



Building a more attractive European Blue Card Directive:

A comparison with the Dutch Highly Skilled Migrant Scheme

Master's thesis LLM Labour Law and Employment Relations

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Acknowledgements

The basis for this thesis originally stemmed from my interest for labour law, HR and the interaction between these two fields. Since there is a shortage of highly skilled workers on the labour market, I decided to explore this topic further. I chose to write my thesis on the highly skilled migrant schemes present in the Netherlands in order to expand my knowledge about both the legal and the HR aspects of this topic. Writing this thesis was a challenging process. This topic is partly of legal nature and as I have a background in the field of HR, the process of writing this thesis has known ups and downs.

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Abbreviations

CJEU	The Court of Justice of the European Union
EU	European Union
GETA	General Equal Treatment Act
HSMS	Highly Skilled Migrant Scheme
IcDW	Informatiecentrum Diplomawaardering <i>(Information centre for credential Evaluation)</i>
ICT	Intra-Corporate Transfer
IND	Immigratie- en Naturalisatiedienst <i>(Immigration and Naturalisation Service)</i>
OECD	Organization for Economic Cooperation and Development
UWV	Uitvoeringsinstituut Werknemersverzekeringen <i>(Employee Insurance Agency)</i>

1. Introduction

The employment landscape is changing rapidly. Countries are competing in a so-called global battle for talent.¹ Human capital is considered as the major driver of economic growth.² Therefore, not surprisingly, demographic changes and a shortage of highly skilled workers will shape the future employment landscape. It is expected that in 2060, the working population will have declined with 46 million people in the European Union (EU)³, as the number of total deaths will outnumber the total number of births until 2025.⁴ In the meantime, the demand for particular skills is increasing in line with societal and technological developments. The demand for highly skilled workers will dominate the labour market in the next decades. This has caused the EU to look for highly skilled workers beyond its borders.

These developments are not specific to the European Union. Other Organization for Economic Cooperation and Development (OECD) countries are struggling to respond to these challenges as well. The EU is, however, not well equipped to fully respond to the challenge of attracting the highly skilled workers it needs. Other OECD countries have been more successful in attracting these workers than the EU so far. One reason for this might be that these more competitive, traditional migration countries, such as Australia, Canada and New Zealand, use another system, the so-called supply-drive system, to attract highly skilled workers compared to the demand-driven system used in the EU Member States.⁵ Of all highly skilled migrants living in OECD countries, 75 per cent resides in a non-EU Member State.⁶ This means that only 25 per cent of highly skilled migrants choose to work in an EU Member State. In 2014, highly skilled third country workers covered 1.7 per cent of the total employed population in the EU compared to the much larger percentages in Australia (9.9 per cent), Canada (7.3 per cent) and the USA (3.2 per cent).⁷

¹ Cerna, 'The EU Blue Card: Preferences, Policies, and Negotiations between Member States', *Migration Studies* 2014/2.

² Wiesbrock & Hercog, 'Making Europe more Attractive to Indian Highly-Skilled Migrants?: The Blue Card Directive and National law in Germany and the Netherlands', *CARIM-India Research Report* 2012/09.

³ OECD, 'Economic Survey of the European Union' (2012), www.read.oecd-ilibrary.org/economics/oecd-economic-surveys-european-union-2012_eco_surveys-eur-2012-en#page1.

⁴ European Commission, 'Policy Plan on Legal Migration', COM(2005) 669 final, Brussels.

⁵ Burmann, Perez, Hoffmann, Rhode, and Schworm, 'Highly Skilled Labour Migration in Europe', *ifo DICE Report* 2018/16/1, p. 42-52.

⁶ European Commission, 'Enhancing Legal Pathways to Europe: an Indispensable Part of a Balanced and Comprehensive Migration Policy', COM(2018) 635 final, Brussels.

⁷ European Commission, 'Attractive Conditions for the Admission and Residence of Highly Qualified Immigrants', Memo(2007) 423, Brussels.

Since 1999, the EU-legislator has adopted several Directives that regulate migration of third country nationals to the EU Member States which provide the beneficiaries of those Directives with a right to take up employment in a Member State. Examples are the Long-term Residence⁸ and the Family Reunification Directives⁹. More recently, the EU has adopted legislation that regulates labour migration from outside the EU. The Intra-Corporate Transfer (ICT) Directive¹⁰, for instance, facilitates the transfer of managers, specialists or trainee employees working for a company established outside the EU to a branch in an EU Member State. Another example is Directive EU/2016/801¹¹ that provides entry and residence conditions for the purpose of research and studies.

1.2 Problem Statement

The EU Member States have attempted to tackle their demographic and labour market issues, in particular the demand for highly skilled labour, by developing individual schemes that cover non-EU highly skilled workers. The Netherlands did this in 2004 by adopting the Highly Skilled Migrant Scheme (HSMS).

The EU also introduced a scheme for highly skilled third country workers coming to the EU. The so-called Blue Card Directive¹² established favourable entry and residence conditions in order to enhance the attractiveness of the EU for highly skilled workers. It creates a level-playing field between the Member States in order to “eliminate competition between Member States which might result from national immigration schemes”.¹³ The Blue Card Directive had to be implemented by the Member States in 2009 and it provides a ‘one-stop-shop’ system, which accelerates the application process for companies and highly skilled third country nationals. After a long trail of discussions whether Member States could operate

⁸ Council Directive 2003/109/EC of 25 November 2003 concerning the Status of Third-country Nationals who are Long-term Residents (further Long-term Residents Directive or Directive 2003/109/EC) *OJ EC 2004*, L 16.

⁹ Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification (further: Family Reunion Directive, or Directive 2003/86/EC) *OJ 2003*, L 251/12.

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 (further: ICT-Directive or Directive 2014/66/EU) *OJ 2014*, L 157.

¹¹ 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 (further Research and Studies Directive or Directive (EU) 2016/801) *OJ 2016*, L 132.

¹² 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 Skilled Employment (further: Blue Card Directive or Council Directive 2009/50/EC) *OJ EC 2009*, L 155/17.

¹³ European Commission, ‘Communication on Immigration, Integration and Employment’, COM(2003) 336 final, Brussels, p. 16.

a national scheme in parallel with the EU scheme, Member States retained competence to apply their national HSMS.

This explains why the Netherlands has two HSMS in force: the Dutch HSMS (in Dutch: Kennismigrantenregeling) and the EU Blue Card Scheme. They both serve the same goal: attracting highly skilled migrants by establishing favourable entry and residence conditions. However, there seems to be a difference in attractiveness between the two schemes. The Dutch HSMS generates significantly more applications than the EU Blue Card Scheme does. In 2016, employers used the Dutch HSMS 9460 times in comparison to only 40 applications for an EU Blue Card. In 2017, employers could also use the ICT Directive admission scheme. This can explain the drop in the number of applications made under the Dutch HSMS compared to in 2016: 7230 applications made under the Dutch HSMS were granted. There were 4510 applications made under the ICT Directive. The difference with the EU Blue Card remained significant: only 60 EU Blue Card applications were granted.

The significant difference in the number of applications made under the national and EU schemes has not gone unobserved. The following reasons have been given to explain this difference. The processing time of the EU Blue Card compared to the processing time under the Dutch HSMS is longer.¹⁴ Other reasons are the documentation burden and the higher salary thresholds under the Blue Card Directive.¹⁵¹⁶ This, as the aforementioned data shows, merits the conclusion that employers seem to prefer the national HSMS over the EU scheme. The question is why is there such a difference in the number of applications made under each scheme? Can this preference be explained by what both schemes offer? What are the implications in every day practice? Why do employers prefer the Dutch HSMS over the EU Blue Card? What are the obstacles and challenges that employers encounter under the EU Blue Card Scheme that make the Dutch HSMS more attractive to them? How can these obstacles and challenges be converted into an effective policy in order to make the EU Blue Card a more attractive scheme for highly skilled migrants in the Netherlands? This leads to the following research question:

¹⁴ Reurs, 'Transposition in the Netherlands', in *The Blue Card Directive: Central Themes, Problem Issues, and Implementation in Selected Member States*, by Grütters and Strik (Eds). Wolf Legal Publishers. 2013, p. 86.

¹⁵ NOS, 'Niemand wil de Europese Blue Card' (2016), www.nos.nl/nieuwsuur/artikel/2106787-niemand-wil-de-europese-blue-card.html.

¹⁶ Reurs, 'Transposition in the Netherlands', in *The Blue Card Directive: Central Themes, Problem Issues, and Implementation in Selected Member States*, by Grütters and Strik (Eds). Wolf Legal Publishers. 2013, p. 86.

“What lessons can be learnt from Dutch practice regarding applications for highly skilled third country workers in order to make the EU Blue Card more attractive to employers compared to the Dutch Highly Skilled Migrant Scheme?”

To answer this research question the following sub-questions need to be answered:

1. *“What does the Dutch Highly Skilled Migrant Scheme provide for highly skilled third country nationals?”*
2. *“What does the Blue Card Directive provide for highly skilled third country nationals?”*
3. *“What are the differences between the Dutch Highly Skilled Migrant Scheme and the Blue Card Directive?”*
4. *“What are the implications in every day practice regarding the differences between the Dutch Highly Skilled Migrant Scheme and the Blue Card Directive and the choice for one of the two Schemes?”*
5. *“How can the obstacles and challenges in every day practice be converted into a more attractive Blue Card Directive?”*

The structure and research method of this thesis will be explained in more detail below.

2.2 Structure and Research Method

In order to answer the main research question, the sub-questions will be answered in the following chapters. After this introductory chapter, a literature review will be conducted in chapter two and sub-questions one and two will be answered. The legal framework for highly skilled migrants will be presented and analysed. The Aliens Act, the Foreign Nationals Employment Act and the resulting lower level legislation of these two Acts will be used to describe the Dutch HSMS, and Council Directive 2009/50/EC will be used to explain the EU Blue Card. Thereafter, a comparison between the Dutch HSMS and the EU Blue Card will be made in which sub-question three will be answered. Subsequently, chapter three will contain the story behind the figures. By conducting semi-structured interviews with several stakeholders, the reasoning behind the choice for a certain scheme will become clearer and the obstacles and challenges in every day practice will become visible. In this way, sub-question four can be answered. On the basis of this analysis, a suggestion to amend the Blue Card Directive to make it more attractive to employers in the Netherlands will be presented in chapter four and sub-question five will be answered. Finally, chapter five will shortly summarize the answers to the sub-questions and the main research question will be answered.

2. Legal Framework for Highly Skilled Workers

2.1 Introduction

The need for high-quality knowledge for the development towards a knowledge economy is increasing. One way to solve the predicted labour shortage and the demographic changes is by attracting highly skilled workers from outside the EU. In order to increase the competitive power of the Netherlands, a Highly Skilled Migrant Scheme (HSMS) was introduced in 2004.¹⁷ Its goal is to attract the necessary talent from third countries to the Netherlands.¹⁸ The Dutch HSMS is interwoven into multiple Acts and lower level legislation. There are two Ministries involved in the application of this scheme. On the one hand, the Ministry of Justice and Security concerning the residence of third country nationals, and, on the other hand, the Ministry of Social Affairs and Employment concerning the labour market access of third country nationals. The two Ministries collaborate in order to provide an efficient and effective HSMS for third country nationals. The scheme is characterized by a demand-driven system, which means that the initiative for migration comes from the employer who requests a third country national to come to work in the Netherlands.¹⁹

Like the Netherlands, the EU introduced a scheme to attract more highly skilled workers from outside the EU. In order to attract and retain more highly skilled third country nationals to the EU, the Blue Card Directive²⁰ was proposed by the European Commission in 2007. It was part of the broader Lisbon Strategy, the goal of which is for the EU to become the most competitive knowledge-based economy in the world. In addition, it was intended to address the aforementioned existing and future labour shortages, which Member States were experiencing. The Blue Card Directive aims at creating a level-playing field between the Member States to ensure the admission of highly skilled third country nationals and to promote these workers on the EU labour market.²¹

¹⁷ Kamerstukken II, 2004-2005, 29 200 VI, nr. 164.

¹⁸ European Migration Network, 'Small CaseStudy III Third country Highly-skilled Migrants in the EU, Entry and Residence Conditions in the Netherlands', April 2007.

¹⁹ Chaloff and Lemaître, 'Managing Highly-Skilled Labour Migration: A Comparative Analysis of Migration Policies and Challenges in OECD Countries', *OECD Social, Employment and Migration Working Papers* 2009/79.

²⁰ 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 Skilled Employment (further: Blue Card Directive or Council Directive 2009/50/EC) *OJ EC* 2009, L 155/17.

²¹ SEC(2007) 1382, Brussels, 2007, p. 2.

After a long trail of discussions and amendments, the Blue Card Directive was adopted on 25 May 2009 and it was published in the Official Journal of the EU on 18 June 2009. Member States had two years from that date onwards to bring their laws, regulations and administrative practice in line with the rules in the Blue Card Directive.²² Denmark, Ireland and the United Kingdom opted out and are thus not bound by the Blue Card Directive.²³ This opt out has an impact on the rights attached to the status of highly skilled workers under the Blue Card Directive in other Member States, as will become clear in section 2.2.4 of this chapter.

The Netherlands implemented the Blue Card Directive on 20 June 2011. Since that date, the Netherlands has two schemes in force in order to attract and retain highly skilled workers; hence the EU Blue Card is complementary to the national HSMS, which will be discussed in section 2.2 of this chapter. To date there is no case law of the European Court of Justice that could clarify the concepts used in the Blue Card Directive. The European Court of Justice is the competent judge to interpret European Union law and thus Council Directive 2009/50/EC.²⁴ Therefore, the analysis is necessarily based on documents of the European Council and the legislation itself, and analyses made in the literature.

The Dutch HSMS and the Blue Card Directive and its implementation in the Netherlands will be discussed in detail in the paragraphs below. The research sub-questions that will be answered in this chapter are: “*What does the Dutch Highly Skilled Migrant Scheme provide for highly skilled third country nationals*” and “*What does the Blue Card Directive provide for highly skilled third country nationals?*”. Furthermore, a comparison between the two schemes will be made in order to answer the following research sub-question: “*What is the difference between the Dutch Highly Skilled Migrant Scheme and the Blue Card Directive?*”.

2.2 The Dutch Highly Skilled Migrant Scheme

The Dutch HSMS is mainly based on two Acts, which will be described below. The Aliens Act (in Dutch: Vreemdelingenwet) provides the rules concerning the residence of third country nationals. Its lower level legislation, the Aliens Decree 2000 (Vreemdelingenbesluit 2000), the Aliens Regulations 2000 (Voorschrift

²² Art. 23 Council Directive 2009/50/EC.

²³ Recitals 28 and 29 Council Directive 2009/50/EC.

²⁴ Art. 19 Treaty on European Union *OJ* 2012, L 293/93.

Vreemdelingen 2000), and the Aliens Act Implementation Guidelines 2000 (Vreemdelingencirculaire 2000), describe the residence requirements in more detail. Secondly, the Foreign Nationals Employment Act (Wet Arbeid Vreemdelingen) provides the legislation concerning the employment of third country nationals. Its lower level legislation, the Foreign Nationals Employment Act Implementation Decree (Besluit Uitvoering Wet Arbeid Vreemdelingen), will be used to describe the labour conditions in more detail.

2.2.1 Personal scope

The Dutch HSMS covers highly skilled workers from non-EU Member States, so-called third country nationals. In the Dutch scheme, a salary threshold is used in order to define who is a highly skilled worker.²⁵ This salary threshold, which will be further described in section 2.2.2, reflects the worker's economic value for the labour market. This economic value is indirectly determined by the worker's level of education. However, education as an element to establish the beneficiaries of the Dutch scheme is not used as such. The Dutch government refrained from including a third country national's level of education in the personal scope, because it considered educational level in itself not a determining factor for the third country national's productivity and contribution to innovation.²⁶

Besides highly skilled employees, independent entrepreneurs also fall under the personal scope of the Dutch HSMS. Self-employed entrepreneurs must meet additional, specific criteria, which can be found in Aliens Regulations 2000 B2.5 and which will not be discussed further, because this master's thesis will focus on the Dutch HSMS in general and will thus not discuss additional conditions for specific categories.

