

EUROPEAN UNION



**Committee of the Regions**

**CIVEX-VI/014**

**10th Commission meeting, 22-23 September 2016**

**DRAFT OPINION**

**Commission for Citizenship, Governance, Institutional and External  
Affairs**

**Legal Migration**

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Marshal of the West Pomerania region

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This document will be discussed at the meeting of the **Commission for Citizenship, Governance, Institutional and External Affairs to be held from 10 a.m. to 5 p.m. on 22 September 2016**. To allow time for translation, any amendments must be submitted through the online tool for tabling amendments (available on the Members' Portal: <http://cor.europa.eu/members>) **no later than 3 p.m. (Brussels time) on 2 September 2016**. A user guide is available at: <http://toad.cor.europa.eu/CORHelp.aspx>.

Reference(s)

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  
COM(2016) 378 final

**Draft Opinion of the Commission for Citizenship, Governance, Institutional and External Affairs - Legal Migration**

**I. RECOMMENDATIONS FOR AMENDMENTS**

**Amendment 1**

Article 2(h)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
<p>"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;</p>	<p>"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>for persons with refugee status resident in the territory of the EU who do not have the documents necessary to prove their qualifications, additional procedures to establish the level of the qualifications will be carried out;</i></p>

<i>Reason</i>
<p>It is necessary to redefine this concept, to take account of the fact that a potentially large number of refugees may not be able to document their vocational qualifications. The proposed provisions of the Directive require a much more flexible approach to this issue than at present. The CoR draws attention in this context to existing documents setting out accumulated experience in this area, in particular the Skills Profile Tool Kit for Third Country Nationals currently being prepared, as proposed in the New Skills Agenda for Europe. It is also suggested that use be made of the experience of European regions in this area.</p>

**Amendment 2**

Article 2(i)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
<p>"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</p>	<p>"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</p>

profession or sector specified in the work contract or binding job offer;	profession or sector specified in the work contract or binding job offer; <b>for persons with refugee status resident in the territory of the EU who do not have the documents necessary to prove their higher-level professional skills, additional procedures to establish their professional experience will be carried out;</b>
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<i>Reason</i>
See previous point.

### Amendment 3

New provision to be inserted in Chapter VI as Article 24(3)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
New provision to be inserted in Chapter VI	<i>Studies will be carried out to extensively ascertain the possibility of transferring and recognising skills and qualifications from third-country nationals.</i>

<i>Reason</i>
The recognition of foreign qualifications remains one of the most critical aspects to be tackled. Enhancing its recognition would ease the mobility of highly skilled workers. In this regard, the European Union should also assess the possibility of promoting, in partnership with third countries, similar Bologna credit systems in other continents that would be easily recognised when third country students and applicants enter, stay or work in Europe.

### Amendment 4

Article 6(2)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
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.	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. <i>In practical terms, local and</i>

	<i>regional institutions will play an important part in this process.</i>
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<i>Reason</i>
The socio-economic impact of migration is most keenly felt at regional and local level. Defining the potential role of institutions at these levels therefore remains an important issue when justifying departure from the terms of the Directive.

### Amendment 5

Article 6(4)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
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.	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. <i>Practical principles for monitoring the ethical dimension of the recruitment process will be drawn up, in line with the standards developed by international organisations.</i>

<i>Reason</i>
Ethical issues are particularly important in the context of recruiting highly skilled workers. This is because demand from European employers is often in occupations where workers are also needed in third countries as a result of severe skills shortages. A massive and uncontrolled exodus could lead to a long-term deterioration in the socio-economic situation in the countries of origin and thus effectively increase the potential for migration. It is proposed that the ethical recruitment provisions be supplemented by practical principles drawn up, inter alia, by international organisations. In this respect, attention should be drawn to the Public Private Alliance for Fair and Ethical Recruitment (PPA) initiative of the International Organization for Migration (IOM) and the IRIS monitoring system.

### Amendment 6

Article 12(1)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
Recognised employers: 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	Recognised employers: 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. <i>These criteria will take account of the ethical aspects of the recruitment process (especially a company's earlier experience of employing highly skilled third-country</i>

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.	<i><b>nationals), and a list of companies will be drawn up with the participation of regional and local-level institutions.</b></i> 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.
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<b><i>Reason</i></b>
It is proposed that specific conditions for acquiring the status of “recognised employer” be added, taking into account the regional/local dimension as well as the ethical aspects of recruitment. The Committee of the Regions suggests that a list of companies of this kind benefiting from simplified procedures be drawn up, with the involvement of local and regional bodies, and that the ethical aspects of recruitment be taken into account.

