue Card Directive. According to Protocol 22 annexed to the Treaties, Denmark is not taking part in the adoption of measures based on this Article¹⁷.

The admission of economic migrants is a shared competence between the EU and its Member States. In particular, any measure proposed in the area of legal migration “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” (Article 79(5) TFEU).

• Subsidiarity

The challenge of improving the capacity to attract and retain talent from outside of the EU has increased and is common to all Member States. Although each Member State could continue to have its own national system for highly skilled workers, this would not increase the attractiveness of the EU as a whole. Especially when comparing the EU to other major destinations with a more uniform approach, Member States acting alone, particularly smaller ones, are not adequately equipped to compete in the international competition for highly skilled workers.

The current fragmented situation with diverging and parallel national rules for the same category of third-country nationals across Member States is neither effective nor efficient for any party involved. Applicants and employers have to navigate a complex regulatory framework which creates costs and administrative burden, which weighs especially heavily on SMEs. Furthermore, it would be easier and more cost-efficient for Member States' authorities to apply a single, clear and straightforward set of rules for examining applications of highly skilled workers to stay and work.

¹⁶ COM(2016)381 final.

¹⁷ The United Kingdom, Ireland and Denmark are not bound by Directive 2009/50/EC.

The EU, acting as a single player towards the outside world, can create economies of scale and hence better compete with other major destinations for the limited supply of highly skilled workers. This proposal aims to increase the EU's overall attractiveness by providing a single, transparent, flexible and streamlined scheme for highly skilled workers across the EU. It sends a clear message to highly skilled workers that the EU welcomes them by offering clear and quick admission procedures combined with attractive residence conditions for them and their families.

In addition, only action at EU level can offer highly skilled workers the possibility to easily move, work and reside in several EU Member States. Intra-EU mobility helps to better respond to demands for highly skilled labour and offset skills shortages. On the contrary, national schemes cannot offer, by their own nature, this possibility to move easily from one Member State to another should labour shortages or work opportunities arise.

Even with a more harmonised EU-wide scheme and the abolition of parallel national schemes, Member States will retain competence on certain aspects, such as their Treaty-based prerogative of defining the volumes of admission of third-country nationals coming from third countries to their territory in order to seek work. Member States will also have the possibility to introduce labour market tests in circumstances where their labour market undergoes serious disturbances such as a high level of unemployment in a given occupation or sector. Moreover, Member States themselves will have control over the level of the salary threshold – even if it will be more harmonised with lower and upper limits – which will be calculated on a national average of the wages, and over the shortage occupations to which a lower threshold will apply.

Given all these considerations the proposal complies with the subsidiarity principle.

- **Proportionality**

This proposal concerns admission conditions, procedures and rights of third-country highly skilled workers, which are elements of a common immigration policy under Article 79 TFEU. EU-wide rules for this group of third-country nationals already exist, in parallel with national rules, yet they need to be modified to address the identified problems and fully achieve the objectives of the Directive, while the content and form of the Union action should remain limited to what is necessary to achieve these objectives.

The proposal offers a balance between, on the one hand, enhanced rights including intra-EU mobility through a higher level of harmonisation, and, on the other hand, a more inclusive scheme through further facilitation of admission procedures (including lower salary thresholds, thus enlarging the target group), with a certain flexibility for Member States to adapt the scheme to their national situation.

The administrative burden imposed on Member State in terms of change of legislation and added cooperation would be moderate as the EU Blue Card scheme already exists and as this burden would be outweighed by the benefits.

- **Choice of the instrument**

The instrument chosen is a new Directive to repeal and replace the current EU Blue Card Directive. This gives Member States a degree of flexibility in terms of implementation and application. A Directive is binding as to the result to be achieved but gives Member States flexibility in respect of the form and method for putting these objectives into effect in their national legal system and general context. No reason has been identified to move from a Directive to a directly applicable Regulation.

Non-binding measures would have too limited an effect, as potential applicants and companies would continue to face an array of different rules for admission

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

The first implementation report of the EU Blue Card Directive¹⁸ was presented in May 2014 and assessed the conformity of national legislations with the provisions of the Directive. It concluded that there are wide variations between Member States in the number of EU Blue Cards granted due to policy choices by Member States who apply and promote the EU Blue Card in considerably different ways and, in some cases, favour their parallel national schemes. The current EU Blue Card Directive only sets minimum standards and leaves much leeway to Member States through many discretionary provisions and references to national legislation. The report also found that there are a number of deficiencies in the transposition and, more specifically, that Member States have been neglecting their reporting obligations under the Directive. These concerns were discussed with Member States through the network of National Contact Points and in Contact Group meetings.

A further evaluation carried out by the Commission in 2015-2016 updated and expanded upon the first report. The conclusion is that the EU Blue Card in its current form does not achieve its potential for adding value to the competing and complementary national schemes for highly skilled workers¹⁹.

- **Stakeholder consultations**

Between 27 May and 30 September 2015, an online public consultation on the EU Blue Card and the EU's labour migration policies was conducted. In total, 610 responses were received to the questionnaire and 15 written contributions from a wide range of actors representing all relevant stakeholders²⁰. Contributions were sought and received from EU citizens, organisations and third-country nationals (residing inside or outside the EU) as well as employers (multinationals as well as SMEs), their associations, private and public employment organisations, trade unions, ministries, regional and local authorities, media workers, academics, international organisations, organisations or authorities of the countries of origin, social partners and other civil society actors. Various bilateral and group meetings have also been held with key Member States, business representatives, practitioners, social partners and international organisations (OECD, UNHCR, IOM). A specific workshop was organised with national social partners on 3 December 2015 in collaboration with the Labour Market Observatory (LMO) and the Permanent Study Group on Immigration and Integration (IMI) of European Economic and Social Committee. Several additional stakeholder consultation activities were conducted by an external contractor with selected national authorities, employer organisations, trade unions, and organisations in countries of origin.

The results have been taken into account throughout the review as reflected in the Impact Assessment report.

- **Collection and use of expertise**

¹⁸ Communication of 22 May 2014 on the implementation of Directive 2009/50/EC, [COM\(2014\) 287 final](#).

¹⁹ See Annex 5 of the accompanying Impact Assessment.

²⁰ Results and contributions are [available online](#).

A Commission Expert Group on Economic Migration (EGEM)²¹ was established to support the future policy development in the field of economic migration. During the first EGEM meeting on 25 March 2015, the experts discussed ways to "better manage Labour Migration at EU level" and the main subject for discussion was the review of the EU Blue Card. The focus of the second EGEM meeting on 7 December 2015 was on the "policy options for a revised Blue Card"²².

In addition, on 13 November 2015, a meeting of the EMN Skilled Migrants Expert Group — a sub-group of the European Migration Network — took place with experts from Member States for a technical discussion on issues related to the EU Blue Card, the parallel national schemes for highly skilled workers and their interaction.

- **Impact assessment**

In the preparation of the proposal a broad range of policy options were examined, some of which – repealing the EU Blue Card Directive, introducing a point-based expression of interest system, extending the scope to international service providers – were discarded in the first stage of assessment.

Options considered

Amongst the options retained for in-depth assessment are the following:

0) Baseline scenario

The current EU Blue Card would continue to be applied without legislative changes. Existing monitoring and enforcement activities of the current legislation would continue, as well as activities to improve cross-national recognition of foreign qualifications either between Member States or in cooperation with third countries through exchanges of practice and further guidance to the national authorities.

1) Extending the scope by making it accessible to a significantly wider group of workers, including (some) medium-skilled

This option would make the EU Blue Card available also to some medium-skilled workers, as salary and qualifications would be set as alternative instead of cumulative conditions. The level of rights would not be significantly enhanced from the current level.

2) Modifying admission conditions and rights without extending the scope beyond highly skilled workers

This option has three sub-options depending on the target group (wider vs. more selective) and remains within the scope and basic framework of the current Directive, but with facilitation common to all sub-options as regards conditions, procedures and rights.

- 2a) Making the EU Blue Card accessible to a wider group of highly skilled workers

²¹ Register of Commission Expert Groups: [E03253](#).

²² Membership, meeting reports and written contributions from participants are available at: <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3253>

This sub-option would extend the scope of highly skilled workers eligible for the EU Blue Card, facilitate admission and provide enhanced residence and mobility rights. Member States would maintain some limited leeway for national adaptation of the scheme, but parallel national schemes would be abolished.

- 2b) Making the EU Blue Card a tool to attract a selected group of the most highly skilled workers

This option would make the EU Blue Card a rather selective instrument for the very highly skilled. Eligible workers would benefit from fast and easy admission and from extensive rights. Parallel national schemes would remain allowed.

- 2c) Creating a two-tiered Blue Card targeted at different skill levels of highly skilled workers

This sub-option would be a combination of the previous sub-options by creating an EU Blue Card with two levels to address different categories of highly skilled workers: first level for a wide group of highly skilled workers and a more selective second level with faster access to long-term residence and easier intra-EU mobility. Parallel national schemes would be abolished.

3) A unified standard EU-wide Blue Card

This policy option package would introduce a standard EU-wide set of Blue Card rules applicable across the Member States. There would be no scope for the Member States to adapt any of the conditions or other rules of the EU Blue Card to national labour market circumstances. An EU Blue Card issued by one Member State would be mutually recognised by all Member States and provide unlimited intra-EU mobility. Parallel national schemes would be abolished.

Horizontal/parallel legislative options

A number of horizontal legislative options have also been considered and also a non-legislative one. These options can be self-standing on top of the baseline situation or combined with any of the legislative packages:

a) Non-legislative actions to improve the effectiveness of the EU Blue Card

This policy option aims at enhancing the implementation of the EU Blue Card and the practical cooperation between Member States, and reinforces the promotion of the brand through information sharing, promotion, and advertisement activities. It would include practical measures to make the use of the EU Blue Card scheme easier by improving the recognition of foreign qualifications and improve skills and job matching.

b) Legislative action extending the EU Blue Card to innovative entrepreneurs

This option would extend the scope of the EU Blue Card from highly skilled *employed* workers to innovative entrepreneurs (thus *self-employed* workers), and a separate set of admission conditions and rights (including possibly intra-EU mobility) for this group would be created within the Directive.

c) Legislative action extending the EU Blue Card to highly skilled beneficiaries of international protection and asylum applicants

This option would open access to the EU Blue Card to other categories of migrants who are applying for or have received international protection status. Two main sub-categories and sub-options can be distinguished: (i) including only beneficiaries of international protection (refugees, persons granted subsidiary protection); (ii) including also asylum seekers.

Preferred option

After the assessment of the impacts, effectiveness and efficiency of the retained options, as well as of their feasibility, the preferred option is 2a) in combination with the horizontal options a) (non-legislative actions) and c), sub-option (i) (including only beneficiaries of international protection in the scope). The preferred option includes therefore the following main elements: modifying the admission conditions and making the EU Blue Card accessible to a wider group of highly skilled workers; improving the rights associated with the EU Blue Card, including intra-EU mobility; and not extending the scope beyond highly skilled workers. Furthermore, national schemes for third-country nationals falling within the scope of application of this Directive would no longer be allowed. The legislative measures would be complemented by non-legislative actions and potentially by making the EU Blue Card accessible to highly skilled beneficiaries of international protection.

The preferred option strikes a mid-way balance between, on the one hand, a high level of inclusiveness, substantial flexibility for Member States to adapt to their national situation, and a high substitution potential for parallel national schemes, and, on the other hand, further facilitation of procedures, a higher level of rights, further facilitation of intra-EU mobility and a high level of harmonisation. Consequently, this preferred option represents a balanced combination between (high) effectiveness and efficiency, positive economic and social impacts. Such positive impacts would be maximised if combined with non-legislative actions such as active promotion of the scheme and improved matching between employers and potential migrants.

The estimated additional permits for this option are in the range of minimum 32 484 to maximum 137 690 highly skilled workers (per year, aggregate across participating Member States, variation depending on the salary threshold set by individual Member States). This would result in an estimated positive annual economic impact of between 1.4 billion to 6.2 billion EUR accruing from additional highly skilled workers coming to and working within the EU. Overall higher numbers of admitted highly skilled workers, and an increased retention potential of young talent trained in the EU, will create a larger pool of highly skilled workers from which employers can draw to fill shortages which would positively impact growth and the EU's competitiveness. Combined with increased possibilities for occupational mobility between jobs and intra-EU mobility this would facilitate and lower the cost of recruitment for SMEs and make it easier for them to fill labour shortages and boost their growth perspectives. There would also be positive impact on the capacity of companies to conduct research and development (R&D) and would benefit the EU's overall capacity for innovation, research and entrepreneurship. The high effectiveness and efficiency of this option would also reduce the administrative burden linked its application.