Some third country nationals are not eligible to rights under the Dutch HSMS. It is not explicitly stated which categories are excluded from the Dutch HSMS. A reason to exclude workers from the scheme can be that they are already included in other schemes such as third country researchers who already fall under the scope of Directive EU/2016/801. This master's thesis will only discuss the main category of highly skilled workers and will not include specific categories that are included in other schemes such as researchers or students.

²⁵ Art. 1d.a. Foreign Nationals Employment Act Implementation Decree.

²⁶ Publication in the Bulletin of Acts and Decrees of the Kingdom of The Netherlands, Explanatory Memorandum, 2004/481.

2.2.2 Recognized sponsorship

In order to be able to apply for the Dutch HSMS, a highly skilled third country national must be in the possession of a valid employment contract with a Dutch employer, as further explained in section 2.2.3. However, first of all, the Dutch employer must be registered as a sponsor with the Immigration and Naturalisation Service (IND) based on Article 2c of the Aliens Act. A sponsor is “a person, employer or organization that has an interest in the arrival of the foreign national in the Netherlands”.²⁷

The employing company must be a reliable partner for the IND and, therefore, needs to meet certain conditions.²⁸ Firstly, the employer must be listed in the Dutch Commercial Register. Secondly, the continuity and solvency of the employer must be sufficiently guaranteed and he may not be bankrupt. Thirdly, the employer must be reliable. Lastly, the recognized sponsorship must not have been withdrawn in the last five years. When the company has been recognized as a reliable partner, the company is entered into the Public Register for Recognized Sponsors and can start an application process for the highly skilled third country national, as will be explained in section 2.2.3.

The application fee for becoming a recognized partner is 3927 euros. For start-ups or small businesses and for sponsors with a change in their business entity, the fee is 1930 euros.²⁹

Refusal or withdrawal of recognized sponsorship

Once recognized, the sponsor can face sanctions including administrative fines, and the suspension or withdrawal of the recognized sponsorship. Article 55a of the Aliens Act states that an administrative fine of 3000 euros can be faced by businesses if they, as a recognized sponsor, do not observe the duty of care towards a third country national or fail to comply with their administration duties.³⁰ Additionally, Article 54.1 of the Aliens Act describes the information duty to which the recognized sponsor has to adhere. This duty is further explained in Article 4.44a of the Aliens Decree 2000. The recognized sponsor must provide essential information concerning the highly skilled worker within a period of four weeks to the Minister of Justice and Security or otherwise, an administrative fine of 3000 euros can be faced.

²⁷ IND, ‘Recognition as a Sponsor’, www.ind.nl/en/work/Pages/Recognition_as_a_sponsor.aspx.

²⁸ Art. 2e. Aliens Act.

²⁹ IND, ‘Recognition as a Sponsor’, www.ind.nl/en/work/Pages/Recognition_as_a_sponsor.aspx.

³⁰ See Art. 2a.2.b. and Art. 2t.2.3. and Art. 24a.2.3. Aliens Act.

The Minister of Justice and Security is competent to withdraw or suspend a recognized sponsorship.³¹ A recognized sponsor can face suspension when there are serious suspicions that the recognized sponsorship will be withdrawn.³² Article 1.22 of the Aliens Decree 2000 lists the grounds for suspension, which includes the continuity and solvability of the sponsor, and the criminal and administrative antecedents. Subsequently, Article 2g of the Aliens Act lists the grounds for withdrawal of the recognized sponsorship, which includes providing incorrect or incomplete information to the Minister of Justice and Security, no longer fulfilling the conditions for sponsorship, and non-compliance with the duties of being a recognized sponsor.

2.2.3 Conditions to be fulfilled

The conditions for admission as a highly skilled worker under the Dutch HSMS are laid down in the Aliens Act, the Foreign Nationals Employment Act and the resulting lower level legislation of these two Acts.

First of all, there are the general conditions that apply to highly skilled third country nationals. As stated in Articles 3.19 to 3.21 of the Aliens Decree 2000, the general conditions are the possession of a valid travel document (i.e. passport), not being a threat to public order or public security³³, and undergoing a medical test for tuberculosis.

Besides these general conditions and the employer's registration as recognized sponsor, as explained in section 2.2.2, there are additional, specific conditions that apply to highly skilled workers. Firstly, a third country national must have a valid employment contract of more than three months with a Dutch employer that complies with the salary threshold set by the Minister of Social Affairs and Employment.³⁴ The salary threshold is revised every year using the percentage-based changes in the most recent index figures for salaries in collective labour agreements. A distinction is made between the salaries of highly skilled workers under the age of 30 and the salaries of highly skilled workers of 30 years and older. As from January 2019, the salary threshold for highly skilled workers under the age of 30 is set at 3299 euros gross per month excluding holiday pay. For highly skilled workers of 30 years and older, the salary threshold is set at 4500 euros gross per month excluding holiday pay.³⁵ A highly skilled worker will

³¹ Art. 2c.1.b. Aliens Act.

³² Art. 2f.1. Aliens Act

³³ See section 2.3.2.

³⁴ Art. 1d.4. Foreign Nationals Employment Act Implementation Decree.

³⁵ Art. 1d.1.a.1. Foreign Nationals Employment Act Implementation Decree.

continue falling under the same age-dependent salary threshold as long as he or she continues to work for the same employer, even if that person has turned 30 years in the meantime. Only when the highly skilled worker starts working for a new employer, the salary threshold will apply to the age of the highly skilled worker at that time.³⁶ The salary will be transferred by the employer to the highly skilled worker's bank account, per giro payment at least once per month.³⁷

Secondly, the salary must be in accordance with market conditions as stated in Article 3.30a of the Aliens Decree 2000. This means that a salary cannot be excessively high in comparison to other workers with the same kind of job. The Uitvoeringsinstituut Werknemersverzekeringen (UWV), on behalf of the Minister of Social Affairs and Employment, determines whether the salary is in accordance with market conditions.^{38 39} The market conformity condition is supported by a judgement of the Court of The Hague in February 2018, in which the Court ruled that the introduction of the market conformity condition is intended to prevent abuse of the Dutch HSMS.⁴⁰ In this case, the Court concluded that the salary offered to the third country national from Turkey was indeed, as the UWV already had concluded before, not in conformity with market conditions. The salary offered was excessively high in comparison to other salaries of the same kind of position.

The last condition to be fulfilled concerns the residence permit in combination with a possible Authorisation for Temporary Stay (MVV). The Dutch employer, as he is the recognized sponsor, must apply to the IND for a residence permit with a 'residence as a highly skilled migrant' restriction for the highly skilled third country national concerned. As stated in Article 1d.1 of the Foreign Nationals Employment Act Implementation Decree, a work permit is not necessary for highly skilled third country nationals. The IND will grant a residence permit for the duration of the employment contract with a maximum of five years based on Article 3.58.1.D of the Aliens Decree 2000. Depending on the nationality of an applicant, a third country national must also possess an Authorisation for Temporary Stay (MVV)

³⁶ IND, 'Required Amounts Income Requirement', www.ind.nl/en/Pages/required-amounts-income_requirement.aspx#Application_residence_permit_highly_skilled_migrant_and_EU_blue_card

³⁷ Art. 1d.5. Foreign Nationals Employment Act Implementation Decree.

³⁸ Art. 2.3. Aliens Act Implementation Guidelines 2000.

³⁹ Art. 3.30d.4. Aliens Decree 2000.

⁴⁰ Court of The Hague 15 February 2018, case AWB 17/14232, ECLI:NL:RBDHA:2018:2236.

when the application for the residence permit is submitted.⁴¹ Some nationalities are exempted from this requirement. If this is the case then a recognized sponsor can apply for a residence permit without a MVV.⁴²

2.2.4 Procedural requirements

An application for the Dutch HSMS must be done by the employer. If the employer is not a recognized sponsor, he must first become one by applying for the status of a recognized sponsor with the IND. Once the employer is recognized as a sponsor, he can upload the application form for the purpose of residence of the highly skilled worker on the website of the IND. The fee for one application is 582 euros.⁴³ The IND, on behalf of the Minister of Justice and Security, will assess whether the conditions are met. If all conditions are met, a residence permit is granted as well as, where required, a MVV. Each application is assessed within two weeks from making it.⁴⁴ The third country national who needs a MMV can pick it up at the Dutch embassy in his or her country of origin. When a MVV is not necessary, the application process for a residence permit can, but this is not obligatory, be started when the third country national is already in the Netherlands. The residence permit needs to be picked up at an IND desk after the third country national's arrival in the Netherlands.

Refusal or withdrawal

An application for the status of highly skilled worker under the Dutch HSMS is refused when the applicant does not or does no longer meet the conditions to be fulfilled as described in section 2.2.3. Additionally, the status as highly skilled worker can be refused or withdrawn if the employer has not been given the status of a recognized sponsor or has lost that status due to a lack of reliability.⁴⁵ The Aliens Decree 2000 states that the reliability is determined by assessing previously imposed fines for the violation of specified fiscal and social norms and Acts, criminal convictions in the past, and previous transactions and penal orders for specified offenses.⁴⁶ To conclude, the refusal or withdrawal of an application mainly lies in the hands of the recognized sponsor, except when concerning threats to public order or public security. The recognized

⁴¹ Art. 2.3. Aliens Decree 2000.

⁴² Exempted from the MVV are nationals of the EU, Switzerland, Australia, New Zealand, Canada, Japan, Monaco, Vatican City, United States of America and South Korea.

⁴³ IND, 'Costs', www.ind.nl/en/Pages/Costs.aspx.

⁴⁴ Art. 14.2. Aliens Act.

⁴⁵ Art. 2.e. Aliens Act.

⁴⁶ Art. 1.19. Aliens Decree 2000.

sponsor is responsible for adhering to the Acts and the lower level legislation, which indirectly affects the highly skilled worker in the case of non-compliance as he will find his application for a residence permit refused or withdrawn.

Enforcement

Once admitted, the highly skilled worker can be confronted with two types of enforcement.⁴⁷ Firstly, the compliance with the salary threshold can be examined by the IND, on behalf of the Minister, at any time. The IND checks the monthly salary, as explained in section 2.2.3, that a highly skilled worker receives via the so-called ‘Suwinet’, an online programme for the exchange of data on all residents between governmental institutions. The enforcement of this condition can include the withdrawal of a residence permit of the highly skilled worker, and a warning or fine for the recognized sponsor. Secondly, the Labour Inspection Department of the Ministry of Social Affairs and Employment can impose an administrative fine by reason of irregular employment when it is found that the conditions of the Dutch HSMS are no longer fulfilled by the sponsor or the individual applicant or both. The interweaving of the two Ministries, as explained in section 2.1, can be seen in the enforcement. Whereas the Minister of Justice and Security can solely give a warning to the recognized sponsor for non-compliance with the conditions, the Minister of Social Affairs and Employment can impose a fine by reason of irregular employment. This fine can consequently result in a suspension of the recognized sponsorship due to non-compliance with the conditions and will, therefore, lead to the withdrawal of the residence permit of the highly skilled worker⁴⁸, with deportation as a result.⁴⁹

2.2.4 Rights

Besides the rights anchored in the Constitution⁵⁰, the status as a highly skilled worker under the Dutch HSMS comes with the following rights: taxation arrangements and priority for family members. These rights, including equal treatment, will be described shortly below.

⁴⁷ De Lange, ‘De sancties bij toelating en verblijf van kennismigranten’, *A&MR* 2015/5/6, p. 205-211.

⁴⁸ De Lange, ‘De sancties bij toelating en verblijf van kennismigranten’, *A&MR* 2015/5/6, p. 209-210.

⁴⁹ Art. 45 Aliens Act.

⁵⁰ The Constitution of the Kingdom of the Netherlands, 1815.

Equal treatment

A highly skilled worker enjoys equal treatment with Dutch citizens. The General Equal Treatment Act (GETA) provides grounds on which one is protected against discrimination.⁵¹ These grounds include religion or belief, political opinion, race, gender, nationality, heterosexual or homosexual orientation, or marital status.⁵² Article 5 GETA provides specific grounds related to labour, which includes equal treatment and job offers, the fulfilment of a vacancy, job placement, employment contracts and working conditions. Furthermore, it is prohibited to discriminate on the ground of education, training followed during or prior to an employment contract, and promotion.⁵³

Taxation arrangements

The Tax and Customs Administration provides the so-called 30% rule for labour migrants, including highly skilled third country nationals. The worker must have been recruited abroad and must possess specific knowledge and skills, which are not or barely available in the Dutch labour market to be eligible for taxation under the 30% rule. The 30% rule offers a tax-free salary of 30 per cent for the extra costs incurred when working in the Netherlands. The Tax and Customs Administration examines the education level, the experience and the salary level of the worker to assess whether he or she is eligible for taxation under the 30% rule.⁵⁴ The maximum duration of the 30% rule used to be eight years. On 1 January 2019, the duration was reduced to five years.⁵⁵

Family members

Family members of a highly skilled worker also have access to the territory of the Netherlands. Family members are defined as registered or marital partners and (minor) children.⁵⁶ In the Aliens Decree 2000⁵⁷, a reference is made to Chapter IV of Family Reunification Directive⁵⁸, where the requirements for the

⁵¹ *Stb.* 1994, 230.

⁵² Art. 1. General Equal Treatment Act.

⁵³ Art. 5. General Equal Treatment Act.

⁵⁴ European Migration Network, 'Small Case Study III Third Country Highly-skilled Migrants in the EU, Entry and Residence Conditions in the Netherlands', 2007.

⁵⁵ Kamerstukken II, 2017-2018, 34 785, nr. 83, p. 7.

⁵⁶ Art. 8.7.2. Aliens Decree 2000.

⁵⁷ Art. 3.22a.2.a. Aliens Decree 2000.

⁵⁸ Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification (further: Family Reunification Directive or Council Directive 2003/86/EC) *OJ 2003*, L 251/12.

exercise of the right to family reunification are provided. Besides the fact that the highly skilled worker must be in the possession of a valid residence permit with a prospect of obtaining the right of permanent residence⁵⁹, the highly skilled worker has to provide evidence of a stable and sufficient income to maintain his or her family members.⁶⁰ Furthermore, he or she must provide evidence of a sickness insurance for himself or herself and the family members.⁶¹ Lastly, the highly skilled worker has to provide evidence of available accommodation.⁶² According to Article 2.c of the Family Reunification Directive, the highly skilled worker must act as the sponsor for his or her family members. An application for family reunion may be rejected if justified by reasons related to public policy, public security or public health⁶³, or reasons related to fraud or misleading information.⁶⁴

Based on Article 3.4.1.A of the Aliens Decree 2000, a residence permit with a ‘residence as a family member’ restriction is issued to family members. Besides this restriction, a ‘TWV is not required’ endorsement is also included on the residence permit.⁶⁵ This means that the family member has the same rights as the highly skilled worker and has free access to the Dutch labour market. The duration of the residence permit issued to a family member is linked to the duration of the residence permit of the highly skilled worker, with a maximum of five years.⁶⁶

2.2.5 Conclusion

In order to answer the research question “*What does the Dutch Highly Skilled Migrant Scheme provide for highly skilled third country nationals?*”, the previous sections provided an overview of the Dutch HSMS. This scheme attempts to attract highly skilled third country nationals by offering a simple and accessible procedure. The specific conditions to be fulfilled in an individual case include a salary specified in an employment contract that is in accordance with market conditions. Within this salary threshold, a distinction is made between highly skilled workers under the age of 30 and highly skilled workers of 30 years and older. The employer has to be a recognized sponsor. A highly skilled worker enjoys equal treatment with

⁵⁹ Art. 3.1. Council Directive 2003/86/EC.

⁶⁰ Art. 7.1.c. Council Directive 2003/86/EC.

⁶¹ Art. 7.1.b. Council Directive 2003/86/EC.

⁶² Art. 7.1.a. Council Directive 2003/86/EC.

⁶³ Art. 6.1. Council Directive 2003/86/EC.

⁶⁴ Art. 16. Council Directive 2003/86/EC.

⁶⁵ Art. 3.1.3.a. Aliens Act Implementation Guidelines 2000.

⁶⁶ Art. 3.58.1.a. Aliens Decree 2000.