#### **Amendment 7**

New provision to be inserted in Chapter VI as Article 24(4)

<b><i>Text proposed by the Commission</i></b>	<b><i>CoR amendment</i></b>
New provision to be inserted in Chapter VI	<i><b>An in-depth and reliable analysis will be carried out of the outflow of highly skilled workers from third countries and of the potential impact of a “brain drain” on migrants’ countries of origin.</b></i>

<b><i>Reason</i></b>
It is proposed that provisions be added to the Directive requiring the Commission to conduct an in-depth and reliable analysis of the outflow of highly skilled workers from third countries and of the potential impact of a brain drain. The results of the proposed study should be used to develop common actions - by the EU and the migrants’ countries of origin - aimed at preventing the negative effects of migration and creating solutions beneficial to countries of origin and destination and to the migrants themselves.

#### **Amendment 8**

New provision to be inserted in Chapter VI as Article 24(5)

<b><i>Text proposed by the Commission</i></b>	<b><i>CoR amendment</i></b>
New provision to be inserted in Chapter VI	<i><b>Studies will be carried out to evaluate the viability of putting forward circular migration initiatives and of measures aiming at facilitating the displacement of third-countries workers for</b></i>

	<i>short periods in Europe, notably by issuing legal visas.</i>
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<i>Reason</i>
It should be acknowledged that is necessary to put forward robust labour migration programmes to meet short term and long-term labour market needs, respecting international norms, and in partnership between countries of origin and destination. Short term visas could be an efficient manner to promote circular migration enabling thereby countries of origin and destination to benefit from skilled workers.

## **II. POLICY RECOMMENDATIONS**

### THE EUROPEAN COMMITTEE OF THE REGIONS

#### *General recommendations*

1. Applauds the efforts of the EU institutions to ensure an adequate supply of highly skilled workers and at the same time to control the influx of documented migrants. In this context, the proposed solutions are a step in the right direction and a response to criticism of the current Directive.
2. Considers that the establishment and promotion of effective channels for the legal/documentated entry of third-country nationals should remain one of the priorities of migration policy at EU, Member State and regional level.
3. Takes the view that the European Union's long-term goal of remaining a competitive global actor requires the creation and modification of a comprehensive strategy for obtaining foreign capital, as well as human capital from third countries. The latter element is important for every economic system wishing to scale up its innovativeness, level of technology and competitiveness. It is, however, particularly important in the context of the demographic crisis being experienced by some Member States and of the problems facing the EU's labour markets.
4. Points out that the EU already has to contend with structural shortages of workers in certain sectors, and that unfavourable demographic trends will exacerbate these shortages. At the same time, the European Union is currently losing the race for talent with such global players as the USA, Canada and Australia.
5. Points out that measures for the recruitment of workers from third countries cannot and should not replace large-scale, long-term investments in education and vocational training for EU citizens. This investment should make greater use than hitherto of knowledge of deficit occupations and it should support those wishing to train in these areas.
6. Welcomes the broad consultation process that accompanied the drafting of the current version of the Directive, but is concerned that too little was done at regional level, involving regional and local authorities, which have the best knowledge of the needs of local and regional labour markets.

7. Also points out that local and regional authorities play a very important role in providing public services for immigrants, in terms of access to the labour market, as well as other dimensions of integration (education, housing, health care etc.).
8. Stresses that regional-level institutions play a key role in identifying the needs of the labour market, as well as in defining conditions requiring the implementation of safeguard procedures (labour market test). In addition, however, these institutions could create a positive climate for the proposed measures and the critical mass needed to raise the profile of the Blue Card procedure.

#### *Assessment of the current arrangements*

9. Notes that the measures introduced in 2009 have not met expectations. One reason for this was that national systems were allowed to co-exist with those introduced by the Directive.
10. Notes that past experience with the implementation of the Blue Card procedure shows that, while the European Commission is seeking to place migration policy and sectoral measures on a European basis, the Member States remain committed to maintaining and promoting national solutions.
11. Notes that the solutions introduced in 2009 largely ignored the needs/expectations of employers (business sector) and of the migrants themselves.