Social impacts will also be positive as EU citizens would benefit from the positive impact on overall economic growth through filling labour and skills shortages, which may indirectly contribute to reinforcing knowledge-based economy and job creation in the EU. Given that this scheme is targeted at highly skilled workers, demand-driven and fairly selective, and that appropriate safeguards are built in, the potential displacement effect on EU workers is expected to be limited. Blue Card holders would enjoy a positive impact in terms of enhanced

family reunification rights, access to long term status and intra-EU mobility. Positive social impacts can also be expected due to the inclusion of beneficiaries of international protection as highly skilled beneficiaries would, by obtaining an EU Blue Card, become more visible to employers in their host Member State and be able to access labour markets also in other Member States than the one that granted them protection. This facilitates their labour market participation which favours their integration and their ability to provide for their own livelihood.

Opinion of the Regulatory Scrutiny Board

On 5 February 2016 the impact assessment was submitted to the Regulatory Scrutiny Board (RSB) and a meeting was held on 2 March 2016. The Board issued a first opinion (negative) on 4 March 2016. The impact assessment was re-submitted on 14 March and a second opinion (positive) was issued on 18 March 2016. The main issues for improvement highlighted by the Regulatory Scrutiny Board's opinions were the following and were taken into account as follows:

a) Clarify the addressed problems and their EU dimension

The impact assessment report has been strengthened in its analysis on the existing and future labour shortages across the EU and how they can be effectively addressed by the revised Blue Card and especially by enhanced intra-EU mobility of third-country national highly skilled workers. The interaction between intra-EU mobility of EU citizens and mobility of highly skilled workers, and the extent to which both contribute to addressing skills and labour shortages, has also been clarified. Figures and additional analysis have been added to better demonstrate the need for EU action in attracting highly skilled third-country national workers and the EU added value in comparison with national schemes. The interaction between the EU Blue Card review and other migrant categories such as beneficiaries of international protection/asylum seekers, service providers and entrepreneurs - as well as the need for their possible inclusion in its scope - has been further elaborated.

b) Clarify the objectives and policy options

The general and specific objectives have been revised to be more consistent with both the problem definition and the proposed options. The underlying logic of the policy option packages has been explained, and the presentation simplified. Justifications for discarding certain options upfront have been strengthened, and the screening and selection of the policy options has been improved.

c) Focus the impact analysis on the main labour market aspects

The presentation of the impact analysis has been simplified and made more reader-friendly and focus is more clearly on labour market aspects and economic impacts. Impacts per Member State have been identified where feasible. Differences between the various policy options and the baseline scenario have been better highlighted. While quantitative data remains limited, administrative costs and gains for different stakeholders have been analysed. A preferred option, consisting of one policy option package and horizontal elements, has been selected as a result of gradual elimination of options based on clear and objective criteria.

• **Fundamental rights**

This initiative is fully consistent with the Charter of Fundamental Rights and enhances some of the rights enshrined therein. It in particular contributes to delivering the right to respect for private and family life (Article 7) — through facilitated provisions in relation to family

reunification for highly skilled workers — and the right to engage in work and to pursue a freely chosen or accepted occupation (Article 15(1)). It is also fully consistent with the rights related to working conditions (Article 15(3)) and rights of workers (Articles 27 to 36) as it maintains the rights to equal treatment for highly skilled workers as regards working conditions, access to social security, to education and vocational training as well access to goods and services. Compatibility with Article 47 (right to an effective remedy and fair trial) is fully ensured as the current provisions in the EU Blue Card related to the right to appeal in case the application is rejected, as well as to be notified the grounds for rejection, are maintained.

4. BUDGETARY IMPLICATIONS

There are no implications for the European Union budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will check the correct and effective transposition into national laws of all participating Member States. Throughout the implementation phase the Commission will organise regular contact committee meetings with all Member States. The Commission will present to the European Parliament and the Council a report evaluating the implementation, functioning and impact of the EU Blue Card three years after the transposition deadline, and every three years thereafter.

The application of the EU Blue Card Directive will be monitored against the main policy objectives using a number of relevant and measurable indicators based on easily available, accepted and credible data sources. The communication of more types of information is made mandatory in the revised Directive to improve its timely provision and reliability. This would increase its value for the monitoring and evaluating the highly skilled migration policy. In addition, the exchange of information via the National Contact Points on the EU Blue Card will be improved.

- **Explanatory documents**

The proposed Directive has a wide personal scope as regards highly skilled third-country national that it covers. The proposal also contains a larger number of legal obligations compared to the existing Directive 2009/50/EC. Given this, and the fact that the proposal includes provisions on a number of groups not yet covered in a mandatory way by the current legal framework, explanatory documents, including a correlation table between national provisions and the Directive, accompanying the notification of transposition measures will be needed so that the transposition measures that the Member States have added to existing legislation are clearly identifiable.

- **Detailed explanation of the specific provisions of the proposal**

Chapter I - GENERAL PROVISIONS

Article 1 - Subject matter

The objective of the proposal is to define the conditions for the entry and residence of third-country nationals applying to reside in the EU for the purpose of highly skilled employment, either from outside the EU or legally residing in the EU with another status, and their family

members, and to define their rights. The proposal also determines the conditions in which third-country nationals who are legally residing in a Member State under the terms of this proposal may move and reside with their family members in other Member States. This provision remains essentially similar to the one in Directive 2009/50/EC but adapted to take account of the fact that the Blue Card will become the sole means for admitting highly skilled third country nationals.

Article 2 – Definitions

This Article sets out the definitions used in the proposal, which are to a large extent common to other existing legal migration Directives. A definition is given to "highly skilled employment", which replaces the concept of "highly qualified employment" in the current Directive. It refers to paid employment, in accordance with national law and practice, by a person having the necessary competence as proven by "higher professional qualifications". The latter can be attested by either "higher education qualifications" (i.e. the successful completion of a post-secondary higher education or equivalent tertiary education programme, corresponding at least to level 6 of ISCED²³ 2011 or to level 6 of the European Qualification Framework) or by "higher professional skills" (i.e. skills attested by at least three years of professional experience of a level comparable to higher education qualifications and relevant to the work or profession to be carried out). The level of required skills remains unchanged, but it becomes mandatory for Member States to recognise professional experience as an alternative to education qualifications. Furthermore, the specific reference to ISCED and EQF levels is new, intended to provide added clarity.

As a novelty compared to Directive 2009/50/EC, the definition of "business activity" is provided in order to define which professional activities can be carried out by the EU Blue Card holder in the context of the specific rules for short-term mobility to other Member States (see Article 19).

Article 3 - Scope

The proposal, similarly to Directive 2009/50/EC, does not cover EU citizens, third-country nationals who are EU long-term residents and want to move to another Member State, seasonal workers nor posted workers. As there are potential overlaps between the scopes of Directive (EU) 2016/801 of the European Parliament and of the Council²⁴ and the present instrument, this Article expressly excludes from the scope of the Directive third-country nationals who apply to reside in a Member State as researchers, within the meaning of Directive (EU) 2016/801, in order to carry out a research project. However, once admitted under Directive (EU) 2016/801 legally residing researchers may apply for an EU Blue Card under this Directive for other purposes than those covered under Directive (EU) 2016/801.

As a modification to Directive 2009/50/EC, all third-country national family members of EU citizens are given access to the EU Blue Card in order to enable them to engage in highly skilled employment and perform business trips in different Member States regardless of whether or not the EU citizen accompanies them. These highly skilled third-country national family members of EU citizens have the same short and long term professional intra-EU mobility needs as other highly skilled third-country nationals, and they should not be denied

²³ UNESCO International Standard Classification of Education.

²⁴ Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (OJ L 132, 21.05.2016, p. 21).

the possibility to apply for an EU Blue Card which they would have had in their country of origin simply due to the fact they are residing legally in the EU as family members of EU nationals.

The proposed Directive continues to not apply to persons seeking international protection and awaiting decision on their status or to those who are beneficiaries of temporary protection or residing in a Member State on a strictly temporary basis. As a novelty it does cover, however, beneficiaries of international protection under Directive 2011/95/EU (“Qualification Directive”). They will be able to apply for an EU Blue Card like any other third-country national, while retaining all the rights they enjoy as beneficiaries of protection (see also comments on Articles 15 and 16). Also third-country nationals to be resettled in Member States under future EU schemes, who will be granted similar rights as those laid down in Qualification Directive, are to be given access to the EU Blue Card. Highly skilled beneficiaries of international protection will thus become more accessible to employers and be able to take up employment in a more targeted way in accordance with their skills and education, filling shortages in sectors and occupations in any Member State. This allows them to actively participate in the labour market, which favours their integration, and to more easily secure their own livelihood. Furthermore, it avoids wasting their skills if there are no vacancies in their specific field in the Member State that granted them protection, leading to a more efficient labour market allocation. In the upcoming revision of the Qualification Directive the necessary references and modifications will be introduced to ensure consistency.

A provision is also included to safeguard international agreements concluded by the Union and/or its Member States to ensure ethical recruitment, i.e. to protect those sectors suffering from lack of personnel in developing countries.

As a distinction to Directive 2009/50/EC, the new proposal does not allow Member States to have parallel national schemes targeting the same group of highly skilled workers. In order to develop the EU Blue Card into a truly EU-wide scheme, Member States are obliged to grant an EU Blue Card instead of a national permit for highly skilled work to persons falling under its scope. Member States may only issue national permits in respect of third-country national workers not falling under the scope of the Directive, within the limitations set out in other EU legislation in the field of legal migration.

Article 4 - More favourable provisions

The proposal harmonises admission conditions and procedures for third-country nationals falling under its scope, and for their family members, as well as for their subsequent mobility to other Member States..

Member States are nevertheless still allowed to grant more favourable conditions as regards rights, in particular in relation to equal treatment (Article 15) and rights of family members (Article 16). Member States may also have more favourable treatment of situations of temporary unemployment (Article 14), and allowed absences from the territory once long-term resident status has been acquired (Article 17(5)). In addition, Member States may introduce more favourable provisions regarding procedural safeguards (Article 10).

Chapter II - CONDITIONS OF ADMISSION

Article 5 – Criteria for admission

Article 5 lays down the conditions the applicant must fulfil in order to be admitted as an EU Blue Card holder. Besides the general conditions similar to those included in Directive

2009/50/EC and other existing acquis on legal migration (i.e., having a valid travel document, sickness insurance and not posing a threat to public policy, public security or public health), specific conditions include:

- *Paragraph 1(a)*: a work contract or a binding job offer with a duration of at least six months in the Member State concerned, as admission is demand-driven. The required length of contract is shortened from 12 to 6 months compared to the current Directive. This condition is intended to guarantee a certain level of continuity of residence and employment while offering a certain degree of flexibility in line with the demands of the labour market and Member States' practices. However, an important share of national residence permits for highly skilled workers are currently issued for a validity period of less than twelve months and employers tend to offer a trial contract first, with a shorter duration, to ensure that the employee is suitable for the position in question, after which an extension may be granted if the trial period has been successfully completed.

- *Paragraph 1(b)*: for regulated professions, similarly to Directive 2009/50/EC, the applicant must fulfil the requirements set out under national law for the exercise by Union citizens of the regulated profession concerned.

- *Paragraphs 1(c) and 6*: for unregulated professions, the applicant must prove that he/she has the necessary higher professional qualifications, i.e. either higher education qualifications or higher professional skills; Member States shall facilitate the validation and recognition of documents attesting the relevant higher professional qualifications. The changes compared to Directive 2009/50/EC have been described under Article 2.

- *Paragraph 2*: The salary specified in the work contract must be at least equal to a certain threshold determined by Member States within a range of minimum 1.0 and maximum 1.4 times the average gross annual salary in the Member State concerned. This threshold is lower than the one set in Directive 2009/50/EC (minimum 1.5 times the average gross annual salary in the Member State concerned, no maximum set), thus significantly increasing the inclusiveness of the EU Blue Card scheme, i.e. including a much higher number of potential highly skilled workers²⁵. A fixed range increases the harmonising effect, while maintaining a certain level of flexibility for Member States to set the threshold in function of the particular situation in their labour market, their average income levels and divergence in income distribution. The use of Eurostat data (National Accounts) as the reference figure for calculating the salary threshold is made mandatory in order to increase transparency and harmonisation.