Dutch citizens. Besides that, just like any third country national, there is the possibility for family members to move with the highly skilled worker and one can qualify for a 30 per cent tax-free salary to cover extra-territorial costs. In this way, it is hoped that the attraction of necessary talent in order to increase the competitive power of the Netherlands is ensured.

2.3 *The Blue Card Directive*

2.3.1 *Personal scope*

Any highly skilled worker from a non-EU Member State, a so-called third country national, who wishes to work in the EU can apply for an EU Blue Card. Third country nationals who apply for admission to the territory of a Member State for more than three months for the purpose of highly skilled employment under the terms of the Blue Card Directive, fall under the personal scope of Directive 2009/50/EC.⁶⁷ These elements of the personal scope will be discussed in the paragraphs below.

Firstly, in light of the Blue Card Directive, a third country national means “any person who is not a citizen of the Union within the meaning of Article [20.1 TFEU]”.⁶⁸ Secondly, a third country national applies for admission for the purpose of highly skilled employment. Highly skilled employment is defined as “the employment of a person who, in the Member State concerned, is protected as an employee under national employment law and/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 adequate and specific competence, as proven by higher professional qualifications”.⁶⁹ Higher professional qualifications are “qualifications attested by evidence of higher education qualifications or, by way of derogation, when provided for by national law, attested by at least five 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”.⁷⁰ A higher education qualification means a diploma, certificate or other evidence attesting the successful completion of a post-secondary higher education programme of at least three years.⁷¹ In order to include professional third

⁶⁷ Art. 3. Council Directive 2009/50/EC.

⁶⁸ Art. 2.a. Council Directive 2009/50/EC.

⁶⁹ Art. 2.b. Council Directive 2009/50/EC.

⁷⁰ Art. 2.g. Council Directive 2009/50/EC.

⁷¹ Art. 2.h. Council Directive 2009/50/EC.

country nationals who do not need a post-secondary diploma to execute their activity, such as experienced managers, the Blue Card Directive allows a minimum of five years of professional experience instead of the higher education qualification. The Netherlands did not implement this second option in its national law, which may indicate an incomplete implementation of the Blue Card Directive into national law. It means that a highly skilled third country national with only five years of professional experience is not allowed to work in the Netherlands as an EU Blue Card holder. In the explanation of the implementation of the Blue Card Directive legislation, it was recognized that the possibility of taking into account the professional experience of a third country national could have offered employers benefits in their recruitment and selection of highly skilled workers. It was, however, decided not to implement this possibility, because it would cause execution problems at the IND as it was felt that professional experience as a qualifying condition would not be enforceable.⁷²

There was a long debate on the contents of Article 3.1 of the Blue Card Directive that determines the beneficiaries of the Blue Card Directive. The European Commission initially wished to generally apply the Blue Card Directive to all third country nationals who apply for residence permission for the purpose of highly skilled employment.⁷³ The draft-text, therefore, lacked a formulation like “under the terms of the Blue Card Directive”, which implied that no differentiation was to be made between the EU Blue Card and national highly skilled employment schemes. Member States wished to keep their national highly skilled employment schemes next to the EU Blue Card Scheme. Finally, the European Commission lost the battle for an exclusive EU Blue Card. Article 3.1 became more precise and is thus only relevant for third country nationals who make an application for an EU Blue Card, and not for an application made under a national scheme of the Member States.

Some categories of third country nationals are excluded from the rights in the Blue Card Directive.⁷⁴ Self-employed activities, third country nationals who have been admitted as seasonal workers⁷⁵, and third country national researchers falling under the scope of Directive 2005/71/EC are all excluded from the personal scope of the Blue Card Directive. Furthermore, refugees and persons applying for asylum or international protection are not eligible for an EU Blue Card.⁷⁶ The Blue Card Directive is also not

⁷² *Stb.* 2010, 307.

⁷³ Council of the European Union, ‘Outcome of Proceedings Working Party on Migration and Expulsion’ (2008), www.register.consilium.europa.eu/doc/srv?l=EN&f=ST%208249%202008%20INIT

⁷⁴ See Art. 3.2.a. – 3.2.j. Council Directive 2009/50/EC.

⁷⁵ Art. 3.2.d. Council Directive 2009/50/EC.

⁷⁶ Art. 3.2.a. – 3.2.c. Council Directive 2009/50/EC.

applicable to family members of EU citizens who have exercised their right to free movement within the EU in conformity with Directive 2004/38/EC⁷⁷. This is also the case for third country nationals who enjoy the status of long-term resident third country national in accordance with Directive 2003/109/EC and, as a result of that status, enjoy the right to access the labour market of other Member States.⁷⁸ Moreover, the Blue Card Directive does not apply to third country nationals entering a Member State under commitments in an international agreement facilitating the entry and temporary stay of persons⁷⁹, and to a third-country national whose expulsion has been suspended for reasons of fact or law.⁸⁰ Finally, highly skilled workers covered by Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 regarding posted workers in the framework of providing services, are excluded from the Blue Card Directive as well.⁸¹

The Netherlands has implemented the above mentioned elements of the personal scope in Article 3.30b of the Aliens Decree 2000. It derogates from the Blue Card Directive in the fact that work that constitutes the performance of sexual acts or the provisions of sexual services is explicitly excluded from the EU Blue Card.⁸² It also derogates from the Blue Card Directive in the fact that it does not include the five years of professional experience as qualifying condition, because of the causing execution and enforcement issues at the IND.⁸³

2.3.2 Conditions to be fulfilled

The conditions for admission as an EU Blue Card holder are laid down in Article 5 of the Blue Card Directive. These conditions are implemented in Dutch law in Article 3.30b of the Aliens Decree 2000. Each condition will be discussed in a separate paragraph that will include a discussion of the Dutch implementation of that provision.

Firstly, a third country national must present a valid employment contract or a binding job offer for highly skilled employment, for the duration of at least one year with an employer. The Blue Card Directive provides that the relevant salary should be at least 1.5 times the average gross annual salary in the Member

⁷⁷ Art. 3.2.e. Council Directive 2009/50/EC.

⁷⁸ Art. 3.2.f. Council Directive 2009/50/EC.

⁷⁹ Art. 3.2.g. Council Directive 2009/50/EC.

⁸⁰ Art. 3.2.i. Council Directive 2009/50/EC.

⁸¹ Art. 3.2.j. Council Directive 2009/50/EC.

⁸² Art. 3.32. Aliens Decree 2000.

⁸³ *Stb.* 2010, 307.

State concerned in order to ensure a minimum level of harmonisation in the admission conditions for highly skilled workers within the EU.⁸⁴ This salary threshold has been created in order to help determine the scope of the EU Blue Card. Its aim is not to determine specific salaries and, therefore, is considered to fully respect the competence of Member States in the fields of employment, labour and social matters.⁸⁵ In the Netherlands, a yearly gross salary should be earned as referred to in the Foreign Nationals Employment Act Implementation Decree. As of 1 January 2019, the yearly gross salary a highly skilled third country national should earn in the Netherlands, excluding holiday pay, is 63.264 euros, which is equal to 5272 euros gross per month.⁸⁶ This salary threshold is revised every year by the Minister of Social Affairs and Employment.⁸⁷ It is permitted to determine a higher salary threshold, but the Netherlands did not opt for this.⁸⁸ The salary threshold should be in accordance with the situation and organization of the Dutch labour market and with national immigration policy. A higher salary threshold would not be in accordance with that.⁸⁹

Secondly, a third country national must present the documents attesting successful completion of higher education or professional qualifications, as discussed in section 2.3.1 on the personal scope of the Blue Card Directive.

Thirdly, the third country national must be in the possession of a valid travel document⁹⁰, and fourthly, must not be considered a threat to public policy, public security or public health.⁹¹ The Blue Card Directive does not provide clarity about what a threat to public order et cetera entails. As, the Blue Card Directive does not clarify the concept ‘a threat to public policy, public security or public health’, this will have to be done by the Court of Justice EU. There is a tendency in migration law towards a uniform interpretation of this concept⁹², which could be of added value for the Blue Card Directive as the level of protection enjoyed by a third country national under EU law in terms of public order is, as a rule, higher than under national law. Having said this, the implementation of this condition in the Aliens Decree 2000

⁸⁴ Art. 5.3. Council Directive 2009/50/EC.

⁸⁵ Recital 11 Council Directive 2009/50/EC.

⁸⁶ Art. 1.i. Foreign Nationals Employment Act Implementation Decree.

⁸⁷ Art. 1.i.3. Foreign Nationals Employment Act Implementation Decree.

⁸⁸ Groen and De Lange, ‘De Europese ‘Blue Card’: verblijfsvergunning voor hooggeschoolde arbeidsmigranten’ *A&MR* 2011/8, p. 338-348.

⁸⁹ Recital 10 Council Directive 2009/50/EC.

⁹⁰ Art. 3.30b.1.d. Aliens Decree 2000.

⁹¹ Art. 3.30b.1.f. Aliens Decree 2000.

⁹² See: CJEU 4 April 2017, case C-544/15 (Fahimian), ECLI:EU:C:2017:255. See also: Oosterom-Staples, Over openbare veiligheid in het migratierecht; het prijskaartje voor onze vrijheid? *Nederlands tijdschrift voor Europees Recht* 2017/7/23, pp. 165-172.

does provide more meaning to what it actually implies according to the Dutch authorities.⁹³ Firstly, one can be a threat because of serious misconduct as stated in Article 1.F of the Refugee Convention. This also holds true when one is a child of, married to or a partner of a person who is a threat to public order, because of serious misconduct as stated in Article 1.F of the Refugee Convention. Lastly, one can be a threat to public order, following a conviction for committing a crime. The Dutch reading of the public order concept offers less protection to the individual than the reading given to this concept in other EU migration Acts by the Court of Justice.

2.3.3 Procedural requirements EU Blue Card

In the Netherlands, an application for an EU Blue Card must be made by the employer. Just like the national HSMS, the employer can decide to become a recognized sponsor in order to facilitate the application process. Benefits of being a recognized sponsor are that an application is handled faster, the employer needs fewer pieces of evidence and that a digital portal can be used for the application.⁹⁴ However, being a recognized sponsor for the application of an EU Blue Card is not obligatory.⁹⁵ The application fee for an EU Blue Card is 285 euros and the application fee for becoming a recognized sponsor is, as stated in section 2.2.2 on recognized sponsorship for the Dutch HSMS, 3927 euros. For start-ups or small businesses and for sponsors with a change in their business entity, the fees are 1963 euros. An extension of an EU Blue Card costs 285 euros. The Blue Card Directive does not contain an Article on fees for handling applications. The Court of Justice of the European Union (CJEU), however, has set limits to imposing fees in its case law. In the *Commission v Netherlands* case⁹⁶, the CJEU ruled that Member States are free, on the basis of Directive 2003/109/EC, to impose fees for handling applications. However, fees may not be excessive and disproportionate, because this may compromise both the objective of integration and the essence of the Directive. This ruling was supported by the *CGIL and INCA* case⁹⁷, in which it was stated that a fee varying between 80 and 200 euros for the issue or renewal of a residence permit is disproportionate and may create an obstacle to exercising the rights conferred by Directive 2003/109/EC. There is, however, no case law on imposing fees under the Blue Card Directive. Having said this, considering the aforementioned rulings of

⁹³ Art. 3.77.1. Aliens Decree 2000.

⁹⁴ IND, 'Recognition as a Sponsor', www.ind.nl/en/work/Pages/Recognition_as_a_sponsor.aspx.

⁹⁵ IND, 'EU Blue Card holder', www.ind.nl/en/work/Pages/EU-blue-card-holder.aspx.

⁹⁶ CJEU 22 April 2012, case C-508/10 (*Commission v Netherlands*), ECLI:EU:C:2012:243.

⁹⁷ CJEU 2 September 2015, case C-309/14 (*CGIL and INCA*), ECLI:EU:C:2015:523.

the Court of Justice, it is unclear whether the application fees for the EU Blue Card in the Dutch implementation are justified.

When all conditions are met, a residence permit is issued. The Minister of Justice and Security assesses an application within 90 days from making the application.⁹⁸ The EU Blue Card is issued either for a period between one and four years or for the duration of the employment contract plus three months.⁹⁹ The Blue Card Directive states that the applicant must present evidence of having or having applied for a health insurance.¹⁰⁰ This requirement is not implemented in Dutch law as such, because a health insurance is a general condition subject to which all residence permits are issued.¹⁰¹ It does, therefore, have to be satisfied. In the Netherlands, the third country national will receive a regular residence permit for a definite period of time with the endorsement 'EU Blue Card'.¹⁰² A work permit (TWV) is not necessary.¹⁰³

Refusal, withdrawal or non-renewal of an EU Blue Card

An application for an EU Blue Card is refused if the applicant does not meet the conditions to be issued that document or if one of the situations in Article 8 of the Blue Card Directive, that justify a refusal, occurs. This explains why an EU Blue Card is refused or withdrawn when the applicant enjoys the status of a long-term resident or if the applicant is an EU citizen.¹⁰⁴ Both are excluded from the personal scope of the Blue Card Directive.¹⁰⁵ Furthermore, an EU Blue Card is refused when an application for an asylum residence permit has been submitted that is still pending a decision or when the applicant is in the possession of an asylum residence permit, as they are excluded from the personal scope of the Blue Card Directive as well.¹⁰⁶

Additionally, an EU Blue Card can be refused or withdrawn if the submitted documents have been fraudulently obtained, falsified or changed as stated in Article 8.1 of the Blue Card Directive. This ground for refusal is not explicitly implemented in Dutch law, because the Aliens Act already states that in general an application may be rejected if incorrect information has been provided.¹⁰⁷

⁹⁸ Art. 2u.2. Aliens Act.

⁹⁹ Art. 3.58.1.e. Aliens Decree 2000.

¹⁰⁰ Art. 5.1.e. Council Directive 2009/50/EC.

¹⁰¹ Art. 3.7.1.c. Aliens Decree 2000.

¹⁰² Art. 14 Aliens Act.

¹⁰³ Art 3.2.5. Aliens Regulations 2000 (B).

¹⁰⁴ Art. 3.30b.2.c. Aliens Decree 2000.

¹⁰⁵ Art. 3. Council Directive 2009/50/EC.

¹⁰⁶ Art. 3.30b.2.a. Aliens Decree 2000.

¹⁰⁷ Art. 18.1.c. Aliens Act.

An EU Blue Card can also be refused or withdrawn whenever the applicant intends to work for an employer who has been sanctioned in conformity with national law for undeclared work or irregular employment.¹⁰⁸ The Netherlands has transposed this refusal ground in Article 3.30b.1.b of the Aliens Decree 2000. It states that an EU Blue Card can be refused if the employer has been sanctioned in the past five years for a violation of the Foreign Nationals Employment Act or for inadequate or non-payment of the required premiums for employees or national insurances and wage taxes.¹⁰⁹ The period of five years is not mentioned in the Blue Card Directive itself. The reason behind this might be that mentioning a period can undermine the effectiveness of the Blue Card Directive, which is to attract and retain as many skilled workers from third countries as possible, in order to make the EU the most competitive knowledge-based economy of the world.¹¹⁰ The period of five years could have a negative effect on attracting these highly skilled workers, because it can be seen as a restriction made on admitting a highly skilled worker solely because of the employer's past. It does not align with the main goal of the Blue Card Directive, which is to attract and retain as many skilled workers from third countries as possible. That is possibly why the Blue Card Directive does not explicitly mention a period in which the employer has been sanctioned, but leaves it to the Member States and their national law.

A third reason why the EU Blue Card can be refused or withdrawn is that a Member State has determined a quota to regulate the number of EU Blue Cards that is issued each year and the quota for EU Blue Cards for that year has been reached or if a Member State has determined that recruitment for a vacancy should first be carried out on the national or EU labour market.¹¹¹ The Netherlands did not implement these provisions in its national law. There is also no general provision establishing a labour market quota.

Furthermore, an EU Blue Card can be refused or withdrawn on the basis of ethical recruitment.¹¹² This concerns the rejection of an application in order to ensure ethical recruitment in sectors suffering from a lack of highly skilled workers in the country of origin. The Netherlands did not implement this provision, because they found there is no legal ground in national law that can justify this reason for refusal.¹¹³

¹⁰⁸ Art. 8.5. Council Directive 2009/50/EC.