#### *The proposed measures - potential risks and shortcomings*

12. Welcomes the proposals to reduce income thresholds, introduce instruments to promote internal mobility, facilitate access to long-term residence permits and take account of migrants already residing in the EU.
13. Wonders, in view of the steadily growing competition for talent, whether consideration should be given to incorporating into the European migration system elements of a supply-driven or points-based system (PBS) or a hybrid system, modelled on that of countries which are more effective in attracting highly skilled workers (Australia, Canada).
14. Stresses that, for highly skilled individuals, considerations such as career opportunities, access to equipment, language of communication and work commensurate with qualifications play an important part in their decisions. The Committee of the Regions is concerned that the proposed measures still take little account of these issues.
15. Welcomes the recognition that the Blue Card may be granted not only to workers arriving in the EU, but also to those who are already there.
16. At the same time, however, considers that clarification is needed as to why this option should be available only to recognised refugees. The proposed Directive explicitly excludes from this possibility seasonal and posted workers, as well as persons whose application for refugee status



is pending. While understanding the political reasons for this decision, the Committee of the Regions considers that opening up a path to employment commensurate with qualifications for other categories of person residing in the EU could result in better use of human capital without necessarily increasing the scale of immigration.

17. Points out that measures for the recruitment of third-country nationals in occupations requiring high-level skills should aim not only to attract immigrants but also to create conditions conducive to their remaining in the EU and integrating effectively.
18. Suggests that the issue of the employment of highly skilled workers should be treated in a holistic and comprehensive way appropriate to the logic of the migration process: from recruitment, via admission and identification of skills, to effective integration (and circulation, where their employment conditions require this).
19. In the context of the proposed measures, considers it necessary to develop a single, generally accepted method of collecting data on the demand for highly skilled workers in various occupations and labour markets. Establishing mechanisms for filling gaps in the labour markets of the Member States more effectively than at present would require the creation of an IT infrastructure making it possible to bring together employers looking for job seekers and prospective workers with appropriate skills. Stresses the potentially key role of European regions in the collection of this type of data.
20. Is concerned that the proposed measures may take insufficient account of young graduates, whose level of earnings may be insufficient to satisfy the criteria set out in the Directive.
21. Emphasises that the issue of recognition of qualifications - and the practical aspects of this process - will be particularly relevant in the case of a category of persons who are for the first time becoming potential beneficiaries of the scheme: recognised refugees. It may be expected that in the case of these persons obtaining proof of qualifications will be especially difficult and complex.
22. Stresses that more attention should be paid to ethical issues relating to the recruitment of highly skilled workers from third countries and that effective methods should be devised for preventing a brain drain from less developed countries with already low levels of human capital.
23. Proposes that an in-depth and reliable analysis be carried out of the outflow of highly skilled workers from third countries and of the potential impact of a brain drain. The results of this study should be used to develop common actions - by the EU and the migrants' countries of origin - aimed at preventing the negative effects of migration and, where possible, creating "win-win-win" solutions (migration that is beneficial to the countries of origin and destination and to the migrants themselves).
24. Points out that any process of migration is a complex, multi-level phenomenon, in which both the countries of destination and the countries of origin of migrants play a major role. Inter alia in the context of the ethical issues highlighted above, calls for enhanced dialogue and closer cooperation between the EU institutions and those of the countries of origin of migrants and

transit countries, also at regional and local level. This cooperation should make use of existing bodies and platforms, such as ARLEM, CORLEAP, joint consultative committees and working groups; use should be made of the experience of the European Training Foundation in supporting circular migration mechanisms.

25. Considers that the proposal is in compliance with the subsidiarity principle as the objective – to compete in the international competition for highly skilled workers – cannot be sufficiently achieved by the Member States acting alone, but can by reason of the scale be better achieved at the EU level. The proposed measures do not go beyond what is necessary 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, and they leave certain flexibility for Member States to adapt the scheme to their national situation. Thus, the proposal complies with the principle of proportionality.