- *Paragraphs 4 and 5*: these provisions introduce a mandatory lower salary threshold (at 80 percent of the general threshold) for shortage occupations determined by the Member States, belonging to ISCO major groups 1 and 2²⁶, as well as for young graduates. In Directive 2009/50/EC, there is only an optional lower salary threshold for shortage occupations at the minimum level of 1.2 times the average salary. The derogation for recent graduates – which was not foreseen in Directive 2009/50/EC – facilitates the access to the EU Blue Card for young professionals who are likely not to have enough professional experience to claim high

²⁵ For an analysis of the impact and 'inclusiveness' of the different salary thresholds see Annexes 7 and 14 of the Impact Assessment accompanying this proposal, SWD(2016)193

²⁶ ISCO (International Standard Classification of Occupations) major groups 1 and 2 include managers and professionals respectively. <http://www.ilo.org/public/english/bureau/stat/isco/intro.htm>.

salaries²⁷. Such facilitation is consistent with recent amendments to EU legislation on students (Directive (EU) 2016/801), where graduates are allowed to look for employment in the host Member State for at least nine months.

Articles 6 and 7 - Grounds for refusal, withdrawal or non-renewal of the EU Blue Card

These provisions lay down the mandatory and optional grounds for refusal, as well as for withdrawal and non-renewal. These are largely similar to the grounds included in Directive 2014/66/EU in relation to intra-corporate transferees and some provisions have been added compared to Directive 2009/50/EC.

As regards the possibility of carrying out a labour market test, whereas it is an unlimited right for Member States under Directive 2009/50/EC, in the proposal it is only allowed in circumstances where a Member State's labour market undergoes serious disturbances, for example a high level of unemployment in a given occupation or sector in a particular region in their territory. In case a Member States intends to carry out labour market tests, it shall send a justified notification to the Commission and communicate this to applicants and employers. The social partners may be involved by Member States in the assessment of the circumstances related to its labour market.

Chapter III - EU BLUE CARD AND PROCEDURE

Articles 8, 9, 10 and 11 - EU Blue Card, applications for admission, procedural safeguards and fees

Applicants for whom a positive decision has been taken by the Member State concerned shall receive a residence permit called "EU Blue Card" stating the conditions under which they are allowed to work. The standard period of validity for the EU Blue Card is at least 24 months. Only if the work contract covers a shorter period, the EU Blue Card validity should be at least the duration of the work contract plus three months. However, when an EU Blue Card is renewed, the period of validity should in any case be at least 24 months. In Directive 2009/50/EC, Member States are given the choice of a standard validity between 1 and 4 years or length of the contract plus three months, and it applies equally to first permits and renewals.

Applications for the EU Blue Card can be made either outside or inside the territory of the Member State, the latter on the condition that the applicant is legally present in the territory of that Member State, on whatever grounds (bearing in mind, however, the categories excluded from the scope under Article 3(2)). This is more generous than provisions in Directive 2009/50/EC, which only gives the possibility for Member States to allow all legally staying third-country nationals to apply on their territory.

Member States shall notify the applicant of a decision on an application at the latest within 60 days after the submission of the application. This is shortened from the 90 days in Directive 2009/50/EC.

Member States may decide to impose fees for handling applications. However, they should not be disproportionate or excessive. This is a new provision, modelled from Directive 2014/66/EU on intra-corporate transferees.

Article 12 - Recognised employers

²⁷

See Annex 7 of the Impact Assessment accompanying the proposal, SWD(2016)193

An optional system of 'recognised employers' is introduced, which was not foreseen in Directive 2009/50/EC. The recognition procedure is regulated at national level; however, such procedure must be transparent and not entail disproportionate or excessive administrative burden and costs for employers. When an employer has been recognised in accordance with this Article, the application procedure for obtaining an EU Blue Card must be fast tracked (30 days maximum) and linked to procedural facilitation (i.e. no evidence required as regards the qualifications for unregulated professions and sickness insurance).

Chapter IV - RIGHTS

Articles 13 and 14 - Access to the labour market and temporary unemployment

Directive 2009/50/EC contains a multifaceted set of rules regulating access to the labour market and the procedures linked thereto. In the proposal access is simplified: EU Blue Card holders are granted full access to highly skilled employment. Member States can only require that they communicate changes of employer or changes that can affect the fulfilment of the EU Blue Card admission conditions. The purpose is to make the legal situation clear across Member States and to avoid unnecessary administrative burden. This will not affect the possibility for Member States to withdraw or not to renew an EU Blue Card, where conditions are no longer fulfilled. In addition, EU Blue Card holders are allowed to exercise a self-employed activity in parallel with their Blue Card occupation as a possible gradual path to innovative entrepreneurship. This entitlement does not change the fact that the admission conditions for the EU Blue Card have to be continuously fulfilled and, therefore, the EU Blue Card holder must remain in highly skilled employed activity.

Similarly to Directive 2009/50/EC, temporary unemployment is allowed without this affecting the right of residence as an EU Blue Card holder. Unemployment cannot last for more than three months or occur more than once during the validity of the EU Blue Card.

Articles 15 and 16 - Equal treatment and family members

The provisions on equal treatment of EU Blue Card holders with Member State nationals largely correspond to the rights provided under Directive 2009/50/EC, only some updates have been introduced to match the more recent Directives.

Derogations from Directive 2003/86/EC are provided in order to facilitate family reunification of highly skilled workers. Like under Directive 2009/50/EC, no waiting period or integration measures can be imposed before reunification is allowed. As a further new facilitation, family members will be entitled to receive their permits immediately when the EU Blue Card is issued and thereby be able to join the worker without any delay. Moreover, Member States cannot apply limitations regarding family members' access to the labour market, but a labour market test can be carried out before granting access.

EU Blue Card holders are not covered by these provisions whenever they enjoy rights, in the areas covered by these Articles, as beneficiaries of the right to free movement. Likewise, beneficiaries of international protection are not covered by these provisions and remain covered by the rules that apply to them as beneficiaries of protection vis-à-vis the Member State which granted them protection.

Articles 17 and 18 - EU long-term residence for EU Blue Card holders

These Articles provide for derogations from Directive 2003/109/EC and thereby give EU Blue Card holders facilitated access to EU long-term resident status. Compared to Directive 2009/50/EC, further facilitations are introduced while building on the existing model. In order to guarantee a sufficient level of integration in the host country, access can be gained first of all through a continuous residence period of three years in one Member State as an EU Blue Card holder. Alternatively, where the EU Blue Card holder has moved to another Member State under the EU Blue Card mobility provisions, the status can be obtained through five years of continuous residence cumulated in different Member States (also residence while holding another residence permit than the EU Blue Card will be accounted for). To reinforce the link to the country issuing the EU long-term resident status, it is required that the EU Blue Card holder has resided at least two years immediately prior to applying for the status in the Member State concerned. Where the period of three years applies, the EU long-term resident status may be withdrawn before a period of legal and continuous residence of five years within the territory of the Member States has been completed if the third-country national becomes unemployed and does not have sufficient resources to maintain himself or herself and, where applicable, the members of his or her family, without having recourse to the social assistance system of the Member State concerned, except in case of illness, accident, involuntary unemployment or vocational training. Where the period of five years applies, longer absences from the territory of Member States are allowed than under the general regime foreseen in Directive 2003/109/EC.

Directive 2009/50/EC already recognised a specific status for EU long-term residents who are former EU Blue Card holders. New provisions are introduced in the proposal to guarantee that no rights are lost in this transition: The short-term intra-EU mobility rights for business activities in a second Member State enjoyed under the EU Blue Card scheme will be maintained upon the issuance of the EU long-term resident status. For residence in a second Member State long-term residents who are former EU Blue Card holders will rely on the regime foreseen in Directive 2003/109/EC, with derogations where the EU Blue Card arrangements are more favourable.

Chapter V - MOBILITY BETWEEN MEMBER STATES

Article 19 - Business activity in a second Member State

This completely new Article allows Blue Card holders to enter and stay in other Member States for the purpose of carrying out a business activity as defined in point (l) of Article 2. Second Member States are not allowed to require a work permit or any other authorisation than the EU Blue Card issued by the first Member State for carrying out such activity. Where the EU Blue Card is issued by a Member State applying the Schengen acquis in full, the EU Blue Card holder can move within the Schengen area and carry out a business activity for 90 days within a 180-day period. He or she can carry out a business activity for the same duration when moving to Member States participating in the EU Blue Card but not fully applying the Schengen acquis. Where the EU Blue Card is issued by a Member State not applying the Schengen acquis in full, second Member States must allow entry and stay on the basis of the EU Blue Card for the purpose of business activity, without requiring a separate visa or any other authorisation, also for a duration of 90 days within a 180-day period. The main purpose of this Article is to guarantee that intra-EU business activities, which may belong to the habitual tasks of highly skilled workers, can be carried out without legal uncertainty or excessive administrative burden.

Articles 20 and 21- Residence in a second Member State for EU Blue Card holders and their family members

Compared to Directive 2009/50/EC, mobility between Member States is further facilitated in order to make the EU Blue Card a truly EU-wide scheme better equipped to attract the necessary skills to Europe. The residence period required in the first Member State is shortened from 18 to 12 months and, in line with the scheme for long-term mobility developed in the context of Directive 2014/66/EU, several conditions are waived when applying for an EU Blue Card in the second Member State. Notably, no labour market test is allowed for mobile EU Blue Card holders if it is not also introduced for first entry applications, no quotas are allowed and the second Member State cannot re-verify the qualifications for unregulated professions. The relevant procedure is simplified and speeded up, and work can begin immediately after the application for an EU Blue Card has been submitted. Family members can join the EU Blue Card holder without any delay and some conditions are waived for their residence in the second Member State.

Article 22 - Safeguards and sanctions

New safeguards are introduced to match the more extensive rights given to EU Blue Card holders. Where the EU Blue Card is issued by a Member State not applying the Schengen acquis in full, Member States may require evidence of the purpose of the trip when an EU Blue Card holder crosses an external border for mobility purposes. Moreover, if an EU Blue Card is not eventually issued by the second Member State, the first Member State has to allow re-entry of the person concerned with possible family members. There are special safeguards against *refoulement* for situations where the EU Blue Card holder is also a beneficiary of international protection. These provisions are similar to those included in Directive 2011/51/EU, by which access to EU long-term resident status along with the relevant mobility rights was extended to beneficiaries of international protection. Member States are given the possibility to impose sanctions on employers not complying with their obligations.

Chapter VI - FINAL PROVISIONS

Articles 23, 24, 25 and 26 – Access to information, statistics, reporting and cooperation between contact points

Article 23 requires, as a novelty compared to Directive 2009/50/EC, Member States to provide easily accessible information to applicants about entry and residence conditions, as well as rights. It also requires them to communicate to the Commission data on a number of aspects, such as the annual salary thresholds, the list of shortage occupations, the cases in which Member States make use of the clause on ethical recruitment, the allowed business activities in their territory,

Article 23 requires Member States to communicate to the Commission statistics on numbers of Blue Card issued, rejected, renewed or withdrawn, as well as on permits issued to their family members. Those statistics should be disaggregated by the period of validity of the permits, the gender and age of the applicants, and the economic sector. They should also allow disaggregating third-country nationals who have been granted an EU Blue Card and who are beneficiaries of international protection or the right to free movement, as well as EU Blue Card holders who have acquired long-term resident status. Some statistics are required already under Directive 2009/50/EC, but the proposal imposes further requirements on Member States, crucial for monitoring the implementation and developing the scheme.

Based on Article 25, the Commission shall report to the European Parliament and the Council on the application of this Directive – and particularly assess the impact of Articles 5, 12, 19 and 20 – every three years and propose any amendment that would be necessary. This is a standard provision, but the new mobility rules are a particular object of interest.

Article 26 requires Member States to designate contact points to exchange information related to Article 17 (long term status), 19 (business activities), 20 (long term mobility) and 23 (implementing measures). The aim is to broaden the information exchange compared to Directive 2009/50/EC.