¹⁰⁹ Art. 3.30b.1.b. Aliens Decree 2000.

¹¹⁰ SEC(2007) 1382, Brussels, 2007, p. 2.

¹¹¹ Art. 8.2. and Art. 8.3. Council Directive 2009/50/EC.

¹¹² Art. 8.4. Council Directive 2009/50/EC.

¹¹³ *Stb.* 2010, 307, p. 129.

Additionally, an application for renewal of an EU Blue Card will be refused if the EU Blue Card holder has been unemployed for more than three months and if the EU Blue Card holder has previously been unemployed during the validity period of his residence permit.¹¹⁴ The EU Blue Card holder has an obligation to inform the competent authorities of the Member State about any changes in his employment situation.¹¹⁵ In the Netherlands, the Minister of Justice and Security must be informed about these changes in advance.¹¹⁶ This is only obligatory during the first three years of legal employment in the Netherlands.¹¹⁷

2.3.4 Rights

Besides the rights anchored in the Dutch Constitution¹¹⁸, an EU Blue Card comes with the following rights: equal treatment, the right to mobility within the EU and a facilitated scheme for family reunion. These rights will be discussed briefly below. Apart from these rights, the taxation arrangement as discussed in section 2.2.4 also applies to an EU Blue Card holder in the Netherlands. However, this right is not provided in the Blue Card Directive itself, hence it will not be discussed in this section.

Equal treatment

An EU Blue Card holder enjoys equal treatment with Dutch citizens. The following fields are mentioned in Chapter IV of the Blue Card Directive: working conditions, education and vocational training, recognition of diplomas, provisions in national law regarding branches of social security, old-age pensions, access to goods, services and the supply of goods and services made available to the public, free access to the entire territory of the Member State and freedom of association and affiliation and membership of an organization.¹¹⁹ These grounds are not explicitly implemented in the Aliens Act or the Foreign Nationals Employment Act, but a reference is made to the GETA¹²⁰, and Articles 1 and 8 of the Constitution.¹²¹ A short description of the GETA can be found in section 2.2.4 on the rights under the Dutch HSMS.

¹¹⁴ Art. 13.1. Council Directive 2009/50/EC.

¹¹⁵ Art. 13.4. Council Directive 2009/50/EC.

¹¹⁶ Art. 4.43.2. Aliens Decree 2000.

¹¹⁷ Art. 4.43.2. Aliens Decree 2000.

¹¹⁸ The Constitution of the Kingdom of the Netherlands, 1815.

¹¹⁹ Art. 14. Council Directive 2009/50/EC.

¹²⁰ *Stb.* 1994, 230.

¹²¹ The Constitution of the Kingdom of the Netherlands 1815.

Mobility within the EU

An attractive aspect of the Blue Card Directive is the possibility for the highly skilled worker and his family members to move within the EU. The mobility of highly skilled third country nationals is a way to improve labour market efficiency, to prevent labour and skill shortages, to better compete with other non-EU countries, and to compensate regional imbalances.¹²²

After 18 months of legal residence in the first Member State as EU Blue Card holder, the EU Blue Card holder can move to another Member State for the purpose of highly skilled employment.¹²³ An EU Blue Card holder is allowed to cumulate the residence periods in the different Member States in order to fulfil the period of five years to obtain a long-term residence status.¹²⁴ This is a derogation from Directive 2003/109/EC concerning the long-term residence status of third country nationals, in which a period of five years in one Member State without the possibility of cumulating periods is mandatory to qualify as long-term resident third country national that comes with the right to intra-EU mobility.¹²⁵

The EU Blue Card holder must present the application for an EU Blue Card and all the documents that prove the fulfilment of the conditions to be admitted as an EU Blue Card holder in another Member State to the competent authority of that second Member State.¹²⁶ This needs to be done no later than one month after entering the territory of the second Member State or while the EU Blue Card holder is still residing on the territory of the first Member State. The second Member State can then decide if it will allow the applicant to work in its territory until the admission decision has been made.

The application for admission is assessed by the second Member State, which has its own reading of the salary threshold, the relevant higher education or professional qualifications and, if implemented, the admission quota. If these conditions are satisfied, then the EU Blue Card holder can take up residence and immediately has access to the labour market of a second Member State for the purpose of highly skilled labour.

The Netherlands uses the same salary threshold for EU Blue Card holders who wish to move to the Netherlands after working and residing in another Member State as for the first admission of a third country

¹²² Summary of the Impact Assessment, SEC(2007) 1382.

¹²³ Art. 18.1. Council Directive 2009/50/EC.

¹²⁴ Art. 16.2. Council Directive 009/50/EC.

¹²⁵ Council Directive 2003/109/EC of 25 November 2003 concerning the Status of Third-country Nationals who are Long-term Residents (further: Long-term Resident Directive or Council Directive 2003/109/EC) *OJ EC 2004*, L 16.

¹²⁶ Art. 18.2. Council Directive 2009/50/EC.

national who has not yet obtained an EU Blue Card, but it could also have chosen for a more favourable, lower salary threshold for an application of a holder of an EU Blue Card issued by another Member State.¹²⁷ The Netherlands has to notify the first Member State in writing if an admission application made by an EU Blue Card holder exercising his mobility rights is refused.¹²⁸ The first Member State must then re-admit the highly skilled third country national even if the EU Blue Card is not valid anymore. The highly skilled worker has the right to search new employment for a period of three months after he has been re-admitted to the first Member State.¹²⁹ The costs of return and re-admission are charged to the EU Blue Card holder or his employer.

Family members

In order to become attractive for highly skilled third country nationals, the Blue Card Directive requires Members States to positively deviate from Council Directive 2003/86/EC on the admission of family members.¹³⁰ Family members should have direct access to the territory and to the labour market of the Member State¹³¹, and the duration of the residence permit of a family member is linked to the duration of the residence permit of the EU Blue Card holder himself.¹³² Moreover, family reunification does not depend on satisfying the requirement that the EU Blue Card holder has reasonable prospects of obtaining the right of permanent residence and a minimum period of residence, which are also a derogation from the Family Reunification Directive as well.¹³³

In the Netherlands, family members are identified as (registered) partners and their (minor) children.¹³⁴ Besides the ‘residence as a family member’ restriction, a ‘TWV not required’ endorsement is found on the residence permit issued to a family member of an EU Blue Card holder. This means that family members have the same rights as the EU Blue Card holder and are allowed to work in the Netherlands.¹³⁵

¹²⁷ Art. 4.2.a. Council Directive 2009/50/EC.

¹²⁸ Art. 3.103a.4. Aliens Decree 2000.

¹²⁹ Art. 18.4.b. Council Directive 2009/50/EC.

¹³⁰ Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification (further: Family Reunion Directive or Council Directive 2003/86/EC) *OJ* 2003, L 251/12.

¹³¹ Art. 15.6. Council Directive 2009/50/EC.

¹³² Art. 15.5. Council Directive 2009/50/EC.

¹³³ Art. 15.2. Council Directive 2009/50/EC.

¹³⁴ Art. 3.8.1. Aliens Regulations 2000 (B).

¹³⁵ Art. 3.1.3.a. Aliens Act Implementation Guidelines 2000.

2.3.5 Conclusion

In order to answer the research question “*What does the Blue Card Directive provide for highly skilled third country nationals?*”, the sections 2.3.1 to 2.3.4 provided an overview of the Blue Card Directive. To conclude, the Blue Card Directive aims at attracting and retaining highly skilled third country nationals for the purpose of highly skilled employment within the EU. It provides the required conditions in order to be granted an EU Blue Card. These conditions include a valid employment contract or a binding job offer of at least one year and a certain salary threshold, the proof of documents attesting higher professional qualifications, the possession of a valid travel document and the assurance of not being considered a threat to public policy, public security or public health.¹³⁶ An EU Blue Card comes with various rights. Most importantly, an attractive aspect of the Blue Card Directive is the possibility to move within the EU. After 18 months of legal residence, the third country national can move to another Member State for the purpose of highly skilled employment. Other rights are the right to equal treatment with respect to nationals and a facilitated scheme for family reunion. These rights should ensure that highly skilled third country nationals are attracted and retained.

2.4 The EU Blue Card and the Dutch Highly Skilled Migrant Scheme: A Comparison

The Dutch HSMS and the EU Blue Card both provide favourable conditions in order to attract highly skilled third country nationals. However, there are some significant differences between both schemes. This section will compare both schemes and it will examine which provisions are most favourable for third country nationals and why. In that way, sub-question three can be answered: “*What are the differences between the Dutch Highly Skilled Migrant Scheme and the Blue Card Directive?*”.

2.4.1 Differences in provisions

The Dutch HSMS covers highly skilled workers and self-employed entrepreneurs who wish to work in the Netherlands. When looking at the personal scope of both schemes, the difference is that the Dutch HSMS covers independent entrepreneurs, whereas the Blue Card Directive explicitly excludes this category.¹³⁷ Additionally, both schemes exclude other categories, which are already covered by other schemes, such as

¹³⁶ Art. 5. Council Directive 2009/50/EC.

¹³⁷ Art. 3.2. Council Directive 2009/50/EC.

third country researchers who fall under the scope of Directive 2005/71/EC. This is done explicitly in the Blue Card Directive and implicitly in the Dutch HSMS. The result is, however, the same as those excluded from both schemes are those who already enjoy a residence right for the purpose of labour market participation under EU law. However, when comparing both schemes, the most relevant difference is the fact that the Dutch HSMS explicitly includes self-employed entrepreneurs, albeit subject to additional requirements, which are not discussed in this thesis, whereas self-employed entrepreneurs are explicitly excluded as beneficiaries of the EU Blue Card. The question is whether the broader scope of the Dutch HSMS is a determining factor to choose that particular scheme or not?

When comparing the conditions to be fulfilled in the Dutch HSMS with those in the Blue Card Directive, one can detect another difference. In order to be eligible for the Dutch HSMS, a highly skilled third country national must be in the possession of a valid employment contract with a Dutch employer. In order to be eligible for the EU Blue Card, two other conditions have to be fulfilled. Firstly, a valid employment contract of at least twelve months must be presented. This is a difference with the Dutch HSMS, in which only a minimal period of three months is mentioned. Secondly, the highly skilled third country national must have obtained a diploma attesting that he or she has completed a higher education programme of at least three years.¹³⁸ The Blue Card Directive also allows a minimum of five years of professional experience instead of the higher education qualification.¹³⁹ The Netherlands did, however, not implement the professional experience condition, which makes it harder for highly skilled third country nationals to be granted an EU Blue Card in the Netherlands as the choice between higher education and higher professional qualifications is unavailable. In the Blue Card Directive, the requirement of attesting higher professional qualifications or higher education qualifications is an additional criteria compared to the Dutch HSMS in which only a valid employment contract, and no higher education diploma or professional experience, is needed. The additional condition of presenting higher professional qualifications or higher education qualifications makes it harder for highly skilled third country nationals to be admitted under the Blue Card Directive as more conditions need to be fulfilled. The question is: do the additional requirements under the Blue Card Directive affect the choice for one of the two schemes?

Another difference between the conditions is identified when comparing the Dutch HSMS and the Blue Card Directive. There is a significant difference between the salary thresholds in both schemes. First

¹³⁸ Art. 2.h. Council Directive 2009/50/EC.

¹³⁹ Art. 2.g. Council Directive 2009/50/EC.

of all, the Dutch HSMS provides favourable conditions for highly skilled workers under the age of 30, which the EU Blue Card does not. Secondly, the EU Blue Card requires a significantly higher salary to qualify as a highly skilled worker in the Netherlands than the Dutch HSMS. This higher salary threshold under the Blue Card Directive in the Netherlands makes less highly skilled third country nationals eligible for an EU Blue Card in the Netherlands compared to the Dutch HSMS. If the Netherlands had chosen for the minimum salary threshold, which is 1.5 times the average gross annual salary, and not for 1.8 times the average gross annual salary it is now, the EU Blue Card would have been more competitive with the Dutch HSMS when looking at highly skilled workers of 30 years and older for which the gross annual salary is set at the average gross annual salary. The difference between the salary thresholds in both schemes remains, however, significant for highly skilled workers under the age of 30. The question is if the difference between the salary thresholds in both schemes affects the choice for a certain scheme?

Another difference between the two schemes concerns the conditions for recognized sponsorship. The Dutch HSMS requires employers to be registered as a sponsor with the IND.¹⁴⁰ Only when the employing company is a recognized sponsor, it can apply for admission of a highly skilled third country national under the Dutch HSMS. Registration as a recognized sponsor is not required under the Blue Card Directive. In the Netherlands, an employer can decide to become a recognized sponsor in order to facilitate the application of an EU Blue Card, but this is not necessary. However, when solely looking at the Blue Card Directive, registration as a recognized sponsor is not provided. In the Netherlands, an application to be registered as a recognized sponsor costs an employer 3927 euros, and for start-ups or small businesses and for sponsors with a change in their business entity, the fee is 1930 euros.¹⁴¹ Thus, not being required to become a recognized sponsor can save an employer up to 3927 euros. Nonetheless, becoming a recognized sponsor has certain benefits as explained in section 2.3.3., the most important being a faster application process. Concluding, recognized sponsorship is not required under the EU Blue Card Scheme, whereas this is obligatory under the Dutch HSMS. Does the requirement of recognized sponsorship affect the choice for one of the two schemes?

Besides the differences in the conditions used in both schemes, there is also a difference in the application process; the period for the assessment of an application. The Dutch HSMS states that each application will be assessed within two weeks from making the application.¹⁴² An application for the EU

¹⁴⁰ Art. 2c. Aliens Act.

¹⁴¹ IND, 'Recognition as a Sponsor', www.ind.nl/en/work/Pages/Recognition_as_a_sponsor.aspx.

¹⁴² IND, 'Costs', www.ind.nl/en/Pages/Costs.aspx.

Blue Card is assessed within 90 days from making the application.¹⁴³ The application for the Dutch HSMS can thus be assessed faster than an application for an EU Blue Card under the Blue Card Directive. However, when looking at the implementation of the Blue Card Directive, the employer can choose to become a recognized sponsor under the EU Blue Card Scheme, which accelerates the application process to two weeks as well.¹⁴⁴ The question is: does the assessment period of an application affect the choice for one of the two schemes?

Another difference between the Dutch HSMS and the EU Blue Card is the validity period of the residence permit issued to the highly skilled third country worker. A highly skilled worker under the Dutch HSMS is issued a residence permit for the duration of the employment contract with a maximum of five years.¹⁴⁵ An EU Blue Card is issued for the duration of the employment contract with a maximum of four years.¹⁴⁶ The residence permit can be extended if needed, both under the Dutch HSMS and the EU Blue Card Scheme. Furthermore, both schemes allow for a three-month search period to look for a new job as a highly skilled worker when the highly skilled worker becomes unemployed. Could the shorter duration of the validity of an EU Blue Card make that scheme less attractive for employers when deciding which scheme to use?

When looking at the rights in both schemes, the following difference can be identified. There is one right that only comes with the EU Blue Card: mobility within the EU. The possibility of moving within the EU after 18 months of legal residence in the first Member State is a way to improve labour market efficiency, to prevent labour and skill shortages, to better compete with other non-EU countries by offering one single mobility possibility on EU level, and to compensate regional imbalances in the EU.¹⁴⁷ The right to move to another Member State for the purpose of highly skilled employment opens the labour market of all EU Member States for third country nationals. A further advantage is that an EU Blue Card holder can cumulate his five years residence in different EU Member States in order to obtain the status of long-term residents.¹⁴⁸ This is a significant difference compared to the Dutch HSMS, where the labour market mobility is only accorded after the status of long-term resident acquired in accordance with the normal rules in Directive 2003/109/EC. This means that the highly skilled third country national must stay in one country

¹⁴³ Art. 2u.2. Aliens Act.

¹⁴⁴ IND, 'Recognition as a Sponsor', www.ind.nl/en/work/Pages/Recognition_as_a_sponsor.aspx.

¹⁴⁵ Art. 3.58.1.d. Aliens Decree 2000.

¹⁴⁶ Art. 7.2. Council Directive 2009/50/EC.

¹⁴⁷ Summary of the Impact Assessment, SEC(2007) 1382.