#### *The role of the regions*

26. Would stress that the socio-economic consequences of migration, such as its impact on the functioning of labour markets and on the social and cultural spheres, are felt most keenly at regional and local level. Similarly, Europe's aggregate competitiveness could be regarded as an abstract concept; what counts is ensuring competitiveness and a high level of innovativeness in Europe's cities and regions.
27. Points out that bringing a regional perspective to bear on the discussion of the proposed measures highlights various paradoxes. One of them is that, while highly skilled immigrants may be attracted by the most developed regions, their presence may be most desirable in regions that are not in a position to offer them such attractive work and residence conditions.
28. The Committee of the Regions draws attention to a critical question in this context: what tools are needed to guarantee a relatively balanced geographical distribution of Blue Card beneficiaries? One of the tools in this context could be cooperation between administrations at different levels and the private sector.
29. Welcomes the retention of the safeguard measures which could be introduced in the event of a deterioration in the labour market in a given country. Points out, however, that one of the effects of the implementation of the proposed measures will be to accelerate the brain drain from the new Member States while steadily increasing the competition for talent (internal rather than external). In the Committee of the Regions' view, an important question is how to ensure that lower-income countries do not become merely transit countries for workers on their way to the most developed EU countries.
30. Would stress, in a local and regional context, the particular importance of a question that is insufficiently addressed by the Commission proposal: how to increase the effectiveness of integration measures and how to make use of existing best practice in this area.
31. Proposes that the role of the local and regional partners be considered in various contexts, such as in relation to: the establishment of experimental fast-track systems in partnership between

regions, countries and the private sector; the effective sharing of best practice, especially in connection with recognition of qualifications and reducing structural mismatches and boosting the effectiveness of integration; and the implementation of solutions ensuring the best possible match between formal qualifications and the needs of local and regional labour markets.

Brussels, 17 August 2016.

### III. PROCEDURE

<b>Title</b>	Legal Migration
<b>Reference(s)</b>	COM (2016) 378
<b>Legal basis</b>	Art. 307(1) TFEU
<b>Procedural basis</b>	Rule 41 b)i) RoP
<b>Date of Council/EP referral/Date of Commission letter</b>	7 June 2016
<b>Date of Bureau/President's decision</b>	14 June 2016
<b>Commission responsible</b>	Commission for Citizenship, Governance, Institutional and External Affairs
<b>Rapporteur</b>	Olgierd Geblewicz (PL/EPP)
<b>Analysis</b>	28 July 2016
<b>Discussed in commission</b>	23 June 2016
<b>Date adopted by commission</b>	Scheduled for 22 September 2016
<b>Result of the vote in commission (majority, unanimity)</b>	
<b>Date adopted in plenary</b>	Scheduled for 7-8 December 2016
<b>Previous Committee opinions</b>	<ul style="list-style-type: none"> <li>– Protection of refugees in their areas of origin: a new perspective 2016, rapporteur Hans Janssen (NL/EPP)<sup>1</sup></li> <li>– European Agenda on Migration, rapporteur François Decoster (FR/ALDE)<sup>2</sup></li> <li>– The efforts to promote genuine solidarity on a real European migration policy, rapporteur François Decoster (FR/ALDE)<sup>3</sup></li> <li>– Future EU policies in Justice and Home Affairs, rapporteur Lotta Håkansson Harju (SV/PES)<sup>4</sup></li> <li>– Global approach to migration and mobility, rapporteur Nichi Vendola (IT/PES)<sup>5</sup></li> <li>– Enhanced intra-EU solidarity in the field of asylum, rapporteur Theodoros Gkotsopoulos (EL/PES)<sup>6</sup></li> <li>– Opinion on the New European Agenda for Integration, rapporteur Dimitrios Kalogeropoulos (EL/EPP)<sup>7</sup></li> <li>– Opinion on seasonal workers and intra-corporate transfer, rapporteur Graziano Ernesto Milia (IT/PES)<sup>8</sup></li> </ul>
<b>Date of subsidiarity monitoring consultation</b>	N/A

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1 CdR 6328/2015 fin.

2 CdR 2607/2015 fin.

3 CdR 5728/2014 fin.

4 CdR 8115/2013 fin.

5 CdR 9/2012 fin.

6 CdR 11/2012 fin.

7 CdR 199/2011 fin.

8 CdR 354/2010 fin.