Articles 27, 28, 29 and 30– Transposition, entry into force, addressees and repeal

Articles 26 to 28 are standard provisions. Article 29 provides for the repeal of Directive 2009/50/EC, which is replaced by the current proposal.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular points (a) and (b) of Article 79(2) thereof,
Having regard to the proposal from the European Commission,
After transmission of the draft legislative act to the national parliaments,
Having regard to the opinion of the European Economic and Social Committee²⁸,
Having regard to the opinion of the Committee of the Regions²⁹,
Acting in accordance with the ordinary legislative procedure,
Whereas:

- (1) The Commission's Communication of 3 March 2010 entitled 'Europe 2020: A strategy for smart, sustainable and inclusive growth'³⁰ sets the objective of the Union becoming an economy based on knowledge and innovation, reducing the administrative burden on companies and better matching labour supply with demand. Measures to facilitate the admission of third-country national highly skilled workers have to be seen in that broader context.
- (2) The conclusions of the European Council of 26 and 27 June 2014 state that in order to remain an attractive destination for talents and skills, Europe must compete in the global race for talent. Strategies to maximise the opportunities of legal migration should therefore be developed, including the streamlining of existing rules.
- (3) The European Agenda on Migration adopted on 13 May 2015 calls for an attractive EU-wide scheme for highly qualified third-country nationals, and specifies that a review of Council Directive 2009/50/EC³¹ is needed to make it more effective in attracting talents to the Union and thereby address both the demographic challenges faced by the Union and labour and skills shortages in key sectors of the Union economy.
- (4) It is necessary to respond to the challenges identified in the implementation report on Directive 2009/50/EC. The Union should aim at establishing a more attractive and effective EU-wide scheme for highly skilled workers. The Union approach on

²⁸ OJ C , , p. .

²⁹ OJ C , , p. .

³⁰ [COM\(2010\) 2020 final](#)

³¹ 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 (OJ L 155, 18.6.2009, p.17).

attracting highly skilled workers should be further harmonised and the EU Blue Card should be made the primary tool in that regard with faster procedures, more flexible and inclusive admission criteria, and more extensive rights including more facilitated intra-EU mobility. As this would entail substantial changes to Directive 2009/50/EC, that Directive should therefore be repealed and replaced by a new Directive.

- (5) An EU-wide admission system to attract and retain highly skilled workers into the Union should be created. Member States should issue an EU Blue Card instead of a national permit to all applicants falling within the scope of this Directive. Member States should retain the right to issue permits other than EU Blue Card for any purpose of employment to third-country nationals who fall outside of the scope of this Directive, subject to the limitations following from other directives in the area of labour migration.
- (6) The concept of highly *skilled* worker should replace the concept of highly *qualified* worker in order to emphasise that both formal educational qualifications and equivalent professional experience should be taken equally into account as criteria for admission. According to a Council Recommendation of 20 December 2012³², the validation of learning outcomes, namely competences (knowledge, skills and attitudes)³³ acquired through non-formal and informal learning can play an important role in enhancing employability and mobility. It recommends Member States to have in place, no later than 2018, arrangements for the validation of non-formal and informal learning. As mechanisms and arrangements for the evaluation and validation of professional experience are not readily available in all Member States, an additional transposition period of two years after the entry into force of this Directive should be provided for the provisions related to recognising professional experience in order to enable Member States, where necessary, to develop such mechanisms and arrangements. Member States' National Contact Points on the EU Blue Card should be involved in effective cooperation with stakeholders and networks in the education, training, employment and youth sectors, as well as other relevant policy areas, for the purpose of recognising professional experience under this Directive.
- (7) This Directive should not affect the right of the Member States to determine the volumes of admission of third-country nationals coming from third countries to their territory in order to seek work in accordance with Article 79(5) of the Treaty. On that basis, Member States should be able to either consider an application for an EU Blue Card inadmissible or reject it. As Article 79(5) TFEU only refers to third-country nationals coming from third countries, the right to determine volumes of admission does not apply in situations where a third-country national has already been admitted in the territory of Member States under this Directive and is seeking to continue the period of residence in the same or a second Member State.
- (8) Beneficiaries of international protection as defined in Article 2(a) of Directive 2011/95/EU of the European Parliament and of the Council³⁴ have a wide set of rights

³² Council Recommendation of 20 December 2012 on the validation of non-formal and informal learning ([2012/C 398/01](#)) (OJ C 398, 22.12.2012, p. 1).

³³ Recommendation of the European Parliament and of the Council of 18 December 2006 on key competences for lifelong learning (OJ L 394, 30.12.2006, p. 10).

³⁴ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (OJ L 337, 20.12.2011, p. 9).

including labour market access in the Member State having granted them protection. In order to further promote social inclusion of these persons and enhance their labour market opportunities across the Union, those who are highly skilled should be entitled to apply for an EU Blue Card. They should be subject to the same rules as any other third-country national falling within the scope of this Directive, while holding the statuses of beneficiary of international protection and EU Blue Card holder in parallel. However, for reasons of legal clarity and coherence, the provisions on equal treatment and family reunification of this Directive should not apply to this group of EU Blue Card holders in the Member State which granted them international protection. Those rights should remain regulated under the asylum acquis and, where applicable, Council Directive 2003/86/EC³⁵.

- (9) The transfer of responsibility for protection of beneficiaries of international protection is outside the scope of this Directive: the protection status and the rights associated with it should not be transferred to another Member State on the basis of the issuance of an EU Blue Card.
- (10) In order to facilitate the independent intra-EU mobility and business activities of those highly skilled third-country nationals who are beneficiaries of the right to free movement, they should be given access to the EU Blue Card according to the same rules as any other third-country national falling within the scope of this Directive. This should apply regardless of whether or not the Union citizen of reference has exercised the fundamental right to move and reside freely under Article 21 TFEU and regardless of whether the third-country national concerned was first an EU Blue Card holder or a beneficiary of the right to free movement. The rights that these third-country nationals acquire as EU Blue Card holders should be without prejudice to rights they may enjoy under Directive 2004/38/EC of the European Parliament and of the Council³⁶. For reasons of legal clarity and coherence, in terms of family reunification and equal treatment the rules under Directive 2004/38/EC should prevail. All provisions regarding the beneficiaries of the right to free movement in this Directive should also apply where that right is derived from those third-country nationals who enjoy rights of free movement equivalent to those of Union citizens under agreements either between the Union and its Member States and third countries or between the Union and third countries.
- (11) This Directive should not apply to categories of third-country nationals to whom a particular scheme under Union law, with specific entry conditions and sets of rights, applies when the inclusion of those categories in this Directive would go against the rationale of the particular scheme, create unnecessary legal complexity or entail a risk of abuses. This Directive should not apply to third-country nationals who apply to reside in a Member State as researchers in order to carry out a research project, as they fall within the scope of Directive (EU) 2016/801 of the European Parliament and of the Council³⁷ which introduces a specific procedure for admitting third-country

³⁵ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ L 251, 3.10.2003, p. 12).

³⁶ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ L 158, 30.4.2004, p. 77).

³⁷ Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (OJ L 132, 21.05.2016, p. 21).

nationals for the purposes of scientific research. However, once admitted under Directive (EU) 2016/801, legally residing researchers should be entitled to apply for an EU Blue Card under this Directive for other purposes than those covered under Directive (EU) 2016/801.

- (12) This Directive should not affect the possibility for an EU Blue Card holder to enjoy additional rights and benefits which may be provided by national law, and which are compatible with this Directive.
- (13) It is necessary to provide for a flexible demand-driven admission system based on objective criteria, such as a work contract or a binding job offer of at least 6 months, a salary threshold adaptable by the Member States to the situation in its labour market and higher professional qualifications.
- (14) This Directive is without prejudice to national procedures on the recognition of diplomas. In order to evaluate if the third-country national concerned possesses higher education or equivalent qualifications, reference should be made either to ISCED (International Standard Classification of Education) 2011 levels 6, 7 and 8, or to the broadly equivalent EQF (European Qualifications Framework) levels 6, 7 and 8, according to the choice of the Member State concerned.
- (15) In order to ensure a sufficient level of harmonisation in the admission conditions throughout the Union, both minimum and maximum factors for calculating the salary threshold should be determined. Member States should fix their threshold in accordance with the situation and organisation of their respective labour markets and their general immigration policies.
- (16) A lower salary threshold should be laid down for specific professions where it is considered by the Member State concerned that there is a particular lack of available workforce and where such professions belong to major group 1 or 2 of the ISCO ("International Standard Classification of Occupation") classification.
- (17) A lower salary threshold should also be laid down to benefit third-country nationals during a certain period after their graduation. This period should be granted each time that the third-country national reaches a level of education relevant for the purposes of this Directive, namely levels 6, 7 or 8 of ISCED 2011, or levels 6, 7 or 8 of EQF, according to the national law of the Member State concerned. It should apply whenever the third-country national applies for an initial or renewed EU Blue Card within three years from the date of obtaining the qualifications and in addition, when that third-country national applies for a first renewal of the EU Blue Card and the initial EU Blue Card was issued for a period shorter than 24 months. After these grace periods – which may run in parallel – have elapsed the young professionals can be reasonably expected to have gained sufficient professional experience in order to fulfil the regular salary threshold.
- (18) The conditions of entry and residence of third-country nationals for the purposes of highly skilled employment, including the eligibility criteria related to a salary threshold should be defined. It should not aim to determine salaries and therefore should not derogate from the rules or practices at Member State level or from collective agreements, and should not be used to constitute any harmonisation in this field. This Directive should fully respect the competences of Member States, particularly on employment, labour and social matters.

- (19) It should not be necessary for a third-country national to hold a travel document whose validity covers the whole duration of the initial EU Blue Card. Third-country nationals should be allowed to renew their travel document while holding an EU Blue Card.
- (20) Member States should reject applications for an EU Blue Card and be allowed to withdraw or refuse to renew an EU Blue Card if there is a threat to public policy, public security or public health. Any rejection on grounds of public policy or public security should be based on the individual behaviour of the person concerned, in accordance with the principle of proportionality. Illness or disability suffered after the third-country national was admitted to the territory of the first Member State should not constitute the sole ground for withdrawing or refusing to renew an EU Blue Card or for not issuing an EU Blue Card in a second Member State.
- (21) Member States should be allowed to withdraw or refuse to renew an EU Blue Card where the EU Blue Card holder has either failed to comply with the conditions for mobility under this Directive or has repetitively exercised the mobility rights in an abusive manner, for example by applying for EU Blue Cards in second Member States and beginning employment immediately while it is clear that the conditions will not be fulfilled and the application will be refused.
- (22) Any decision to reject an application for an EU Blue Card or to withdraw or refuse to renew an EU Blue Card should take into consideration the specific circumstances of the case and respect the principle of proportionality. In particular, where the ground for rejection is related to the activity of the employer, a minor misconduct should not in any case constitute the sole ground for rejecting an application or withdrawing or refusing to renew the permit.
- (23) Once all the conditions for admission are fulfilled, Member States should issue an EU Blue Card within specified time limits. If a Member State issues residence permits only on its territory and all the conditions of this Directive relating to admission are fulfilled, the Member State should grant the third-country national concerned the requisite visa. It should be ensured that the competent authorities effectively cooperate in order to issue the visa without delay.
- (24) The rules on processing times for EU Blue Card applications should guarantee the swift issuance of permits in all cases. The processing time for examining the application for an EU Blue Card should not include the time required for the recognition of professional qualifications, where applicable, or the time required for issuing a visa, if required.
- (25) The format of the EU Blue Card should be in accordance with Regulation (EC) No 1030/2002³⁸, thus enabling the Member States to refer in particular to the information on the conditions under which the person is permitted to work.
- (26) The Member State concerned should ensure that applicants have the right to challenge before a court or tribunal any decision rejecting an application for an EU Blue Card, or not renewing or withdrawing an EU Blue Card. This is without prejudice to the possibility to designate an administrative authority to carry out a prior administrative review of such decisions.

³⁸ Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ L 157, 15.6.2002, p. 1).