¹⁴⁸ Art. 16.2. Council Directive 2009/50/EC.

for five years in order to qualify for the status of long-term resident third country national before he or she can move to another EU Member State.¹⁴⁹ Could the right to move to another EU Member State make the EU Blue Card more attractive for highly skilled third country nationals when deciding on which scheme to use? Is it seen as important when there is the right of moving within the EU and the right of acquiring a long-term residence status easier?

To conclude, there are some significant differences between the Dutch HSMS and the EU Blue Card. These differences could affect the choice for one of the two schemes. The next chapter will investigate what the impact of the differences is in the choice for a particular scheme and why. Interviews have been conducted with stakeholders to examine if the abovementioned differences between the two schemes play a role in practice.

¹⁴⁹ Art. 4.1. Council Directive 2003/109/EC.

3. The EU Blue Card and the Dutch Highly Skilled Migrant Scheme in Practice: The Story behind the Figures

3.1 Method

In order to tell the story behind the figures, semi-structured interviews have been conducted with stakeholders. The aim of these interviews was to find out why employers might prefer the Dutch Highly Skilled Migrant Scheme (HSMS) over the EU Blue Card. It will be examined if the aforementioned differences between the two schemes affect an employer's choice for one of the two schemes. The focus of the interviews was on the obstacles and challenges that employers encounter under the two schemes, more specifically how they affect their preference for one of the schemes, and how these obstacles and challenges can be converted into an effective policy in order to make the EU Blue Card more attractive to employers compared to the Dutch HSMS.

Interviews have been conducted with several professionals in the working field of migration law. First, the Holland Expat Center South was contacted. Via this governmental agency, partners were approached and five professionals were willing to be interviewed. For this master's thesis, two migration lawyers have been interviewed and two expat service providers have been consulted. In addition, a senior policy officer of the Ministry of Justice and Security was interviewed. The choice to conduct interviews with professionals in migration law, and not the employers itself, is explained by the fact that these migration experts are specialized in the two schemes discussed in this master's thesis. They deal with the Dutch HSMS and the EU Blue Card on a daily basis. More information on the organizations where the interviewees work can be found in Appendix 1.

The questions asked in the interview were based on the theoretical findings of chapter two and on the final report of the Research and Documentation Centre (WODC) concerning the attractiveness of the Netherlands for highly skilled migrants.¹⁵⁰ The authors of this WODC report investigated how attractive highly skilled migrants perceive the Netherlands as a potential country to reside and work in. It showed, in general, a positive experience with the Dutch HSMS, although a few bottlenecks were identified. The questions for the interviews conducted for this master's thesis were partly based on these bottlenecks in the Dutch HSMS, such as the 30% rule and the admission of family members, as identified in this report. The

¹⁵⁰ Wetenschappelijk Onderzoek- en Documentatie Centrum (WODC), 'Aantrekkelijkheid van Nederland voor kennismigranten', *Regioplan Beleidsonderzoek* 2018.

WODC report did not cover the EU Blue Card, nor did it include the experiences of employers; only those of highly skilled employees. That is why, this master's thesis will, in particular, focus on the views of employers in order to discover their perspective. Moreover, because the Dutch HSMS and the implementation of the Blue Card Directive are characterized by a demand-driven system, as explained in section 2.1 of Chapter 2, it is the employer who requests a third country national to come to work in the Netherlands. Therefore, it is justified to merely focus on the employer's perspective to discover the obstacles and challenges they encounter when deciding between the two schemes.

The list of questions asked during the interviews can be found in Appendix 2 and the summaries of the interviews can be found in Appendix 3. In the next section, the results of the interviews will be discussed and the story behind the figures will become visible. In chapter four, the results of the interviews will be converted into suggestions for a more effective Blue Card Directive, i.e. how can it be made more attractive for employers compared to the Dutch HSMS.

3.2 *The story behind the Figures*

As said, the aim of the interviews was to tell the story behind the figures. It would become clearer why, in 2017, 7230 applications were made under the Dutch HSMS and only 60 applications under the EU Blue Card Scheme. By conducting five interviews with professionals in the working field, it was examined if, and why, employers prefer the Dutch HSMS over the EU Blue Card. In this way, sub-question four can be answered: *“What are the implications in every day practice regarding the differences between the Dutch Highly Skilled Migrant Scheme and the Blue Card Directive and the choice for one of the two Schemes?”*.

The interviews showed that the Dutch HSMS is generally preferred over the EU Blue Card. This is caused by several factors. Firstly, the recognized sponsorship is of significant relevance. As explained in chapter two, recognized sponsorship is mandatory under the Dutch HSMS and voluntary under the EU Blue Card Scheme in the Netherlands. The recognized sponsorship enables an employer to easily apply for the Dutch HSMS. It requires less documents, which means less administrative burden for the employer. If an employer is already a recognized sponsor, the Dutch HSMS is chosen automatically. When a firm has difficulties with becoming a recognized sponsor, the EU Blue Card is sometimes considered as an alternative. If an employer is not yet recognized as a sponsor, the EU Blue Card will be considered, but very often the Dutch HSMS is chosen. This is partly due to the possibility to hire more highly skilled workers more conveniently in the future, hence the application will be handled faster and fewer pieces of evidence are needed. However, it is not only the recognized sponsorship that plays a role in applying for the Dutch HSMS.

The other conditions in the Blue Card Directive are harder to fulfil compared to the Dutch HSMS. First of all, the salary threshold of the EU Blue card often plays a decisive role. The salary threshold is set at 5272 euros gross per month in the Netherlands. The salary threshold of the Dutch HSMS is set at 4500 euros gross per month for highly skilled workers of 30 years and older. The benefit of the Dutch HSMS over the EU Blue Card is that it has set a salary threshold of highly skilled workers younger than 30 years old, which is 3299 euros gross per month. Although some interviewees stated that the salary threshold of highly skilled workers younger than 30 years is sometimes considered as too high, all interviewees found the differentiation in age an attractive aspect of the Dutch HSMS compared to the universal salary threshold for the EU Blue Card, as it enables employers to attract and hire young highly skilled workers.

Another condition in the Blue Card Directive that was found to be an obstacle as well is that the third country national must have obtained documents attesting the successful completion of higher education or professional qualifications in order to be eligible for the EU Blue Card. As said, the Netherlands has not implemented the five years of professional experience option. The higher education diploma condition, however, is considered as the biggest obstacle to apply for an EU Blue Card due to the necessity of diploma evaluation if a diploma attests the successful completion of education in a third country. This costs extra, precious time. Employers want to have the possibility to hire a highly skilled worker within the shortest timeframe as possible. Evaluating a diploma potentially extends the application process. Furthermore, it leads to insecurity, because employers cannot calculate the time needed for the diploma evaluation process. One interviewee mentioned the fact that the Dutch Information centre for credential Evaluation (IcDW) does not provide all the requirements for recognition of a foreign diploma in the diploma evaluation form. The extra time and the uncertainty of diploma evaluation make the EU Blue Card less attractive than the Dutch HSMS. Having a higher education diploma recognized generates an administrative burden for employers, which they do not have under the Dutch HSMS, where there is no higher education diploma requirement.

If the Netherlands would implement the five years of professional experience, the EU Blue Card would be slightly more attractive. This is especially the case for highly skilled workers who do not have a higher education diploma and are self-educated. Professional experience implies a certain level of skills without possessing a higher education diploma. However, attesting professional experience still leads to a higher administrative burden compared to the Dutch HSMS, because the employer must provide the documents attesting the highly skilled employee's professional experience, which the IND needs to check as well. The interviewees perceived this as an extra obstacle, which you do not have under the Dutch HSMS. They referred to the ICT Directive, in which only a CV needs to be send with the application for a residence permit under that Directive, which diminishes the administrative burden for the employer. The Dutch

HSMS does not require higher education or professional qualifications at all, which makes the EU Blue Card, even when implementing the professional experience condition, less attractive than the Dutch HSMS.

The Dutch HSMS thus has a lower salary threshold, it has a more simplified procedure because of the recognized sponsorship and it enables an employer to bypass the diploma evaluation which is compulsory for the EU Blue Card in the Netherlands. The interviewees noticed that when you fulfil the conditions of the EU Blue Card, you also fulfil the conditions of the Dutch HSMS, and not vice versa.

There is, however, one condition in the Dutch HSMS that the Blue Card Directive does not require. With the Dutch HSMS, the salary should be in accordance with market conditions. The Blue Card Directive, and its implementation in the Netherlands, does not require market conformity. One interviewee mentioned that, in theory, this could be a reason to apply for an EU Blue Card in order to circumvent the market conformity requirement in the Dutch HSMS. If a salary is not in conformity with market conditions, the application will be rejected under the Dutch HSMS and its maximum application process of two weeks will not be attainable anymore. This could be a reason to strategically choose to apply for an EU Blue Card, but in practice this barely happens, because not many problems are encountered with the market conformity assessment by the UWV.

Another aspect of the EU Blue Card was exposed by the interviewees. The EU Blue Card comes with the mobility right after 18 months of residence in the first Member State. The interviewees all agreed upon the fact that the right to move to another Member State does not work in practice and that it does not play a role in applying for an EU Blue Card instead of applying under the Dutch HSMS. The main argument was that employers are not eager to increase the mobility of their highly skilled employees and that it is perceived as an advantage for the employee as employers like to keep their highly skilled employees, because they invest in them by providing trainings and additional services. Employers do not want to lose their highly skilled employees as there is a shortage of highly skilled workers on the labour market and there is fierce competition in certain sectors.

Besides looking at the conditions and rights of the schemes, the interviewees look at how fast the application process is. Under the Dutch HSMS, it only takes two weeks until the application decision is made. Under the EU Blue Card Scheme, it can take up to three months, because the diploma needs to be evaluated. The interviewees often experience that employers want the highly skilled migrant to start working as soon as possible. A processing time of maximum fourteen days is, therefore, very beneficial. The processing time of the EU Blue Card is set at a maximum of 90 days and in the Netherlands two weeks if an employer is a recognized sponsor. In most cases, the Dutch HSMS is chosen when the employer is recognized as a sponsor, because the Dutch HSMS has fewer conditions, as no diploma and a lower salary threshold is required. In the Netherlands, when the employer is not recognized as a sponsor, it often takes

up to six or eight weeks in practice before the application for an EU Blue Card is assessed which is explained by the necessity of diploma evaluation. All interviewees stated that employers compare the two weeks processing time under the Dutch HSMS with the processing time of six or eight weeks under the EU Blue Card in practice, and a maximum of 90 days in theory. This merits the conclusion that employers opt for the Dutch HSMS when taking into account the importance of the application processing time.

To conclude, when looking at the figures, the Dutch HSMS is used more often than the EU Blue Card. In 2017, 7230 applications were made under the Dutch HSMS and only 60 applications were made for the EU Blue Card. The story behind the figures is in line with the figures. It tells us that the EU Blue Card does not directly offer benefits to the employer. The interviewees perceive the Dutch HSMS as the most convenient scheme to use. The differences, as explained in section 4.1 of Chapter 2, do play a role when deciding on which scheme to use. The next chapter will focus on these identified shortcomings of the EU Blue Card and the changes needed to make the Blue Card Directive more attractive.

4. Resolving Tensions: A Proposal for an Effective Policy

On the basis of the conducted interviews, shortcomings of both the Dutch Highly Skilled Migrant Scheme (HSMS) and the Blue Card Directive have been identified as discussed, on a theoretical basis in Chapter 2 (section 2.4), and on a practical basis in Chapter 3 (section 3.2). This chapter will focus on these shortcomings and which shortcomings can be overcome in order to make the Blue Card Directive more attractive (section 4.1). Thereafter, the proposal of the European Commission¹⁵¹ for a new Blue Card Directive, in which the weaknesses of the Blue Card Directive are addressed, will be discussed (section 4.2). From these two paragraphs, a more attractive Blue Card Directive will be proposed compared to the Dutch HSMS. In this way, in section 4.3, sub-question five can be answered: *“How can the obstacles and challenges in every day practice be converted into a more attractive Blue Card Directive?”*.

4.1 Overcoming the Weaknesses of the EU Blue Card

The shortcomings in the Blue Card Directive, identified in Chapters 2 (section 2.4) and 3 (section 3.2), can be mitigated by introducing several improvements to the Blue Card Directive. First of all, as all interviewees mentioned, the two most important requirements of the EU Blue Card need to be revised.

Firstly, the salary threshold of the EU Blue Card was found to be unattractive compared to the Dutch HSMS. This aspect can be identified as an implementation issue, because the Netherlands could have opted for a lower salary threshold. The Blue Card Directive states that the salary must be at least 1.5 times the average gross annual salary in the Member State.¹⁵² The implementation of the Blue Card Directive into Dutch law states that the gross annual salary under the EU Blue Card Scheme must be at least 63.264 euros.¹⁵³ This is much more than 1.5 times the average gross annual salary of 36.000 euros in the Netherlands in 2018.¹⁵⁴ However, the Netherlands could have chosen for a lower salary threshold of at least 54.000 euros gross per year, which is exactly 1.5 times the gross annual salary of 36.000. In order to make

¹⁵¹ European Commission, ‘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’, 7 June 2016, COM(2016) 378 final, Strasbourg.

¹⁵² Art. 5.3. Council Directive 2009/50/EC.

¹⁵³ Art. 1.i. Foreign Nationals Employment Act Implementation Decree.

¹⁵⁴ Ministerie van Financiën, ‘Het Blauwe Boekje. De Economie en overheidsfinanciën in grafieken en tabellen’, 2018.

the Blue Card Directive more competitive with the Dutch HSMS (39.588 euros gross per year for highly skilled worker under the age of 30 and 54.000 euros gross per year highly skilled workers of 30 years and older), it is important that the salary threshold in the Blue Card Directive is adhered to. Furthermore, the problem lies in the fact that Member States have too much freedom to set a disproportionate salary threshold that undermines the goal of the Blue Card Directive, which is to attract and retain more highly skilled third country nationals to the EU.¹⁵⁵ In order to achieve this goal, the salary threshold not only needs to be revised at a Dutch level, but it also needs to be revised in the Blue Card Directive by obliging Member States to set a proportionate salary threshold. This could be done by setting a salary threshold with an upper bound.

Furthermore, another reason, both in theory and practice, for choosing the Dutch HSMS, is that the salary threshold under the Dutch HSMS differentiates using the highly skilled worker's age. The interviewee from the Ministry of Justice and Security mentioned that about one third of the applications made under the Dutch HSMS are from persons younger than 30 years. In 2013, around 75 per cent of the EU Blue Cards granted in Germany were issued to highly skilled workers between the age of 18 and 35 years old.¹⁵⁶ The salary differentiation in age enables employers to hire highly skilled workers under the age of 30 by paying them a lower required salary than for highly skilled workers of 30 years and older. The interviews showed that many young highly skilled workers do not have the knowledge and skills to earn as much as the older highly skilled workers who have already built their career. The result might be that young highly skilled workers are not attracted to the EU, because they are unable to fulfil the condition of the high salary threshold of the EU Blue Card. To enable age differentiation, a provision must be introduced in the Blue Card Directive that allows for a differentiation in salary thresholds for different age groups. One option is a generally worded "more favourable provision in favour of the highly skilled migrant". It is, however, questionable if this will be politically feasible, but from a social science perspective, all steps must be taken to attract more highly skilled workers to the EU. This includes attracting more young highly skilled workers who, due to their limited experience and their labour market position, cannot fulfil the salary threshold condition. The initial proposal for the Blue Card Directive provided a lower salary threshold for highly skilled workers under the age of 30. It was deleted in the negotiation process as it was felt that this would cause unequal treatment based on age even though, the European Commission had labelled it positive

¹⁵⁵ SEC(2007) 1382, Brussels, 2007, p. 2.

¹⁵⁶ European Commission, 'Communication from the Commission to the European Parliament and the Council on the Implementation of Directive 2009/50/EC on the Conditions of Entry and Residence of Third-country Nationals for the Purpose of Highly Qualified Employment', COM(2014) 287 final, p.3.

discrimination and thus in line with the EU acquis.¹⁵⁷ Finally, due to a lack of consensus between Member States, only a lower salary threshold of at least 1.2 times the average gross annual salary was included in Article 5.5 of Council Directive 2009/50/EC for professions which are in particular need of highly skilled third country nationals.¹⁵⁸ Nonetheless, in order to attract more young highly skilled migrants, more should be done regarding different salary thresholds for different age groups.