- (27) Since EU Blue Card holders are highly skilled workers contributing to addressing labour and skills shortages in key sectors, the principle of access to the labour market should be the general rule. However, in circumstances where the domestic labour market undergoes serious disturbances such as a high level of unemployment in a given occupation or sector, which may be limited to particular regions or other parts of the territory, a Member State should be able to take into account the situation of its labour market before issuing an EU Blue Card.
- (28) In case Member States decide to make use of this possibility for a given occupation or sector, possibly in a particular part of their territory, they should send a notification to the Commission hereof, explaining the economic, social and other reasons justifying the decision to introduce such labour market test for the next 12 months and do so again for every subsequent 12 month period. Member States may involve social partners in the assessment of the circumstances related to the domestic labour market. This verification should not be possible when an EU Blue Card is renewed in the first Member State. For EU Blue Cards in a second Member State, taking into account the situation of the labour market should only be possible if that Member State has also introduced checks for first applications for third-country nationals coming from third countries and after a separate justified notification. In case Member States decide to make use of this possibility, they should communicate this in a clear, accessible and transparent way to applicants and employers, including online.
- (29) In implementing this Directive, Member States should refrain from pursuing active recruitment in developing countries in sectors suffering from a lack of personnel. Ethical recruitment policies and principles applicable to public and private sector employers should be developed in key sectors, for example the health sector. This is consistent with EU's commitment to the 2010 WHO Global Code on the International Recruitment of Health Personnel³⁹ in addition to the Council and Member States' conclusions of 14 May 2007 on the European Programme for Action to tackle the critical shortage of health workers in developing countries (2007-2013) and the education sector, as appropriate. These principles and policies should be strengthened by the development and application of mechanisms, guidelines and other tools to facilitate, as appropriate, circular and temporary migration, as well as other measures that would minimise negative and maximise positive impacts of highly skilled immigration on developing countries in order to turn "brain drain" into "brain gain".
- (30) A simplified procedure for employers which have been recognised for that purpose should be provided, optional for Member States. The status of recognised employer should bring specific facilitation in terms of procedures and admission conditions – amounting to a *simplified procedure* – under this Directive and Member States should include sufficient safeguards against abuse. Where the status of recognised employer is withdrawn during the period of validity of an EU Blue Card issued under the simplified procedure, regular admission conditions should apply upon renewing that EU Blue Card, unless the third-country national concerned is employed by another recognised employer.
- (31) In order to promote innovative entrepreneurship, third-country nationals admitted under this Directive should be given the right to exercise in parallel a self-employed activity without it affecting the right of residence as an EU Blue Card holder. This

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The [WHO Global Code of Practice on the International Recruitment of Health Personnel](#), adopted on 21 May 2010 by the Sixty-third World Health Assembly in [resolution WHA63.16](#).

right should be without prejudice to the continuous obligation to meet the conditions for admission under this Directive, and the EU Blue Card holder should therefore remain in highly skilled employed activity.

- (32) Equal treatment as granted to EU Blue Card holders should include equal treatment in respect of those branches of social security listed in Article 3 of Regulation (EC) No 883/2004 of the European Parliament and of the Council⁴⁰. This Directive does not harmonise the social security legislation of Member States. It is limited to applying the principle of equal treatment in the field of social security to the third-country nationals falling within its scope.
- (33) In the event of mobility between Member States, Regulation (EU) No 1231/2010 of the European Parliament and of the Council⁴¹ applies. This Directive should not confer more rights to the mobile EU Blue Card holder than those already provided for in existing Union law in the field of social security for third-country nationals who have cross-border interests between Member States.
- (34) Professional qualifications acquired by a third-country national in another Member State should be recognised in the same way as those of Union citizens. Qualifications acquired in a third country should be taken into account in accordance with Directive 2005/36/EC of the European Parliament and of the Council⁴². Where a third-country national is applying for an EU Blue Card to practice an unregulated profession, Member States should avoid excessive formal requirements and full recognition procedures regarding qualifications, wherever sufficient evidence can be otherwise obtained.
- (35) The rights acquired by a beneficiary of international protection as an EU Blue Card holder should be without prejudice to rights enjoyed by the person concerned under Directive 2011/95/EU and under the Geneva Convention in the Member State which granted the protection status. In that Member State, in order to avoid situations of conflicting rules, the provisions on equal treatment and family reunification of this Directive should not apply. Persons who are beneficiaries of international protection in one Member State and EU Blue Card holders in another should enjoy the same rights including equality of treatment with nationals of the Member State of residence as any other EU Blue Card holders in the latter Member State.
- (36) Favourable conditions for family reunification and unhindered access to work for spouses should be a fundamental element of this Directive in order to facilitate the attraction of highly skilled workers. Specific derogations from Council Directive 2003/86/EC should be provided for in order to reach this aim. Conditions related to integration or waiting periods should not be applied before allowing family reunification, as highly skilled workers and their families are likely to have favourable starting point regarding integration in the host community. With the aim of facilitating the swift entry of highly skilled workers, residence permits to their family members

⁴⁰ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

⁴¹ Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality (OJ L 344, 29.12.2010, p. 1).

⁴² Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).

should be issued at the same time as the EU Blue Card, where the relevant conditions are fulfilled and the applications were lodged simultaneously.

- (37) In order to attract highly skilled workers and encourage their continuous stay in the Union, while enabling mobility within the Union as well as circular migration, derogations from Council Directive 2003/109/EC⁴³ should be provided for in order to give EU Blue Card holders an easier access to EU long-term resident status.
- (38) In order to foster the mobility of highly skilled workers between the Union and their countries of origin, derogations from Directive 2003/109/EC should be provided for in order to allow longer periods of absence than those provided for in that Directive after highly skilled third-country workers have acquired the EU long-term resident status
- (39) The occupational and geographical mobility of third-country highly skilled workers should be recognised as an important contributor to improving labour market efficiency across the Union, addressing skills shortages and offsetting regional imbalances. Mobility within the Union should be facilitated.
- (40) Existing legal uncertainty surrounding business trips of highly skilled workers should be addressed by defining this notion and setting a list of activities that in any case should be considered as business activities in all Member States. Second Member States should not be allowed to require from EU Blue Card holders engaging in business activities a work permit or any other authorisation than the EU Blue Card issued by the first Member State. Where the EU Blue Card is issued by a Member State not applying the Schengen *acquis* in full, its holder should be entitled to enter and stay in one or several second Member States for the purpose of business activity for up to 90 days in any 180-day period based on the EU Blue Card.
- (41) EU Blue Card holders should be allowed to move to a second Member State under simplified conditions where they intend to apply for a new EU Blue Card based on an existing work contract or binding job offer. Second Member States should not be allowed to require from EU Blue Card holders any other authorisation than the EU Blue Card issued by the first Member State. As soon as they submit an application for an EU Blue Card within the deadline provided for in this Directive, they should be allowed to begin employment. In the second Member State the procedure for issuing an EU Blue Card should be simplified compared to the first EU Blue Card; as the mobile EU Blue Card holder has already exercised highly skilled activity in one Member State for a certain period of time, the second Member State should not have the need to control all the same details for a second time. However, mobility should remain demand-driven and therefore a work contract should always be required in the second Member State, and the salary should meet the threshold set by the second Member State in accordance with this Directive.
- (42) While some special rules are provided in this Directive regarding entry and stay in a second Member State for the purpose of business activity, as well as moving to a second Member State to apply for a new EU Blue Card in its territory, all the other rules governing the movement of persons across borders as laid down in the relevant provisions of the Schengen *acquis* apply.

⁴³

Council Directive 2003/109/EC of 25 November 2003 on the status of third-country nationals who are long-term residents (OJ L 16, 23.1.2004, p. 44).

- (43) Where the EU Blue Card is issued by a Member State not applying the Schengen *acquis* in full and the EU Blue Card holder, in the mobility situations provided for in this Directive, crosses an external border within the meaning of Regulation (EU) 2016/399 of the European Parliament and of the Council⁴⁴, a Member State should be entitled to require evidence that the EU Blue Card holder is entering its territory either for the purpose of business activities or in order to apply for a new EU Blue Card based on a work contract or binding job offer. In the case of mobility for carrying out business activities, that Member State should be able to require evidence of the business purpose of the stay, such as invitations, entry tickets, or documents describing the business activities of the company and the position of the EU Blue Card holder in the company.
- (44) Where the EU Blue Card holder moves to a second Member State to apply for an EU Blue Card and he or she is accompanied by family members, that Member State should be able to require evidence of their lawful residence in the first Member State. Besides, in case of crossing of an external border within the meaning of Regulation (EU) 2016/399, the Member States applying the Schengen *acquis* in full should consult the Schengen information system and should refuse entry or object to the mobility of persons for whom an alert for the purposes of refusing entry or stay, as referred to in Regulation (EC) No 1987/2006 of the European Parliament and of the Council⁴⁵, has been issued in that system.
- (45) For the purpose of residence of beneficiaries of international protection across Member States, it is necessary to ensure that Member States other than the one which issued international protection are informed of the protection background of the persons concerned in order to enable Member States to comply with their obligations regarding the principle of non-refoulement.
- (46) Where a Member State intends to expel a person who has acquired an EU Blue Card in that Member State and who is a beneficiary of international protection in another Member State, that person should enjoy the protection against expulsion guaranteed under Directive 2011/95/EU and under Article 33 of the Convention Relating to the Status of Refugees of 28 July 1951, as amended by the Protocol signed in New York on 31 January 1967 (the Geneva Convention).
- (47) Where the expulsion of a beneficiary of international protection outside the territory of the Member States is permitted under Directive 2011/95/EU, Member States should be obliged to ensure that all information is obtained from relevant sources, including, where appropriate, from the Member State that granted international protection, and that it is thoroughly assessed with a view to guaranteeing that the decision to expel that beneficiary is in accordance with Article 4 of the Charter of Fundamental Rights of the European Union.
- (48) Specific reporting provisions should be provided for to monitor the implementation of this Directive, with a view to identifying and possibly counteracting its possible impacts in terms of brain drain in developing countries and in order to avoid brain waste.

⁴⁴ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23 03 2016, p. 1).

⁴⁵ Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 381, 28.12.2006, p. 4).

- (49) Since the objectives of this Directive, namely the establishment of a special admission procedure and the adoption of conditions of entry and residence, and the rights, applicable to third-country nationals for the purpose of highly skilled employment and their family members, cannot be sufficiently achieved by the Member States, especially – to better exploit the EU’s overall attractiveness – as regards ensuring their mobility between Member States and offering a clear and single set of admission criteria across the Member States, and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (50) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in accordance with Article 6 of the Treaty on European Union (TEU).
- (51) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents⁴⁶, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (52) In accordance with Articles 1 and 2 and Article 4a(1) of Protocol 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to TEU and TFEU, and without prejudice to Article 4 of the that Protocol, those Member States are not taking part in the adoption of this Directive and are not bound by or subject to its application.
- (53) In accordance with Articles 1 and 2 of the Protocol 22 on the position of Denmark annexed to TEU and TFEU, Denmark is not taking part in the adoption of this Directive, and is not bound by it or subject to its application.
- (54) Directive 2009/50/EC should therefore be repealed,

HAVE ADOPTED THIS DIRECTIVE:

Chapter I

GENERAL PROVISIONS

Article 1

Subject matter

This Directive lays down:

⁴⁶ OJ C 369, 17.12.2011, p. 14.

- (a) the conditions of entry and residence for more than three months in the territory of the Member States, and the rights, of third-country nationals for the purpose of highly skilled employment, and of their family members;
- (b) the conditions of entry and residence, and the rights, of third-country nationals and of their family members, referred to in point (a), in Member States other than the Member State which first granted an EU Blue Card.

Article 2

Definitions

For the purposes of this Directive:

- (a) "third-country national" means any person who is not a citizen of the Union within the meaning of Article 20(1) of the Treaty;
- (b) "highly skilled employment" means the employment of a person who:
 - in the Member State concerned, is protected as an employee under national employment law or in accordance with national practice, irrespective of the legal relationship, for the purpose of exercising genuine and effective work for, or under the direction of, someone else;
 - is paid; and
 - has the required competence, as proven by higher professional qualifications.
- (c) "EU Blue Card" means the residence permit bearing the term "EU Blue Card" entitling its holder to reside and work in the territory of a Member State under the terms of this Directive;
- (d) "first Member State" means the Member State which first grants a third-country national an "EU Blue Card";
- (e) "second Member State" means any Member State in which the EU Blue Card holder intends to exercise or exercises the right of mobility within the meaning of this Directive, other than the first Member State;
- (f) "family members" means third-country nationals as defined in Article 4(1) of Directive 2003/86/EC;
- (g) "higher professional qualifications" means qualifications attested by evidence of higher education qualifications or higher professional skills;
- (h) "higher education qualifications" means any diploma, certificate or other evidence of formal qualifications issued by a competent authority attesting the successful completion of a post-secondary higher education or equivalent tertiary education programme, namely a set of courses provided by an educational establishment recognised as a higher education institution or equivalent tertiary educational institution by the State in which it is situated, where the studies needed to acquire those qualifications lasted at least three years and correspond at least to ISCED 2011 level 6 or to EQF level 6, according to national law;
- (i) "higher professional skills" means skills attested by at least three years of professional experience of a level comparable to higher education qualifications and which is relevant in the profession or sector specified in the work contract or binding job offer;

- (j) "professional experience" means the actual and lawful pursuit of the profession concerned;
- (k) "regulated profession" means a regulated profession as defined in Article 3(1) (a) of Directive 2005/36/EC;
- (l) "business activity" means a temporary activity related to the business interests of the employer, such as attending internal and external business meetings, attending conferences and seminars, negotiating business deals, undertaking sales or marketing activities, performing internal or client audits, exploring business opportunities, or attending and receiving training;
- (m) "international protection" has the meaning as defined in Article 2(a) of Directive 2011/95/EU of the European Parliament and of the Council.