Secondly, the higher education qualification was found to be unattractive compared to the Dutch HSMS. The diploma evaluation costs extra time and leads to insecurity as explained in Chapter 3 (section 3.2). The administrative burden for employers attached to the diploma evaluation makes the EU Blue Card significantly unattractive compared to the Dutch HSMS, in which no diploma condition must be fulfilled. The interviewee from the Ministry of Justice and Security mentioned that “99 per cent of all highly skilled workers in the Netherlands, who did not have to fulfil the diploma condition under the Dutch HSMS, has at least a bachelor’s diploma without requiring it”. It is difficult to eliminate the diploma requirement in the Blue Card Directive due to diverging political interests of Member States in the EU (e.g. in the Council of the EU). Nevertheless, more should be done to facilitate the diploma requirement process as the requirements for recognition of a foreign diploma in the diploma evaluation form are not clearly provided at the moment, both at EU and national level. Therefore, clearer criteria must be established in the Blue Card Directive and in national law and a list of types of diplomas must be established at a national level. One way to diminish the diploma obstacle is by having the required five years of professional experience as provided in the Blue Card Directive. In order to make this condition of the EU Blue Card more convenient, much could be improved including solving implementation issues and diminishing the administrative burden at a national level. This could be done by solely requiring a CV of the highly skilled worker, which matches the required professional experience.

The Blue Card Directive could also be improved by introducing recognized sponsorship. The interviews showed that recognized sponsorship plays a big role in deciding which scheme to use. As explained in Chapter two, recognized sponsorship is mandatory under the Dutch HSMS and voluntary under the EU Blue Card Scheme in the Netherlands. The recognized sponsorship enables an employer to easily apply for the Dutch HSMS, because he can hire more highly skilled workers more conveniently in the future,

¹⁵⁷ Council of the European Union, ‘Outcome of Proceedings of Working Party on Migration and Expulsion’, 2008, 8249/08, p. 14.

¹⁵⁸ Art. 5.5. Council Directive 2009/50/EC.

as any further application will also be handled faster and fewer pieces of evidence are needed.¹⁵⁹ The interviewees stated that the Dutch HSMS is chosen most of the times, because of the benefits of being a recognized sponsor. Because the recognized sponsorship plays such an important role at a national level, it should also be considered at the EU level. The Blue Card Directive should allow for recognized sponsorship, which may be filled in freely at a national level by Member States. It should create benefits for employers in such a way that, when looking at the Netherlands, the Blue Card Directive is made a little more comparable to the Dutch HSMS. It will also have consequences for the application's processing time. It is crucial to accelerate the processing time in general in order to facilitate the application process for hiring highly skilled migrants. Together with the introduction of recognized sponsorship in the Blue Card Directive, it can lead to a more attractive EU Blue Card Scheme.

Another improvement that can be made concerns the mobility right that comes with the EU Blue Card. After 18 months of residence in the first Member State, the highly skilled worker can move to another Member State.¹⁶⁰ The mobility right does not work in practice and it does not play a role in choosing to apply for an EU Blue Card instead of choosing to apply under the Dutch HSMS. The interviews showed that employers are not eager to increase the mobility of their highly skilled employees, because of the investments (e.g. providing training) they made in them. Intra-EU mobility is perceived as an advantage for the highly skilled employee and it is not in the interest of the employer. That is why, the mobility right should not be developed further and it could even be considered to abolish the right to move to another Member State in the way it is now designed in the Blue Card Directive. A highly skilled worker must not be allowed to move to another Member State and to leave his or her employer for no reason. In order to keep the goal of the Blue Card Directive of creating a level-playing field between Member States into account, the right to move within the EU should be designed differently, from a business perspective, to foster economic activity in all Member States. After all, performing an economic activity is the sole purpose for a highly skilled third country national to come to the EU. Improvements can be made here by introducing a revised mobility right with a possibility to carry out a temporary business activity in other Member State.

Other secondary weaknesses of the EU Blue Card could be overcome as well. This concerns extending the personal scope of the Blue Card Directive and re-considering the minimum duration of the employment contract. Furthermore, in order to make the Blue Card Directive more attractive for both

¹⁵⁹ IND, 'Recognition as a Sponsor', www.ind.nl/en/work/Pages/Recognition_as_a_sponsor.aspx.

¹⁶⁰ Art. 18.1. Council Directive 2009/50/EC.

employers and highly skilled employees, the maximum validity period of an EU Blue Card (four years) could be re-considered.

In addition, some improvements at a national level can be made on a non-legal basis. These improvements include efficiency of processing and more focus on the social aspects such as assistance for partners and children. Providing additional services to not only the highly skilled worker, but also to his or her family members, could ensure the attraction and retention of more highly skilled third country nationals which is beneficial for the Dutch labour market.

To conclude, several weaknesses of the EU Blue Card Scheme can be overcome both at the EU and the national level. At the moment, the Blue Card Directive is implemented in Dutch law in a way that it is the least attractive scheme to make use of. By looking at the effective aspects of the Dutch HSMS, the Blue Card Directive can be improved significantly. The improvements will make the Blue Card Directive more similar to the Dutch HSMS. In that way, the Blue Card Directive can be made more attractive for employers in the Netherlands, which will be discussed in section 4.3. First, the proposal of the European Commission for a new Blue Card Directive will be presented and discussed.

4.2 Proposal Blue Card Directive

In 2014, the first implementation report of the European Commission on the Blue Card Directive was presented.¹⁶¹ It concluded that, after five years of the Blue Card Directive, the number of EU Blue Cards issued in Member States varied significantly. The conclusion was that the current Blue Card Directive does not achieve its goals. That is why, the European Commission proposed amendments to the Blue Card Directive in 2016.¹⁶² The proposal determines new and revised conditions and rights to reside in the EU for the purpose of highly skilled employment.¹⁶³ It would make the revised EU Blue Card accessible to a wider group of highly skilled workers. The major difference with the 2009 Blue Card Directive is that the revised

¹⁶¹ European Commission, ‘Communication from the Commission to the European Parliament and the Council on the Implementation of Directive 2009/50/EC on the Conditions of Entry and Residence of Third-country Nationals for the Purpose of Highly Qualified Employment’, COM(2014) 287 final.

¹⁶² European Commission, ‘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’, 7 June 2016, COM(2016) 378 final, Strasbourg.

¹⁶³ European Commission, ‘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’, 7 June 2016, COM(2016) 378 final, Strasbourg, p.12-13.

EU Blue Card will become the exclusive scheme for admitting highly skilled third country nationals. Hence, national HSMS would have to be abolished. The most noteworthy changes in the proposal for a new Blue Card Directive will be discussed briefly and, where appropriate, the Dutch views will be included.

Firstly, national HSMS would have to be abolished according to the proposal for a revised Blue Card Directive. Member States would no longer be allowed to have parallel national schemes for highly skilled persons already falling under the scope of the new Blue Card Directive. It is obligatory to then grant an EU Blue Card instead of a national permit in order to further develop the Blue Card Directive into an EU-wide scheme.¹⁶⁴ Member States are only allowed to issue a national permit to third country national workers not qualifying under the personal scope of the revised Blue Card Directive. The view of the Netherlands on the abolition of the national HSMS is reticent. As shown in the interview with the Ministry of Justice and Security (see Appendix 3), the Netherlands wishes to retain the power to pursue a more flexible policy regarding highly skilled migrants.¹⁶⁵ Important is that the revised Blue Card Directive should not introduce more or stricter conditions than currently apply under the Dutch HSMS. If it does, the policy regarding highly skilled migrants will lose its flexibility and effectivity and the Dutch government will make every effort to ensure that Member States can maintain their national HSMS.¹⁶⁶

Secondly, the personal scope will be extended according to the proposal for a revised Blue Card Directive.¹⁶⁷ It will also cover beneficiaries of international protection under Directive 2011/95/EU.¹⁶⁸ EU Blue Card holders will also be allowed to exercise a self-employed activity next to their highly skilled employed activity.

¹⁶⁴ European Commission, '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', 7 June 2016, COM(2016) 378 final, Strasbourg, p.14.

¹⁶⁵ Kamerstukken II, 2015-2016, 22 112, nr. 2155.

¹⁶⁶ Kamerstukken II, 2015-2016, 34 536, nr. A.

¹⁶⁷ European Commission, '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', 7 June 2016, COM(2016) 378 Final, Strasbourg, P.13.

¹⁶⁸ 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 *OJ 2011*, L 337/9.

The definition of the concept ‘higher professional qualifications’ will also be amended.¹⁶⁹ Firstly, the concept of ‘higher education qualifications’ will include a specific reference to European qualification levels (ISCED and EQF) in order to provide clarity on what ‘higher education qualification’ entails. Secondly, the professional experience of ‘at least five years’ will be changed to ‘at least three years’. It will also become obligatory to recognize professional experience as an alternative for higher education qualifications. This will have consequences for the Netherlands, as they did not implement this condition in the 2009 Blue Card Directive into their national law.

The admission conditions will also change as proposed in the revised Blue Card Directive.¹⁷⁰ Firstly, the required minimum duration of the employment contract or binding job offer will be shortened from twelve to six months. Secondly, the salary threshold will be reduced from at least 1.5 times the average gross annual salary to a range of a minimum of 1.0 and a maximum of 1.4 times the average gross annual salary in the Member State. Thirdly, Article 5.4 and Article 5.5 of the proposal introduce a mandatory salary threshold that is lower, that is to say 80 per cent of the general salary threshold, for shortage occupations and for young graduates. This will facilitate the admission as a highly skilled worker under the Blue Card Directive for young graduates who do not have the experience to earn as much as more experienced highly skilled workers. Moreover, the validity period of the EU Blue Card will be changed as well. In the 2009 Blue Card Directive, the EU Blue Card was issued for a minimum period of one year and a maximum of four years or for the duration of the employment contract plus three months. This will change to a minimum duration of at least two years or the length of the employment contract plus three months, but only if the employment contract covers a shorter period than two years, as stated in Article 8 of the proposal. There will be no maximum validity period. Furthermore, the processing time under the revised Blue Card Directive will be shortened from a maximum of 90 to a maximum of 60 days. Moreover, a completely new Article 11 will be introduced. According to this provision, Member States will be allowed to impose fees for handling applications. These fees should, however, not be disproportionate or excessive.

Article 12 of the proposal introduces another new provision. It provides an optional system of ‘recognized employers’ regulated at a national level. It means that, when an employer has been recognized,

¹⁶⁹ European Commission, ‘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’, 7 June 2016, COM(2016) 378 Final, Strasbourg, P.13.

¹⁷⁰ European Commission, ‘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’, 7 June 2016, COM(2016) 378 Final, Strasbourg, P.15.

the processing time must be fast-tracked with a maximum of 30 days and the admission conditions are more flexible. Thus, no evidence will be required regarding the qualifications for unregulated professions and a sickness insurance will no longer be a qualifying condition.¹⁷¹ The procedure of recognized employer must, however, be transparent and it must not lead to excessive or disproportionate burden and costs for the employers. The Dutch government perceives this amendment as very positive, especially because recognized employers may waive the required qualifications. The required qualifications were perceived as superfluous; businesses can assess themselves which skills are necessary to execute the job and whether the candidate actually has the required skills. This is reflected in the salary of the highly skilled migrant.¹⁷²

Moreover, the mobility right is further facilitated in the proposal. A highly skilled worker will be allowed to move to another Member State after twelve months, which used to be 18 months. The procedure for applying for an EU Blue Card in the second Member State is simplified by allowing highly skilled workers to start working immediately after submitting the application for the EU Blue Card in that Member State.¹⁷³ Furthermore, a new Article 19 is proposed. It states that EU Blue Card holders are allowed to enter other Member States for the purpose of carrying out a business activity.¹⁷⁴ The EU Blue Card holder is allowed to carry out a business activity in another Member State for 90 days within a 180-day period.

To conclude, the proposal submitted by the European Commission provides new and more flexible conditions for entry and residence of highly skilled third country nationals in both the first and second and following Member States. It is a balance between more harmonization and more flexibility for Member States. It attempts to promote the EU Blue Card in order to achieve its goal of attracting and retaining more highly skilled workers to the EU. The next section will discuss all suggestions needed to improve the 2009 Blue Card Directive based on the lessons learnt in practice taking into account the proposal for a revised Blue Card Directive as proposed by the European Commission. In this way, a more attractive Blue Card Directive can be build compared to the Dutch HSMS.

¹⁷¹ European Commission, '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', 7 June 2016, COM(2016) 378 Final, Strasbourg, P.17.

¹⁷² Kamerstukken II 2015-2016, 22 112, nr. 2155.

¹⁷³ European Commission, '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', 7 June 2016, COM(2016) 378 Final, Strasbourg, P.19.

¹⁷⁴ European Commission, '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', 7 June 2016, COM(2016) 378 Final, Strasbourg, P.18.

4.3 Building a more Attractive European Blue Card Directive

In order to become the most competitive knowledge-based economy in the world, more highly skilled third country nationals need to be attracted and retained to the EU.¹⁷⁵ Lessons learnt from practice showed that the Dutch HSMS is preferred over the Blue Card Directive, as discussed in Chapter 3. That is why, it should be established how the Blue Card Directive could be revised in order to make the EU Blue Card more attractive compared than the Dutch HSMS, irrespective whether the Dutch HSMS must be abolished or not, as set out in the European Commission's proposal for a revised Blue Card Directive.

Firstly, the interviews showed that the recognized sponsorship plays an important role in choosing to use the Dutch HSMS. Because the recognized sponsorship plays such an important role at the national level, it should also be introduced in a new Article in the revised Blue Card Directive. It should create benefits for employers in such a way that the EU Blue Card becomes an attractive scheme to use. This means that employers should have the possibility to deviate from the admission conditions in favour of the highly skilled employee when recognized as a sponsor. The introduction of recognized sponsorship in the proposal for a revised Blue Card Directive will not change much for the Netherlands, as recognized sponsorship is already possible albeit on a voluntary basis. However, if it is allowed to deviate from the admission conditions in the Blue Card Directive when the employer is a recognized sponsor, the EU Blue Card will become more attractive. Fortunately, the proposal of the European Commission introduced benefits to the employer when being recognized as a sponsor. As stated in Article 12.1 of the European Commission's proposal, recognized sponsorship is introduced for the purpose of applying simplified procedures. It is stated in Article 10.1 that the application must be fast tracked with a maximum of 30 days and Article 12.2 states that the admission conditions are to be more flexible. This means that, at a Dutch level, the processing time of two weeks can be adhered to according to both the Dutch HSMS and the proposal for a revised Blue Card Directive. It also means that no evidence is required regarding the diploma or professional experience qualifications for unregulated professions and regarding the application for a sickness insurance if the employer is recognized as a sponsor.¹⁷⁶ In this way, only the salary threshold, and not the diploma requirement or professional experience, will become the main condition of the EU Blue Card, which will enhance the attractiveness of the Blue Card Directive.

¹⁷⁵ SEC(2007) 1382, Brussels, 2007, p. 2.

¹⁷⁶ European Commission, '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', 7 June 2016, COM(2016) 378 Final, Strasbourg, P.17.

Secondly, the diploma requirement must become more flexible. It will be difficult to completely eliminate the diploma requirement in the Blue Card Directive due to diverging political interests of Member States in the EU (e.g. in the Council of the EU). However, measures should be taken to diminish the administrative burden of the diploma evaluation process, particularly if recognized sponsorship is not available in a Member State or when the employer is not recognized as a sponsor. The process should become clearer in order to accelerate an application for an EU Blue Card. This can be done by establishing clearer criteria in the Blue Card Directive itself by detailing what 'higher education qualification' entails. The proposal of the European Commission introduces a reference to European qualification levels (ISCED and EQF) in order to provide clarity about higher education qualifications. This will help to clarify the criteria used in the diploma evaluation procedure, as set out on the diploma evaluation form, at a national level and which diploma is exactly required. This is not clearly provided at the moment. At a national level, more non-legal effort must be taken to diminish the administrative burden that the diploma evaluation process currently is. Suggestions are: to provide a list of recognized diplomas that do not need a thorough evaluation and to use the past experience to draw up this list. Furthermore, diploma evaluation forms should be clear and easily accessible online. Moreover, it is important that the cooperation between different institutions (e.g. the IND and the IcdW) is improved in order to ensure that the diploma evaluation does not have a negative impact on the processing time of an application for a residence permit. Introducing recognized sponsorship will also contribute towards eliminating the diploma obstacle, as the higher education qualification condition can then be waived for unregulated professions.