Article 3

Scope

1. This Directive shall apply to third-country nationals who apply to be admitted or who have been admitted to the territory of a Member State for the purpose of highly skilled employment.
2. This Directive shall not apply to third-country nationals:
 - (a) who seek international protection and are awaiting a decision on their status or who are beneficiaries of temporary protection in accordance with the Council Directive 2001/55/EC⁴⁷ in a Member State;
 - (b) who seek protection in accordance with national law, international obligations or practice of the Member State and are awaiting a decision on their status, or who are beneficiaries of protection in accordance with national law, international obligations or practice of the Member State;
 - (c) who apply to reside in a Member State as researchers within the meaning of Directive (EU) 2016/801 in order to carry out a research project;
 - (d) who enjoy EU long-term resident status in a Member State in accordance with Directive 2003/109/EC and exercise their right to reside in another Member State in order to carry out an economic activity in an employed or self-employed capacity;
 - (e) 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 natural persons, with the exception of third-country nationals who have been admitted to the territory of a Member State as intra-corporate transferees pursuant to Directive 2014/66/EU of the European Parliament and of the Council⁴⁸;

⁴⁷ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212, 7.8.2001, p. 12).

⁴⁸ Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (OJ L 157, 27.5.2014, p. 1).

- (f) who have been admitted to the territory of a Member State as seasonal workers pursuant to Directive 2014/36/EU of the European Parliament and of the Council⁴⁹;
 - (g) whose expulsion has been suspended for reasons of fact or law;
 - (h) who are covered by Directive 96/71/EC of the European Parliament and of the Council⁵⁰ as long as they are posted on the territory of the Member State concerned;
 - (i) who under agreements between the Union and its Member States and third countries enjoy rights of free movement equivalent to those of Union citizens.
3. This Directive shall be without prejudice to any agreement between the Union and its Member States or between the Member States and one or more third countries, that lists the professions which do not fall under this Directive in order to assure ethical recruitment, in sectors suffering from a lack of personnel, by protecting human resources in the developing countries which are signatories to these agreements.
 4. Member States shall not issue any other permit than an EU Blue Card to third-country nationals for the purpose of highly skilled employment.

Article 4

More favourable provisions

1. This Directive shall be without prejudice to more favourable provisions of:
 - (a) Union law, including bilateral or multilateral agreements concluded between the Union or the Union and its Member States on the one hand and one or more third countries on the other;
 - (b) bilateral or multilateral agreements already concluded between one or more Member States and one or more third countries before the date of entry into force of this Directive.
2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions in respect of Articles 10, 14, 15, 16 and 17(5).

⁴⁹ Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers (OJ L 94, 28.3.2014, p. 375).

⁵⁰ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1).

Chapter II

CRITERIA FOR ADMISSION, REFUSAL AND WITHDRAWAL

Article 5

Criteria for admission

1. A third-country national who applies for an EU Blue Card shall:
 - (a) present a valid work contract or, as provided for in national law, a binding job offer for highly skilled employment, of at least six months in the Member State concerned;
 - (b) for regulated professions, present 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;
 - (c) for unregulated professions, present evidence attesting higher professional qualifications;
 - (d) present a valid travel document, as determined by national law, and, if required, an application for a visa or a valid visa or, where applicable, a valid residence permit or a valid long-stay visa;
 - (e) present evidence of having or, if provided for by national law, having applied for a sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or resulting from, the work contract.
2. In addition to the conditions laid down in paragraph 1, the gross annual salary resulting from the monthly or annual salary specified in the work contract or binding job offer shall not be inferior to the salary threshold set and published for that purpose by the Member States. The salary threshold set by the Member States shall be at least 1.0 times but not higher than 1.4 times the average gross annual salary in the Member State concerned.
3. Member States shall require that all conditions in the applicable laws, collective agreements or practices in the relevant occupational branches for highly skilled employment are met.
4. By way of derogation from paragraph 2, and for employment in professions which are in particular need of third-country national workers and which belong to major groups 1 and 2 of ISCO, the salary threshold shall be 80 percent of the salary threshold set by the Member State concerned in accordance with paragraph 2.
5. By way of derogation from paragraph 2, as regards third-country nationals who have obtained a higher education qualification not more than three years before submitting the application for an EU Blue Card, the salary threshold shall be 80 percent of the salary threshold set by the Member State concerned in accordance with paragraph 2. The period of three years shall reapply after the attainment of each level of higher education qualifications.

The salary threshold referred to in the first subparagraph of this paragraph shall apply whenever an application for a first EU Blue Card or a renewal is submitted during that period of three years. Where the EU Blue Card issued during the period of three years is renewed after the three years period has elapsed, the salary threshold referred to in paragraph 2 shall apply. However, where the first EU Blue Card issued during the period of three years was issued for less than 24 months, the lower salary threshold referred to in the first subparagraph of this paragraph shall apply upon the first renewal.

6. Member States shall facilitate the validation and recognition of documents attesting the relevant higher professional qualifications pursuant to point (c) of paragraph 1.
7. Member States shall reject applications of third-country nationals who are considered to pose a threat to public policy, public security or public health.
8. Member States may require the third-country national concerned to provide his or her address in their territory.

Where the national law of a Member State requires an address to be provided at the time of application and the third-country national concerned does not yet know his or her future address, Member States shall accept a temporary address. In such a case, the third-country national shall provide his or her permanent address at the latest when the EU Blue Card pursuant to Article 8 is issued.

Article 6

Grounds for refusal

1. Member States shall reject an application for an EU Blue Card in any of the following cases:
 - (a) where the applicant does not meet the conditions set out in Article 5;
 - (b) where the documents presented have been fraudulently acquired, or falsified or tampered with.
2. In circumstances where their labour market situation undergoes serious disturbances such as a high level of unemployment in a given occupation or sector, which may be limited to a particular part of their territory, Member States may check whether the concerned vacancy could not be filled by national or Union workforce, by third-country nationals lawfully resident in that Member State and already forming part of its labour market by virtue of Union or national law, or by EU long-term residents wishing to move to that Member State for highly skilled employment in accordance with Chapter III of Directive 2003/109/EC.

The Member State concerned shall notify the Commission of its intention to introduce such check in a given occupation or sector, which may be limited to a particular part of their territory, for third-country nationals coming from third countries for the next 12 months, and shall supply the Commission with all relevant reasons justifying this decision. For each extension of 12 months the Member State concerned shall send a new justified notification.
3. Member States may reject an application for an EU Blue Card where:

- (a) the employer has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions;
 - (b) the employer's business is being or has been wound up under national insolvency laws or no economic activity is taking place; or
 - (c) the employer has been sanctioned for employment of illegally staying third-country nationals in accordance with Article 9 of Directive 2009/52/EC of the European Parliament and of the Council⁵¹, or for undeclared work or illegal employment according to national law.
4. Member States may reject an application for an EU Blue Card in order to ensure ethical recruitment in sectors suffering from a lack of qualified workers in the countries of origin.
5. Without prejudice to paragraph 1, any decision to reject an application shall take account of the specific circumstances of the case and respect the principle of proportionality.

Article 7

Withdrawal or non-renewal of the EU Blue Card

1. Member States shall withdraw or refuse to renew an EU Blue Card where:
- (a) the EU Blue Card or the documents presented have been fraudulently acquired, or have been falsified or tampered with;
 - (b) the third-country national no longer holds a valid work contract for highly skilled employment or the qualifications required by points (b) and (c) of Article 5(1) or his or her salary no longer meets the salary threshold as set in accordance with Article 5(2), (4) or (5), as applicable, without prejudice to Article 14.
2. Member States may withdraw or refuse to renew an EU Blue Card issued on the basis of this Directive in any of the following cases:
- (a) for reasons of public policy, public security or public health;
 - (b) where appropriate, where the employer has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions;
 - (c) where the conditions in the applicable laws, collective agreements or practices in the relevant occupational branches for highly skilled employment are no longer met;
 - (d) where the third-country national has not communicated the changes referred to in Article 13(1), where applicable, and in Article 14(3);
 - (e) where the third-country national no longer holds a valid travel document;

⁵¹ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ L 168, 30.6.2009, p. 24).

- (f) where the third-country national fails to comply with the conditions of mobility under this Chapter or repetitively makes use of the mobility provisions of this Chapter in an abusive manner.

Where an EU Blue Card is withdrawn or not renewed on the basis of point (e) of paragraph 2, Member States shall, prior to withdrawing or not renewing the EU Blue Card, set a reasonable deadline for the third-country national concerned to obtain and present a valid travel document.

3. The lack of communication pursuant to Article 13(1) or 14(3) shall not be considered to be a sufficient reason for withdrawing or not renewing the EU Blue Card if the holder proves that the communication did not reach the competent authorities for a reason independent of the holder's will.
4. Without prejudice to paragraph 1, any decision to withdraw or refuse to renew an EU Blue Card shall take account of the specific circumstances of the case and respect the principle of proportionality.

Chapter III

EU BLUE CARD AND PROCEDURE

Article 8

EU Blue Card

1. Where a third-country national fulfils the criteria set out in Article 5 and where no ground for rejection pursuant to Article 6 applies, he or she shall be issued with an EU Blue Card.

Where a Member State only issues residence permits on its territory and the third-country national fulfils all the admission conditions laid down in this Directive, the Member State concerned shall issue him or her the requisite visa.
2. Member States shall set a standard period of validity for the EU Blue Card, which shall be at least 24 months. If the work contract covers a shorter period, the EU Blue Card shall be issued at least for the duration of the work contract plus three months. Where an EU Blue Card is renewed, its period of validity shall be at least 24 months.
3. The EU Blue Card shall be issued by the competent authorities of the Member State using the uniform format as laid down in Regulation (EC) No 1030/2002. In accordance with point (a) 7.5-9 of the Annex to that Regulation, Member States shall indicate on the EU Blue Card the conditions for access to the labour market as set out in Article 13(1) of this Directive. Member States shall enter the words "EU Blue Card" under the heading "type of permit" in the residence permit.
4. Where a Member State issues an EU Blue Card to a third-country national to whom it has granted international protection, it shall enter the following remark in that third-country national's EU Blue Card, under the heading "Remarks": "International protection granted by [name of the Member State] on [date]". Where that Member State withdraws the international protection enjoyed by the EU Blue Card holder, it shall, where appropriate, issue a new EU Blue Card not containing that remark.

5. Where an EU Blue Card is issued by a Member State to a third-country national who is a beneficiary of international protection in another Member State, the Member State issuing the EU Blue Card shall enter the remark “International protection granted by [name of the Member State] on [date]” in the EU Blue Card.

Before the Member State enters that remark, it shall notify the Member State to be mentioned in that remark of the issuance of the EU Blue Card and request that Member State to provide information as to whether the EU Blue Card holder is still a beneficiary of international protection. The Member State mentioned in the remark shall reply no later than one month after receiving the request for information. Where international protection has been withdrawn by a final decision, the Member State issuing the EU Blue Card shall not enter that remark.

Where, in accordance with the relevant international instruments or national law, responsibility for the international protection of the EU Blue Card holder was transferred to the Member State after it issued an EU Blue Card in accordance with the first subparagraph, that Member State shall amend the remark accordingly within three months after the transfer.

6. During the period of its validity, the EU Blue Card shall entitle its holder to:
 - (a) enter, re-enter and stay in the territory of the Member State issuing the EU Blue Card;
 - (b) enjoy the rights recognised in this Directive.

Article 9

Applications for admission

1. Member States shall determine whether applications for an EU Blue Card are to be made by the third-country national or by the employer. Member States may also allow an application from either of the two.
2. The application shall be considered and examined either when the third-country national concerned is residing outside the territory of the Member State to which he or she wishes to be admitted, or when he or she is already legally present in the territory of that Member State.

Article 10

Procedural safeguards

1. The competent authorities of the Member States shall adopt a decision on the application for an EU Blue Card and notify the applicant in writing, in accordance with the notification procedures laid down in the national law of the Member State concerned. The notification shall be made at the latest within 60 days of the date of submission of the application.

Where the employer has been recognised in accordance with Article 12, the notification shall be made at the latest within 30 days of the date of submission of the application.
2. Under exceptional and duly justified circumstances linked to the complexity of the application, Member States may extend the maximum period referred to in paragraph

1 by 30 days. They shall inform the applicant of the extension before that maximum period has expired.