The diploma requirement can be circumvented by a 'five years of professional experience'-condition. The proposal of the European Commission aims at obliging Member States to recognize professional experience as an alternative for the higher education diploma, which will eliminate the obstacle of the diploma requirement. In order to make the professional experience condition more convenient, the administrative burden should be diminished as well. This can be done by solely requiring a CV that will attest the professional experience of the applicant. The Dutch implementation provisions of the ICT Directive already provide for this in Article B6/4.7 of the Aliens Act Implementation Guidelines 2000. Therefore, it would not be an entirely new process for the immigration service (i.e. IND) to become familiar with. In this way, attesting the professional experience would become enforceable by the national institutions as the IND. Article 5.1.D. of the ICT Directive states that evidence should be provided that the third country national has the necessary professional experience. This Article could, if adjusted as follows, also be included in Article 5 of the Blue Card Directive. Article 5.1.D of the ICT Directive reads:

“Present evidence that the third country national has the professional qualifications and experience needed in the host entity to which he or she is to be transferred as manager or specialist or, in the case of a trainee employee, the university degree required.”¹⁷⁷

This provision can be adjusted to suit the Blue Card Directive in the following way:

“Present evidence, [as provided for in national law], that the third country national has the professional qualifications and experience needed in the [Member State concerned].”

By introducing this provision, Member States can set rules in their national law on how evidence of work experience can be tested. In the Netherlands, a CV can then be required that will prove the professional experience, as it is already stated in the Aliens Act implementation Guidelines 2000 for the ICT Directive.¹⁷⁸ In this way, attesting professional experience will become easily enforceable.

In order to make the Blue Card Directive even more accessible to a larger group of highly skilled migrants, the period of required professional experience should be shortened. The European Commission has recognized this as well and has proposed that the five years of professional experience should be reduced to three years in Article 2.i.

Besides the diploma requirement, the higher salary threshold of the EU Blue Card is of significant importance to apply for residence permission under the Dutch HSMS. A lower salary threshold must be introduced into the Blue Card Directive. The salary threshold not only needs to be revised at a Dutch level, but it also needs to be revised in the Blue Card Directive. In addition, an upper bound level should be introduced in order to prevent the possibility of setting a disproportionate salary threshold. The proposal of the European Commission aims at introducing both a lower salary threshold and an upper bound level in Article 5.2.¹⁷⁹ The salary threshold will be reduced from at least 1.5 times the average gross annual salary to a range of minimum 1.0 and maximum 1.4 times the average gross annual salary in the Member State.

¹⁷⁷ Art. 5.1.d. Directive 2014/66/EU.

¹⁷⁸ Art. B6/4.7. Aliens Act Implementation Guidelines 2000.

¹⁷⁹ European Commission, ‘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’, 7 June 2016, COM(2016) 378 Final, Strasbourg, p. 15.

Furthermore, the interviews showed that the salary differentiation in age under the Dutch HSMS plays a role in choosing this scheme as well. Salary differentiation in age should also be introduced in the Blue Card Directive. In this context it is important that limits must be set in the flexibility to differentiate in favour of the highly skilled worker. The European Commission has proposed a mandatory salary threshold that is lower, that is to say 80 per cent of the general salary threshold, for shortage occupations and for young graduates. This is a step in the right direction, but an exhaustive measure is lacking. In order to attract all highly skilled workers, young or recently graduated or in occupations in high demand, all steps must be taken to attract these attractive categories of highly skilled workers. Besides a lower salary threshold for shortage occupations and for young graduates, flexibility in the possibility to differentiate in salary thresholds for different age groups should be provided. The initial proposal of the European Commission of 2007 included an Article that derogates from the salary threshold for third country nationals younger than 30 years.¹⁸⁰ This proposed derogation should be included in Article 5 of the Blue Card Directive:

“If the application is submitted by a third-country national of less than 30 years of age and holding higher professional qualifications, the following derogations shall apply:

(a) Member States shall consider fulfilled the condition set out in Article 5.3 if the gross monthly salary offered corresponds to at least two-third of the national salary threshold defined in accordance with Article 5.3.”¹⁸¹

Another improvement that can be made concerns the mobility right. The possibility of moving within the EU after 18 months of legal residence should not be developed further as the European Commission proposes and it could even be abolished in the way it is now designed in the Blue Card Directive. The mobility right should be designed differently, from a business perspective. The proposal of the European Commission aims at introducing the possibility to carry out a business activity in other Member States by the name of the employer. A highly skilled worker may carry out a business activity in

¹⁸⁰ European Commission, ‘Proposal for a Council Directive on the Conditions of Entry and Residence of Third-country Nationals for the Purposes of Highly Qualified Employment’, 23 October 2007, COM(2007) 637 Final, Brussels, p. 22.

¹⁸¹ European Commission, ‘Proposal for a Council Directive on the Conditions of Entry and Residence of Third-country Nationals for the Purposes of Highly Qualified Employment’, 23 October 2007, COM(2007) 637 Final, Brussels, p. 22.

another Member State for 90 days within a 180-day period without being required any authorization from that second Member State other than the EU Blue Card issued by the first Member State.¹⁸² The European Commission also proposes to further develop the mobility right to move to another Member State. By introducing the mobility right for the purpose of a business activity, the further development of the mobility right to move to another Member State should not be introduced in the revised Blue Card Directive. If the possibility to carry out a business activity in a Member State will be provided, the Blue Card Directive's attractiveness will be enhanced and it can replace Article 18 about the (non-working) mobility right.

Other ways to make the EU Blue Card more attractive are by overcoming several other weaknesses. One of these concerns the extension of the personal scope. The Blue Card Directive should also cover self-employed entrepreneurs, as under the Dutch HSMS. The European Commission's proposal covers beneficiaries of international protection under Directive 2011/95/EU and it allows EU Blue Card holders to exercise a self-employed activity next to their highly skilled employed activity in Article 3.

Another improvement can be made by shortening the application's processing time. The maximum period should be shortened in the Blue Card Directive and, moreover, Member States themselves should do more to shorten this period at a national level. The proposal of the European Commission shortens this maximum period from 90 days to 60 days. Member States should be encouraged to shorten the period even further. By setting more flexible conditions, as for example by introducing recognized sponsorship, the application processing time can be shortened even further.

Other ways to make the EU Blue Card more competitive with the Dutch HSMS is by diminishing the minimum duration of the employment contract that is necessary to apply for an EU Blue Card and by extending the maximum duration of the validity of the EU Blue Card. In this way, employers will have more possibilities to employ highly skilled workers. The European Commission's proposal shortens the minimum duration of the employment contract from twelve to six months. Furthermore, it amends the minimum validity period of the EU Blue Card from one year to two years, the only exception being that the employment contract covers a shorter period. In this case, an EU Blue Card is to be issued for the duration of the employment contract plus three months. The proposal does not state a maximum validity period anymore, but leaves this to the Member States. By setting a longer minimum validity period and by giving

¹⁸² European Commission, 'Proposal for a Council Directive on the Conditions of Entry and Residence of Third-country Nationals for the Purposes of Highly Qualified Employment', 23 October 2007, COM(2007) 637 Final, Brussels, p. 45.

Member States the choice to set a longer maximum validity period, Member States can adopt more favourable conditions for highly skilled workers in their national law.

Additionally, improvements can be made on a non-legal basis by the Member States. In the Netherlands, these improvements could include a more efficient processing of applications and more focus on branding the Netherlands at events abroad. Furthermore, as both the WODC report¹⁸³, and the interviews showed, more attention should be paid to the social integration of highly skilled workers and their families. This includes providing Dutch language courses, more assistance for partners to enter the labour market and more assistance for a highly skilled worker's children to find appropriate schools.

To conclude, many steps can be taken to make the Blue Card Directive more attractive to Dutch employers. Whether the national HSMS will be abolished in the future or not, the Dutch HSMS is an excellent example of a HSMS that is attractive in its effectiveness. By looking at the Dutch HSMS, the obstacles and challenges of the EU Blue Card can be converted into a more attractive Blue Card Directive as described above. In this way, its goal of attracting and retaining more highly skilled third country nationals can be achieved.

¹⁸³ Wetenschappelijk Onderzoek- en Documentatie Centrum (WODC), 'Aantrekkelijkheid van Nederland voor kennismigranten', *Regioplan Beleidsonderzoek* 2018.

5. Conclusion

The aim of this thesis is to provide an answer to the following research question:

“What lessons can be learnt from Dutch practice regarding applications for highly skilled third country workers in order to make the EU Blue Card more attractive to employers compared to the Dutch Highly Skilled Migrant Scheme?”

In order to provide the answer to this research question, it was first discussed what the Dutch HSMS provides for highly skilled third country nationals in order to answer sub-question 1. To answer sub-question 2, an overview of what the Blue Card Directive provides, was given. Both schemes, the Dutch HSMS being the national scheme in the Netherlands and the Blue Card Directive being the EU-wide scheme, aim at attracting and retaining highly skilled third country nationals by establishing favourable entry and residence conditions. The specific conditions to be fulfilled in order to be eligible for the Dutch HSMS include a salary threshold¹⁸⁴, in which a distinction is made between highly skilled workers under the age of 30 and 30 years and older, specified in an employment contract of at least three months that is in accordance with market conditions.¹⁸⁵ The employer also has to be registered as a recognized sponsor.¹⁸⁶ The conditions to be fulfilled in order to be granted an EU Blue Card include a valid employment contract or a binding job offer of at least one year and a salary threshold. Furthermore, a highly skilled third country national must be in the possession of higher professional qualifications, which means either providing evidence attesting higher education qualifications or providing evidence attesting at least five years professional experience.¹⁸⁷ Besides being allowed to bring family members under both schemes, the EU Blue Card offers the specific right to move within the EU after 18 months.

After having provided an overview of the Dutch HSMS and the Blue Card Directive, sub-question 3 aimed at identifying the differences between the Dutch HSMS and the Blue Card Directive. The main differences found concerned the personal scope, the conditions to be fulfilled, the duration of the application process, the validity of the residence permit and the rights that come

¹⁸⁴ Art. 1d.4. Foreign Nationals Employment Act Implementation Decree.

¹⁸⁵ Art. 3.30a. Aliens Decree 2000.

¹⁸⁶ Art. 2c. Aliens Act.

¹⁸⁷ Art. 5. Council Directive 2009/50/EC.

with the status of highly skilled worker. This sub-question aimed at establishing if these differences affect the choice for one of the two schemes.

As the Dutch HSMS generates significantly more applications than the EU Blue Card Scheme does in the Netherlands, it was investigated in Chapter 4 if the differences between the two schemes play a role in practice. Interviews were conducted with stakeholders to analyse the implications in every day practice regarding the differences between the Dutch HSMS and the Blue Card Directive and the choice for one of the two schemes. By interviewing five professionals in the working field of migration law, it was found that the Dutch HSMS is preferred over the EU Blue Card, which is caused by several factors. These include the recognized sponsorship under the Dutch HSMS and the duration of the application process. Moreover, it is felt that the conditions of the EU Blue Card are harder to fulfil compared to the conditions of the Dutch HSMS. The differences between the two schemes do play a role when deciding on which scheme to use. Chapter 3 reported that the story behind the figures is in line with the figures that show that significantly more applications are made under the Dutch HSMS. The Dutch HSMS was found to be the most attractive scheme, as it is the most convenient one to use.

The last chapter of this master's thesis focused on the identified shortcomings of the EU Blue Card and how to overcome them in order to build a more attractive Blue Card Directive. In this way, sub-question 5 could be answered by providing tailor made improvements to make the Blue Card Directive more attractive, in any case for the Netherlands. These improvements include introducing the possibility of recognized sponsorship, shortening the period of the application process, obliging Member States to recognize professional experience as an alternative for a higher education diploma, and introducing a lower salary threshold that has an upper bound with a possibility to differentiate for different age groups. In addition, improvements can be made by extending the personal scope, taking measures to diminish the administrative burden, shortening the required minimum duration of the employment contract, extending the duration of the validity of the residence permit, and by revising the mobility right. Furthermore, non-legal measures should be taken at a national level that focus on a better social integration of highly skilled workers and their families.

The abovementioned conclusions mean that the answer to the main research question should be as follows. There are many lessons that can be learnt from practice in order to make the Blue Card Directive more attractive to make it a true competitor for the Dutch HSMS as described above. In this way, its goal of attracting and retaining more highly skilled third country nationals can also be achieved.

The proposed improvements, which are based on the conducted interviews, are mostly included in the proposal of the European Commission for a revised Blue Card Directive.¹⁸⁸ Thus, the European Commission's proposal is a step in the right direction to make the Blue Card Directive a more attractive scheme in order to attract and retain more highly skilled third country nationals. It shows many similarities with the Dutch HSMS, which, if national HSMS must be abolished as proposed by the European Commission, will ensure the effectiveness of that scheme. Only if the Blue Card Directive would become comparable to the Dutch HSMS, employers in the Netherlands will become great supporters of the EU Blue Card. However, this is also the root of the problem.

The official view of the Netherlands on the proposal of the European Commission is that the improvements for a more attractive Blue Card Directive are insufficient. More flexible provisions should be introduced in order to make the EU Blue Card as effective as the Dutch HSMS is now. By combining the insights from the proposal of the European Commission with the insights derived from the interviews, the most attractive (revised) Blue Card Directive has been introduced in this master's thesis. Unfortunately, the Netherlands is not the only cause of that the negotiations on a new Blue Card Directive stalled one and a half years ago. It is questionable if the revised Blue Card Directive will ever be approved of by the European Parliament and the Council of the EU due to the diverging interests of Member States in the EU, it will be challenging to align the interests of all Member States. The suggestion in this master thesis for a more attractive Blue Card Directive are legally feasible, but it does remain to be seen if it will ever be politically feasible. Nevertheless, it shows that many lessons can be learnt from Dutch practice to make the Blue Card Directive more attractive to employers compared to the Dutch HSMS. The conclusion to be drawn from this master thesis is that, in order to reach the Blue Card Directive's goal of attracting and retaining more highly skilled third country nationals in the future, there are significant potential gains if only the political will can be found.

¹⁸⁸ European Commission, 'Proposal for a Council Directive on the Conditions of Entry and Residence of Third-country Nationals for the Purposes of Highly Qualified Employment', 23 October 2007, COM(2007) 637 Final, Brussels.

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Appendix 1

Organization Profile

Everaert Advocaten

Everaert Advocaten is one of the leading firms in migration law in the Netherlands located in Amsterdam. It was established in 1982 and is nowadays a well-known migration law firm, recognized nationally and internationally. For this master's thesis, a very experienced lawyer, specialized in employment-related immigration, was interviewed. In 2018, this interviewee (anonymized for this research study) was ranked amongst the ten most influential corporate immigration lawyers in Europe by 'Who's Who in Corporate Immigration Law'.¹⁸⁹ He and his team solely deal with labour immigration. The emphasis of their work is on foreign employees coming to the Netherlands, which implies that they submit applications on the basis of the ICT Directive when employees are transferred within a company, and on the basis of the Dutch HSMS and the EU Blue Card. Workers with a so-called local employment contract, hence they are not transferred from a company established outside the EU to a branch in a EU Member State, make use of the Dutch HSMS and the EU Blue Card. The interview focused on this category of workers who use a local employment contract and disregarded the applications on the basis of the ICT Directive.

Kroes Advocaten Immigration Lawyers

Kroes Advocaten Immigration Lawyers is one of the leading corporate migration law firms in the Netherlands situated in Amsterdam. They are a specialist in the field of labour migration, recognized nationally and internationally. Their focus is on the business market and less on private applications. They advise firms on the Dutch HSMS and on the EU Blue Card. This includes both firms that want to hire a third country nationals, as well as foreign firms that are going to establish a new plant in the Netherlands. For this master's thesis, a lawyer, specialized in the enforcement of the law and in European labour migration law, was interviewed. This interviewee (anonymized for this research study) advises firms and workers on cross-border employment and all other aspects of labour migration. He often writes about national and European labour migration law and he teaches in labour migration as well. The focus of the interview was on the Dutch HSMS and the EU Blue Card.