3. Where the information or documents supplied in support of the application are inadequate or incomplete, the competent authorities shall notify the applicant of the additional information that is required and set a reasonable deadline for providing it. The period referred to in paragraph 1 shall be suspended until the authorities have received the additional information or documents required. If the additional information or documents have not been provided within the deadline, the application may be rejected.
4. Any decision rejecting an application for an EU Blue Card, or a decision not to renew or to withdraw an EU Blue Card shall be notified in writing to the third-country national concerned and, where relevant, to his employer in accordance with the notification procedures set out in the relevant national law. The notification shall specify the reasons for the decision and the competent authority with which an appeal may be submitted as well as the time limit for submitting the appeal. Member States shall provide an effective judicial remedy, in accordance with national law.
5. An applicant shall be allowed to submit an application for renewal before the expiry of the EU Blue Card. Member States may set a maximum deadline of 60 days prior to the expiry of the EU Blue Card for submitting an application for renewal.
6. Where the validity of the EU Blue Card permit expires during the procedure for renewal, Member States shall allow the third-country national to stay on their territory until the competent authorities have taken a decision on the application.

Article 11

Fees

The level of fees required by Member States for the processing of applications shall not be disproportionate or excessive.

Article 12

Recognised employers

1. Member States may decide to provide for recognition procedures for employers in accordance with their national law or administrative practice for the purpose of applying simplified procedures for obtaining an EU Blue Card.

Where a Member State decides to provide for recognition procedures, it shall provide clear and transparent information to the employers concerned about, among others, the conditions and criteria for approval, the period of validity of the recognition and the consequences of non-compliance with the conditions, including possible withdrawal and non-renewal, as well as any sanction applicable.

The recognition procedures shall not entail disproportionate or excessive administrative burden or costs for the employers.

2. Member States may refuse to recognise an employer pursuant to paragraph 1, where the employer has been sanctioned for employment of illegally staying third-country nationals pursuant to Directive 2009/52/EC.

The simplified procedures shall include processing of applications as provided for in the second subparagraph of Article 10(1). Applicants shall be exempt from presenting the evidence referred to in points (c) and (e) of Article 5(1) and in Article 5(8).

3. Member States shall provide for measures to prevent possible abuses. Those measures may include monitoring, assessment at regular intervals and, where appropriate, inspection in accordance with national law or administrative practice.

Member States may, among other measures, refuse to renew or decide to withdraw the status of recognised employer where the employer has not respected its obligations under this Directive or in cases where the recognition has been fraudulently acquired.

Chapter IV

RIGHTS

Article 13

Labour market access

1. EU Blue Card holders shall have full access to highly skilled employment in the Member State concerned. Member States may require that a change of employer and changes affecting the fulfilment of the criteria for admission as set out in Article 5 are communicated in accordance with procedures laid down by national law.

The communication procedure shall not suspend the right of the EU Blue Card holder to pursue the employment.

2. Without prejudice to the criteria for admission set out in Article 5, EU Blue Card holders may engage in self-employed activity in parallel to the activity in highly skilled employment.
3. By way of derogation from paragraph 1, Member States may retain restrictions on access to employment, where the employment activities entail involvement in the exercise of public authority and the responsibility for safeguarding the general interest of the State.
4. This Article shall apply without prejudice to the principle of preference for Union citizens where applicable under the provisions of the relevant Acts of Accession.

Article 14

Temporary unemployment

1. Unemployment in itself shall not constitute a reason for withdrawing an EU Blue Card, unless the period of unemployment exceeds three consecutive months, or where the unemployment occurs more than once during the period of validity of an EU Blue Card.
2. During the period referred to in paragraph 1, the EU Blue Card holder shall be allowed to seek and take up employment in accordance with the conditions set out in Article 13.

3. The EU Blue Card holder shall communicate the beginning and, where appropriate, the end of the period of unemployment to the competent authorities of the Member State of residence, in accordance with the relevant national procedures.

Article 15

Equal treatment

1. EU Blue Card holders shall enjoy equal treatment with nationals of the Member State issuing the EU Blue Card, as regards:
 - (a) terms of employment, including the minimum working age, and working conditions, including pay and dismissal, working hours, leave and holidays, as well as health and safety requirements at the workplace;
 - (b) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the rights and benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;
 - (c) education and vocational training;
 - (d) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;
 - (e) branches of social security, as defined in Article 3 of Regulation (EC) No 883/2004;
 - (f) access to goods and services and the supply of goods and services made available to the public, including procedures for obtaining housing, as well as information and counselling services afforded by employment offices.
2. With respect to point (c) of paragraph 1 the Member State concerned may restrict equal treatment as regards study and maintenance grants and loans or other grants and loans regarding secondary and higher education and vocational training. Access to university and post-secondary education may be subject to specific prerequisites in accordance with national law.

With respect to point (f) of paragraph 1 the Member State concerned may restrict equal treatment as regards procedures for obtaining housing. This shall be without prejudice to the freedom of contract in accordance with Union and national law.
3. EU Blue Card holders moving to a third country, or their survivors who reside in a third country and who derive rights from the EU Blue Card holder, shall receive, in relation to old age, invalidity and death, statutory pensions based on the EU Blue Card holder's previous employment and acquired in accordance with the legislation referred to in Article 3 of Regulation (EC) No 883/2004, under the same conditions and at the same rates as the nationals of the Member States concerned when they move to a third country.
4. The right to equal treatment laid down in paragraph 1 shall be without prejudice to the right of the Member State to withdraw or to refuse to renew the EU Blue Card in accordance with Article 7.
5. This Article shall not apply to EU Blue Card holders who are beneficiaries of the right to free movement under Union law in the Member State concerned.

6. This Article shall apply to EU Blue Card holders who are beneficiaries of international protection only when they reside in a Member State other than the Member State which granted them international protection.

Article 16

Family members

1. Council Directive 2003/86/EC shall apply with the derogations laid down in this Article.
2. By way of derogation from Articles 3(1) and 8 of Directive 2003/86/EC, family reunification shall not be made dependent on the requirement of the EU Blue Card holder having reasonable prospects of obtaining the right of permanent residence and having a minimum period of residence.
3. By way of derogation from the third subparagraph of Article 4(1) and from the second subparagraph of Article 7(2) of Directive 2003/86/EC, the integration conditions and measures referred to therein may only be applied after the persons concerned have been granted family reunification.
4. By way of derogation from the first subparagraph of Article 5(4) of Directive 2003/86/EC, where the conditions for family reunification are fulfilled and the applications were submitted simultaneously, residence permits for family members shall be granted at the same time as the EU Blue Card. Where the family members join the EU Blue Card holder after the EU Blue Card has been granted to him or her and where the conditions for family reunification are fulfilled, residence permits shall be granted at the latest within 60 days from the date on which the application was submitted.
5. By way of derogation from Article 13(2) and (3) of Directive 2003/86/EC, the duration of validity of the residence permits of family members shall be the same as that of the EU Blue Card insofar as the period of validity of their travel documents allows it.
6. By way of derogation from Article 14(1)(b) and (2) of Directive 2003/86/EC, Member States shall not apply any time limit in respect of access to the labour market. Without prejudice to the restrictions referred to in Article 13(3) of this Directive, family members shall have access to any employed or self-employed activity in the Member State concerned.

Before a family member is granted access to employment, Member States may check whether the concerned vacancy could not be filled by national or Union workforce, by third-country nationals lawfully resident in that Member State and already forming part of its labour market by virtue of Union or national law, or by EU long-term residents wishing to move to that Member State for employment in accordance with Chapter III of Directive 2003/109/EC.

7. By way of derogation from Article 15(1) of Directive 2003/86/EC, for the purposes of calculation of the five years of residence required for the acquisition of an autonomous residence permit, residence in different Member States shall be cumulated.

8. The provisions set out in Article 17 concerning the accumulation of periods of residence in different Member States by the EU Blue Card holder for the purpose of acquiring the EU long-term resident status shall apply by analogy.
9. This Article shall not apply to EU Blue Card holders who are beneficiaries of the right to free movement under Union law in the Member State concerned.
10. This Article shall apply to EU Blue Card holders who are beneficiaries of international protection only when they reside in a Member State other than the Member State which granted them international protection.

Article 17

EU long-term resident status for EU Blue Card holders

1. Directive 2003/109/EC shall apply with the derogations laid down in this Article.
2. By way of derogation from Article 4(1) of Directive 2003/109/EC, Member States shall grant EU long-term resident status to third-country nationals who have legally and continuously resided as EU Blue Card holders within their territory for three years immediately prior to the submission of the relevant application.

The EU long-term resident status granted in accordance with the first subparagraph of this paragraph may be withdrawn before the period of legal and continuous residence of five years referred to in Article 4(1) of Directive 2003/109/EC within the territory of the Member States has been completed, where the third-country national becomes unemployed and does not have sufficient resources to maintain himself or herself and, where applicable, the members of his or her family, without having recourse to the social assistance system of the Member State concerned.

However, the EU long-term resident status shall not be withdrawn where the third-country national:

- (a) is temporarily unable to work as the result of an illness or accident;
 - (b) is in duly recorded involuntary unemployment and has registered as job-seeker with the relevant employment office;
 - (c) begins vocational training which, unless the third-country national concerned is involuntarily unemployed, shall be related to the previous employment.
3. By way of derogation from Article 4(1) of Directive 2003/109/EC, the EU Blue Card holder having made use of the possibility provided for in Article 20 of this Directive is allowed to cumulate periods of residence in different Member States in order to fulfil the requirement concerning the duration of residence, if that holder has accumulated:
 - (a) five years of legal and continuous residence within the territory of the Member States; and
 - (b) two years of legal and continuous residence as an EU Blue Card holder immediately prior to the submission of the relevant application within the territory of the Member State where the application for the EU long-term resident status is submitted.
4. For the purpose of calculating the five years period of legal and continuous residence in the Union referred to in point (a) of paragraph 3 and by way of derogation from

the first subparagraph of Article 4(3) of Directive 2003/109/EC, periods of absence from the territory of the Member States shall not interrupt the five years period if those periods of absence are shorter than twelve consecutive months and do not exceed in total eighteen months within the five years period of legal and continuous residence.

5. By way of derogation from Article 9(1)(c) of Directive 2003/109/EC, Member States shall extend to 24 consecutive months the period of absence from the territory of the Member States which is allowed to an EU long-term resident holder of a long-term residence permit with the remark referred to in Article 18(2) of this Directive and of his family members having been granted the EU long-term resident status.
6. The derogations set out in paragraphs 4 and 5 may be restricted to cases where the third-country national concerned can present evidence that he has been absent from the territory of the Member States to exercise an economic activity in an employed or self-employed capacity, or to perform a voluntary service, or to study in his own country of origin.
7. Point (f) of Article 15(1), Article 19 and, where applicable, Articles 16 and 21 shall apply to holders of a long-term residence permit with the remark referred to in Article 18(2).
8. Where the EU long-term resident who holds a long-term residence permit with the remark referred to in Article 18(2) of this Directive is exercising his or her right to move to a second Member State pursuant to Chapter III of Directive 2003/109/EC, Article 14(3) and (4) and point (b) of Article 15(2) of that Directive shall not apply. The second Member State may apply measures in accordance with Article 20(6) of this Directive.

Article 18

Long-term residence permit

1. EU Blue Card holders who fulfil the conditions set out in Article 17 of this Directive for the acquisition of the EU long-term resident status shall be issued with a residence permit in accordance with Article 1(2)(a) of Regulation (EC) No 1030/2002.
2. Member States shall enter the words "Former EU Blue Card holder" in the residence permit referred to in paragraph 1 of this Article under the heading "remarks".

Chapter V

MOBILITY BETWEEN MEMBER STATES

Article 19

Business activity in a second Member State

1. Where a third-country national who holds a valid EU Blue Card issued by a Member State applying the Schengen acquis in full enters and stays in one or several second Member States for a period of 90 days in any 180-day period for the purpose of

carrying out a business activity, the second Member State shall not require any authorisation for exercising such activity other than the EU Blue Card issued by the first Member State.

2. A third-country national who holds a valid EU Blue Card issued by a Member State not applying the Schengen acquis in full shall be entitled to enter and stay for the purpose of carrying out a business activity in one or several second Member States for up to 90 days in any 180-day period on the basis of the EU Blue Card issued by the first Member State. The second Member State shall not require any authorisation for exercising the business activity other than the EU Blue Card issued by the first Member State.

Article 20

Application for an EU Blue Card in a second Member State

1. After twelve months of legal residence in the first Member State as an EU Blue Card holder, the third-country national shall be entitled to enter a second Member State for the purpose of highly skilled employment on the basis of the EU Blue Card and a valid travel document under the conditions set out in this Article.
2. As soon as possible and no later than one month after entering the territory of the second Member State, the EU Blue Card holder or his employer or both shall submit an application for an EU Blue Card to the competent authority of that Member State and present all the documents proving the fulfilment of the conditions referred to in paragraph 3 for the second Member State.

The EU Blue Card holder shall be allowed to work in the second Member State immediately after submitting the application.

The application may also be submitted to the competent authorities of the second Member State while the EU Blue Card holder is still residing in the territory of the first Member State.

3. For the purposes of the application referred to in paragraph 2, the EU Blue Card holder shall present:
 - (a) the valid EU Blue Card issued by the first Member State;
 - (b) a valid work contract or, as provided for in national law, a binding job offer for highly skilled employment, of at least six months in the second Member State;
 - (c) for regulated professions, 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;
 - (d) a valid travel document, as determined by national law;
 - (e) evidence of meeting the salary threshold set in the second Member State in application of paragraph 2 or, where applicable, of paragraphs 4 or 5 of Article 5.
4. The second Member State shall reject an application for an EU Blue Card in any of the following cases:
 - (a) the documents required pursuant to paragraph 3 are not presented;

- (b) the documents were fraudulently acquired, or falsified or tampered with;
 - (c) the employment does not comply with the conditions laid down in the applicable laws, collective agreements or practices as referred to in Article 5(3).
- 5. The second Member State shall reject an application for an EU Blue Card where the third-country national poses a threat to public policy, public security or public health.
- 6. The second Member State may reject an application for an EU Blue Card on the basis of a check made in accordance with Article 6(2) after a justified notification as set out in that Article, and only if the second Member State has also introduced such checks for third-country nationals coming from third countries under this Directive.
- 7. The second Member State may reject an application for an EU Blue Card where the third-country national repetitively makes use of the possibility to enter and work in second Member States pursuant to this Article in an abusive manner. The second Member State shall notify the first Member State of the rejection for the purpose of point (f) of Article 7(2).
- 8. By way of derogation from Article 10(1), the second Member State shall adopt a decision on an application for an EU Blue Card and notify the applicant and the first Member State in writing at the latest within 30 days of the date of submission of the application of its decision to either:
 - (a) where the conditions laid down in this Article are fulfilled, issue an EU Blue Card and allow the third-country national to reside on its territory for the purpose of highly skilled employment; or
 - (b) where the conditions laid down in this Article are not fulfilled, refuse to issue an EU Blue Card and oblige the applicant and his family members, in accordance with the procedures provided for in national law, to leave its territory.
- 9. Where the EU Blue Card issued by the first Member State expires during the procedure, the second Member State may issue, if so required by national law, national temporary residence permits, or equivalent authorisations, allowing the applicant to continue to stay legally on its territory until a decision on the application has been taken by the competent authorities.
- 10. From the second time that an EU Blue Card holder and, where applicable, his family members, make use of the possibility to move to another Member State pursuant to this Article, "first Member State" shall be understood as meaning the Member State from where the person concerned moves and "second Member State" as meaning the Member State to which he is applying to reside. By way of derogation from Article 20(1), an EU Blue Card holder may move to another Member State a second time after six months of legal residence in the first Member State as an EU Blue Card holder.

Article 21

Residence in the second Member State for family members

- 1. Where the EU Blue Card holder moves to a second Member State in accordance with Article 20 and where the family was already constituted in the first Member State, the members of his or her family shall be authorised to accompany him or her and to

enter and stay in the second Member State based on the valid residence permits obtained as family members of an EU Blue Card holder in the first Member State.

2. No later than one month after entering the territory of the second Member State, the family members concerned or the EU Blue Card holder, in accordance with national law, shall submit an application for a residence permit as a family member to the competent authorities of that Member State.

Where the residence permit of the family member issued by the first Member State expires during the procedure or no longer entitles the holder to reside legally on the territory of the second Member State, the second Member State shall allow the family member to stay in their territory, if necessary by issuing national temporary residence permits or equivalent authorisations, until a decision on the application has been taken by the competent authorities of the second Member State.

3. The second Member State may require the family members concerned to present with their application for a residence permit:
 - (a) their residence permit in the first Member State and a valid travel document, or certified copies thereof;
 - (b) evidence that they have resided as members of the family of the EU Blue Card holder in the first Member State.
4. By way of derogation from Article 16(4), where the family members join the EU Blue Card holder after he or she has moved to the second Member State, residence permits shall be granted at the latest within 30 days from the date on which the application was submitted, where the conditions for family reunification are fulfilled.
5. In addition to the derogations listed in Article 16, the second Member State shall not require the evidence referred to in points (a) and (b) of Article 7(1) of Directive 2003/86/EC.
6. Where the family was not already constituted in the first Member State, Article 16 shall apply.
7. This Article shall apply to EU Blue Card holders who are beneficiaries of international protection only when they move to reside in a Member State other than the Member State which granted them international protection.
8. This Article shall not apply to EU Blue Card holders who are beneficiaries of the right to free movement under Union law in the second Member State.

Article 22

Safeguards and sanctions

1. Where the EU Blue Card is issued by a Member State not applying the Schengen acquis in full and the EU Blue Card holder crosses an external border for the purpose of mobility as referred to in Articles 19 and 20, the second Member State shall be entitled to require as evidence of the mobility of the EU Blue Card holder:
 - (a) the valid EU Blue Card issued by the first Member State;
 - (b) for the purpose of Article 19, evidence of the business purpose of the stay;
 - (c) for the purpose of Article 20, a work contract or a binding job offer for highly skilled employment of at least six months in the second Member State.

2. Where the EU Blue Card is issued by a Member State not applying the Schengen acquis in full and the family members of an EU Blue Card holder join him or her when crossing an external border for the purpose of moving to a second Member State as referred to in Article 21(1), the second Member State shall be entitled, in addition to the evidence referred to in paragraph 1 of this Article, to require that family members present their residence permits in the first Member State as family members of the EU Blue Card holder.
3. Where the second Member State rejects the application for an EU Blue Card in accordance with point (b) of Article 20(8), the first Member State shall, upon the request of the second Member State, allow re-entry of the EU Blue Card holder and, where applicable, his family members, without formalities and without delay. This shall also apply if the EU Blue Card issued by the first Member State has expired or has been withdrawn during the examination of the application. Article 14 shall apply after re-entry into the first Member State.
4. The EU Blue Card holder or his employer in the second Member State may be held responsible for the costs related to the re-entry of the EU Blue Card holder and his family members referred to in paragraph 4.
5. Member States may hold the employer of the EU Blue Card holder responsible for failure to comply with the conditions of mobility laid down in this Chapter or for repetitively making use of the mobility provisions of this Chapter in an abusive manner.

The Member State concerned shall provide for sanctions where the employer is held responsible. Those sanctions shall be effective, proportionate and dissuasive.

6. Where a Member State withdraws or does not renew an EU Blue Card which contains the remark referred to in Article 8(4) and decides to expel the third-country national, it shall request the Member State mentioned in that remark to confirm whether the person concerned is still a beneficiary of international protection in that Member State. The Member State mentioned in the remark shall reply within one month after receiving the request for information.

Where the third-country national is still a beneficiary of international protection in the Member State mentioned in the remark, that person shall be expelled to that Member State, which shall, without prejudice to the applicable Union or national law and to the principle of family unity, immediately allow the re-entry, without formalities, of that beneficiary and his or her family members.

By way of derogation from the second subparagraph, the Member State which adopted the expulsion decision shall retain the right to remove, in accordance with its international obligations, the third-country national to a country other than the Member State which granted international protection, where that person fulfils the conditions specified in Article 21(2) of Directive 2011/95/EU.

7. Where the EU Blue Card holder or his or her family members cross the external border of a Member State applying the Schengen acquis in full, that Member State shall consult the Schengen information system. That Member State shall refuse entry for persons for whom an alert for the purposes of refusing entry and stay has been issued in the Schengen information system.

Chapter VI

FINAL PROVISIONS

Article 23

Access to information and monitoring

1. Member States shall make easily accessible to applicants the information on all the documentary evidence needed for an application and information on entry and residence conditions, including the rights, obligations and procedural safeguards, of the third-country nationals falling under the scope of this Directive and of their family members. This information shall include information on the salary thresholds set in the Member State concerned in accordance with Article 5(2), (4) and (5), and on the applicable fees.

This information shall also include information:

- (a) on business activities allowed in the territory of the Member State concerned to an EU Blue Card holder from another Member State as referred to in Article 19
- (b) on the procedures applicable to obtaining an EU Blue Card as well as residence permits for family members, in a second Member State, as referred to in Article 20 and 21.

In the case where Member States decide to make use of the possibility provided for by Article 6(2), the introduction of a check of the labour market situation in a given occupation or sector, in a given region, shall be communicated in the same way.

2. Member States shall communicate to the Commission each year and upon each modification, the factor they have decided to set for determining the annual salary thresholds, and the resulting nominal amounts, in accordance with Article 5(2), (4) and (5).

Member States shall communicate each year to the Commission the list of the professions for which a derogation in accordance with Article 5(4) applies.

Where Member States refuse applications for an EU Blue Card based on ethical recruitment considerations in accordance with Article 6(4), they shall communicate to the Commission and to the other Member States a duly justified decision indicating the countries and sectors concerned.

Member States shall communicate to the Commission each year the list of allowed business activities, as meant in Article 2(1), for the application of Article 19.

3. Member States shall monitor and communicate each year to the Commission the impact of this Directive on the national labour markets.

Article 24

Statistics

1. Annually, and for the first time by ...⁵² at the latest, Member States shall, in accordance with Regulation (EC) No 862/2007⁵³, communicate to the Commission statistics on the numbers of third-country nationals who have been granted an EU Blue Card and on those whose application have been rejected, specifying those rejected in application of Article 6(2), as well as on the numbers of third-country nationals whose EU Blue Card has been renewed or withdrawn, during the previous calendar year. Those statistics shall be disaggregated by the citizenship, occupation, length of validity of the permits, sex and age of the applicants, and the economic sector. Those statistics for third-country nationals who have been granted an EU Blue Card shall be further disaggregated into beneficiaries of international protection, beneficiaries of the right to free movement and those who have acquired EU long-term resident status in accordance with Article 17.

Statistics on admitted family members shall be communicated in the same manner, except as regards information on their occupation and the economic sector.

For EU Blue Card holders, and members of their families, who have been granted residence permits in a second Member State in accordance with Articles 20 and 21, the information provided shall, in addition, specify the Member State of previous residence.

2. For the purpose of the implementation of paragraphs Article 5(2), (4) and (5), reference shall be made to data sent to Eurostat in accordance with Regulation (EU) No 549/2013⁵⁴.

Article 25

Reporting

Every three years, and for the first time by [*five years after the date of entry into force of this Directive*], the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States, in particular the assessment of the impact of Articles 5, 12, 19 and 20, and the impact of this Directive on the national labour market situations. The Commission shall propose any amendments that are necessary.

The Commission shall notably assess the relevance of the salary threshold set out in Article 5 and of the derogations provided for in that Article, taking into account, among others, the diversity of the economical, sectorial and geographical situations and the labour market impact within the Member States.

⁵² Four years after the date of entry into force of this Directive.

⁵³ Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers (OJ L 199, 31.7.2007, p. 23).

⁵⁴ Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union (OJ L 174, 26.6.2013, p. 1).

Article 26

Cooperation between contact points

1. Member States shall appoint contact points which shall be responsible for receiving and transmitting the information needed to implement Articles 17, 19, 20 and 23 and shall cooperate effectively with each other.
2. The Member States' contact points shall in particular cooperate effectively regarding validation arrangements with stakeholders in the education, training, employment and youth sectors, as well as other relevant policy areas, needed to implement Articles 5(1)(c) and 5(6).
3. Member States shall provide appropriate cooperation in the exchange of the information and documentation referred to in paragraph 1. Member States shall give preference to exchanging information via electronic means.

Article 27

Repeal of Directive 2009/50/EC

Directive 2009/50/EC is repealed with effect from ... [two years+1 day after the date of entry into force of this Directive].

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation tables in Annex [II](#).

Article 28

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [*Two years after the date of entry into force of this Directive*]. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.
3. By way of derogation from paragraph 1, Member States shall bring into force the laws, regulations and administrative provision necessary to comply with points (g) and (i) of Article 2 with regard to recognising higher professional skills as higher professional qualifications by [2 years after the general transposition deadline].

Article 29

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 30

Addressees

This Directive is addressed to the Member States, in accordance with the Treaties.

Done at Strasbourg,

For the European Parliament
The President

For the Council
The President