¹⁸⁹ Who's Who Legal, 'Corporate Immigration 2018: Analysis' (2018), www.whoswholegal.com/news/analysis/article/34362/corporate-immigration-2018-analysis/.

P&D Care

P&D Care is a firm specialized in international mobility located in Tilburg. They provide an optimized process of preparation, formalities, arrival and accommodation for international workers coming to the Netherlands. Employers can make use of the whole service package or just of a few specific aspects. P&D Care is also fully aware of all legal procedures and it can act as an agent in applying for permits. That is why, they are dealing with highly skilled migrants and the underlying schemes as well. For this master's thesis, a very experienced manager was interviewed who could tell more about the Dutch HSMS and the EU Blue Card, and the attractiveness of the Netherlands for highly skilled migrants.

Boxx global expat solutions

Boxx global expat solutions is a firm specialized in delivering and coordinating integrated mobility services globally. They have offices in Belgium, Hong Kong, Boston and Amsterdam. Boxx global expat solutions provides all services concerning the arrival and departure of international workers, and it also helps international workers in their transfer from one country to another. The mobility services of Boxx, next to applications for residence permits such as under the Dutch HSMS and the EU Blue Card, include finding housing and schools, guidance for partners, advice on social security, and payroll. For this master's thesis, a senior immigration consultant, with a broad experience in global migration, was interviewed who could tell more about the Dutch HSMS and the EU Blue Card, and the attractiveness of the Netherlands for highly skilled migrants.

Ministry of Justice and Security

The ministry of Justice and Security is responsible for maintaining the rule of law in the Netherlands. For this master's thesis, a senior policy officer was interviewed who is responsible for the policy regarding the Highly Skilled Migrant Scheme and the EU Blue Card. He checks if the policy still fits its goals and if it works in practice. If not, a solution will be found by him and his team. The interviewee also negotiates on the new EU Blue Card in Brussels.

Appendix 2

List of questions

1. In which way are you connected to the Dutch HSMS / EU Blue Card? What is your work concerning these schemes?
2. There are two scheme for attracting highly skilled migrants: the Dutch HSMS and the EU Blue Card. Which scheme do you use/advise or do you see clients using, or do you use/advise both schemes in which you make a trade-off for each case?

Use one scheme:

- 2.1. Why do you consciously use/advise one particular scheme?
- 2.2. What do you think is the disadvantage of the scheme that you use/advise?
- 2.3. Why do you not choose/advise the other scheme?
- 2.4. What should change about the other scheme in order to use/advise that scheme?
- 2.5. If you use/advise the EU Blue Card: the EU Blue Card offers mobility within the EU. To what extent does this aspect play a role in your choice for the EU Blue Card Scheme?
If you use/advise the Dutch HSMS: does the mobility aspect play a role in considering the EU Blue Card?

Decision per case

- 2.6. What is the reason that you use/advise the Dutch HSMS in a case?
- 2.7. What is the reason that you use/advise the EU Blue Card in a case?
- 2.8. Why do you not choose/advise the other scheme for that particular case (e.g. mobility)?
- 2.9. What should change about the other scheme in order to use/advise that scheme for that case?

Attracting highly skilled migrants

3. According to the WODC report, the Netherlands can still do a lot to attract more highly skilled migrants. How do you think the Netherlands can attract more highly skilled migrants in the future?
4. The WODC report showed that highly skilled migrants in the Netherlands are less satisfied with the social integration (learn Dutch, finding accommodation). How can the Netherlands improve itself on this aspect in order to attract and retain more highly skilled migrants?
5. According to the WODC report, bringing family member is sometimes a difficult process. How do you think about the policy of only bringing your (marital or registered) partner and children, and not your parents when considering the attractiveness of the Netherlands?

List of questions interview Ministry of Justice and Security

1. In which way are you connected to the Dutch HSMS / EU Blue Card? What is your work concerning these schemes?
2. There are two scheme for attracting highly skilled migrants: the Dutch HSMS and the EU Blue Card. Which scheme do you mostly see in practice and why?
3. What is the position of the Netherlands with regard to the diploma requirement of the EU Blue Card?
4. The Netherlands has chosen not to implement the five years of professional experience of the EU Blue Card. What is your opinion on not implementing this requirement considering the attractiveness of the EU Blue Card?
5. The Dutch HSMS has a salary requirement for highly skilled workers under the age of 30. Do most applications come from young workers under the age of 30, or especially above 30? Do you think that the salary requirement under the Dutch HSMS is an attractive aspect of the Dutch HSMS and possibly for the EU Blue Card in the future?
6. The European Commission has proposed plans to revise the EU Blue Card. What is the position of the Netherlands on this proposal?
To what extent is the new EU Blue Card comparable with the Dutch HSMS?
What is missing in the proposal?
7. If the Dutch HSMS should be abolished, what would need to change about the EU Blue Card to make it just as attractive?
8. According to the WODC report, the Netherlands can still do a lot to attract more highly skilled migrants. How do you think the Netherlands can attract more highly skilled migrants in the future?

Appendix 3

Summaries interviews

Everaert Advocaten

After a short introduction about the firm and the work regarding highly skilled migrants, the interview started with the question which scheme the interviewee advises his client to use or if his advice depends on each case. He explained that the most important difference is the recognized sponsorship. “If an employer is a recognized sponsor then, in almost every case, the Dutch HSMS will be chosen. An EU Blue Card will only be considered when you know that an employer is not a recognized sponsor. In that situation, you first look whether the conditions of the EU Blue Card can be fulfilled. The conditions of the EU Blue Card are harder to fulfil in general, hence a higher salary threshold is set and the higher skilled migrant must possess a higher education diploma of at least three years. When the employing company is a recognized sponsor already, there is the choice to opt for the Dutch HSMS or for the EU Blue Card. When the employing company is not a recognized sponsor, the only choice there is, is to opt for the EU Blue Card, unless the employer chooses to become a recognized sponsor. So the first step is to check whether the employing company is a recognized sponsor. Then the puzzle starts and you check which scheme is the most convenient. The most convenient has nothing to do with the status of the highly skilled migrant. The only advantage of the EU Blue Card is that you use your mobility right after 18 months. Moreover, you can cumulate the five years in several Member States in order to obtain the status of long-term resident. However, no one is interested in that. If you would have the mobility immediately with the EU Blue Card (like with the ICT Directive), then the EU Blue Card could be interesting. After 18 months of legal residence in the Netherlands moving to Germany, and not being able to work immediately when you enter the country is not attractive. You first have to apply again for the EU Blue Card in Germany and you need to fulfil all the conditions in Germany again. So in practice we never see that someone will choose for the EU Blue Card just because of the mobility right. The EU Blue Card exists since 2009. Since that time, I have seen it only twice that an employer wanted to choose for the EU Blue Card. The highly skilled employee already had an EU Blue Card in Germany. When I explained him the procedures that you have to apply for the EU Blue Card in the second Member State and that the admission conditions will be assessed again, the employer eventually chose for the Dutch HSMS, because it was more convenient.”

Subsequently, my question was that if the employer is not a recognized sponsor, he would still choose to become a recognized sponsor in order to be eligible for the Dutch HSMS. “Besides looking at the conditions that need to be fulfilled, you look at two things. What provides the strongest residence right and how fast is the application process? When an employer is a recognized sponsor and chooses for the

Dutch HSMS, he can submit his application online. Only a passport copy is necessary when you consider a standard highly skilled migrant without a family. It takes two weeks until the application decision is made. When a MVV is not necessary, the highly skilled migrant can start working immediately. When a MVV is necessary, he has to wait for another week on average. The whole application process thus takes two to three weeks in theory. Companies that submit lots of applications know that within two weeks the process will be finished and the highly skilled migrant can start in about three weeks. However, with the EU Blue Card, the diploma needs to be evaluated. This takes one to two weeks with an emergency process. This creates an extra obstacle. Everything that you have to do extra means a doubling of the decision period. So that is why often the the Dutch HSMS is chosen. What benefits does it give me if we do the diploma evaluation for the EU Blue Card? The answer is then the mobility after 18 months. But only the employee benefits from that. Employer state that they don't need their employees to go work in Germany. In addition, you need a local employment contract in Germany as well. You cannot second an employee to Germany with the same EU Blue Card.”

“Lots of highly skilled workers who come to the Netherlands are going back to their home country after all. Especially Indian workers. A lot of Chinese workers are coming to eventually settle themselves here. A big group of Indian employees work in particular project base. Then there could be an interest to let them go to Germany. However, could they also work in the Netherlands with the same EU Blue Card? No, after 18 months they can apply again for another EU Blue Card here. But it is too complicated. So that is why the Dutch HSMS is chosen. Eventually, those people go back to India, so the mobility, well... It is about the psychology of the highly skilled worker. He or she does not think of going to one Member State for 18 months and then moving to another Member State. Mobility is not attractive. Mobility is only attractive as like it is proposed in the proposal for the new EU Blue Card. If they want to make the EU Blue Card exclusive, like the ICT Directive, no national HSMS is possible anymore. Mobility could work if you receive an EU Blue Card and you could work everywhere in the EU, or you receive an EU Blue Card and on that EU Blue Card you are allowed to go work in other Member States without submitting an application all over again in the second Member State. Pending your application, you can already start working at the company in the second Member State. However, I do not think that is going to happen.”

He said that in terms of convenience, the difference with the Dutch HSMS is too big. “Member States do not want the EU Blue Card. They want to protect their own labour market. Member States may also determine a quota of EU Blue Cards. But you do not want this and it will lead nowhere.”

When asked how to make the EU Blue Card more attractive, he noticed the salary threshold. “The salary threshold should go down. Most of the highly skilled workers (for example Indian) do not have such a high salary. Then the EU Blue Card is no option. So you should earn as much as under the Dutch HSMS.

Furthermore, the diploma requirement is fine. It is not a big deal, it just takes a bit longer. Sometimes it happens that a highly skilled migrant fulfils the salary conditions, but does not fulfil the diploma condition. This is an obstacle. Employees who gained a lot of experience within a company, but who accidentally do not have a higher education diploma, are left out. The Netherlands only implemented the diploma requirement [not the five years of professional experience], which is non-existing under the Dutch HSMS.”

“Sometimes we strategically choose for the EU Blue Card. The Dutch HSMS only requires one condition: the salary threshold. The IND has looked for ways to reject a highly skilled worker. Eventually that has become the market conformity assessment. The EU Blue Card does not know this assessment. We observe that with Chinese migrants coming to work for a Chinese company and with Turkish workers, almost always the market conformity assessment will be executed. For strategic reasons (if all other conditions are fulfilled), we sometimes advise the EU Blue Card. It may take a bit longer, but the chance of rejection is much smaller because of the market conformity assessment. With market conformity they imply earning too less or too much according to Dutch standards. The IND has lists of positions and how the market is doing for those positions. If you deviate too much from that, it may be a sign of the salary not being in accordance with the market conditions. It will be presented to the UWV for a labour market advice. Firstly, you run the risk that the UWV will state that the salary is not in conformity with the market and that the application will be rejected. Secondly, the application process of two weeks will not be attainable anymore. Employers do not want to run the risk that it will take longer or that it will be rejected.” \

Then the question was how the Netherlands could attract more highly skilled migrants in general. “In general, people are coming to the Netherlands for money and for the good circumstances (very good education). The business environment for both employers and employees is very good if we look at the employment conditions. We might have the best dismissal protection of the EU.”

“When the 30% taxation rule was shortened, I thought that my clients would get mad. But I did not hear a word. Lots of clients thought it made sense.” When I made the comment that the WODC report noted that some highly skilled migrants would leave the Netherlands because of the reduction of the 30% rule to five years, he did not agree. “Lots of clients think it makes sense. After five years they are done with moving. The 30% rule is nice, but it is not a compelling reason to come to the Netherlands or not. When looking at the standard highly skilled worker, it does not play a big role. If you look at the higher segment, so CEOs, they have financially more interests so they will look at the tax burden. But I do not think that the tax burden in the Netherlands is deviating that much from other Western European countries. People do not want to live and work in Eastern Europe or Southern Europe, which is only nice for holidays. They want to work in Switzerland, England or the Netherlands. Germany is not an option either. France is becoming less popular, because of the demonstrations and terrorist attacks. In the Netherlands there is not much happening.

So you have a category (Americans especially) that say that they want to go to Switzerland or the Netherlands. The advantage of the Netherlands is the language, people can speak English pretty well.”

Then I asked him about the integration issues mentioned in the WODC report. He said that family members always have difficulties with integration and participation. “The lower your education, the more important it is to be able to speak Dutch. The higher the education, the less Dutch is spoken. So highly skilled migrants can speak English at their work. Chinese employees working for Chinese companies speak mainly Chinese. Family members’ integration is not different than others. They have free access to the labour market, so they can do whatever we can do. Education is of a very high quality. A part of the people is going back prematurely, because the family cannot ground in the Netherlands. But that is something of all time. It has to do with the family, not with what the Netherlands has to offer. The partner is often far away from the family, living in different time zones. Especially if you look at Indian highly skilled migrants. If they bring their family with them, the question arises if they can bring their parents as well. They often have a duty of care. Traditionally, the man works and the wife stays home. When the wife comes with him to the Netherlands, she often goes back to India soon. The problem then is that the wife spends too much time in India with her family. The distance is too big. But that has more to do with the family itself. I have never experienced that a highly skilled migrant went back his or her home country, because the Netherlands was a bad country or that they rather went to Germany.”

There were two things that the Netherlands could improve: being able to bring a nanny and facilitating bringing your parents again. First of all, for example Americans, who come here and both partners are working at a highly skilled level, often want to bring a nanny. A nanny often rotates within the family, working for years for the family. There is no admission policy for nannies, so they fall back on employment with prioritised supply. However, it is impossible for a nanny to get through this application (in the Netherlands they also have nanny agencies), and then the highly skilled partners are not coming, because the nanny is part of the family. They then move to England, which has a nanny policy in place. These highly skilled partners are determining for companies. When you have personnel working for your family, you are often dealing with people working on a CEO level. At least 10 to 12 times a year, maybe even more, I get this question. I have to answer with no and then the highly skilled partners are not coming to the Netherlands.”

Secondly, it should be possible again to bring your parents. This has been abolished ten years ago or so. In some countries, you cannot leave your parents. There is a part of highly skilled migrants that do not come, because they cannot bring their parents. It used to be Union law that you can bring your parents next to partner and kids. The family reunification Directive does not state this anymore. Parents are part of the family so you have to give them residence within the EU. The Netherlands does not include parents

anymore at all. If the Netherlands wants to facilitate more, it should facilitate bringing your parents again. We have a good social system and a good dismissal protection, but you miss the opportunity to shaping your family life the way you want to. For example, in the nineties, we had a lesbian couple that explicitly chose for the Netherlands, because of the large acceptance and tolerance level. We have multiple Jewish clients that are wondering how safe it is. Safety is very important, and the Netherlands scores very high on that.”

The WODC report also noticed that the transition between different schemes is sometimes difficult. The interviewee really saw the value of the orientation year for highly educated persons. “For a pretty low salary, you can look for a job. This low salary threshold will always be applicable for you (if market conform). It is people’s own fault when they encounter a residence gap, because then the low salary threshold does not longer apply to you. You have to take care of that yourself. The scheme itself is very decent, but you have to pay attention yourself for the residence gap.”

About the level of the salary he noticed the following. “The goal of the Dutch HSMS is to attract a certain part of the labour market. These are the people that are highly educated who will always have a perspective on work. If you would reduce the salary threshold, more people would come, but you automatically reduce the level of the work itself. If there is unemployment, the people that will come into trouble are the ones in this middle segment between lowly and highly educated. You do not want to attract these people. You either want the lowly educated or the highly educated.”

If the Dutch HSMS would be abolished, the division between the salary threshold for highly skilled workers younger than 30 years or 30 years or older, is still smart. “When you do not do this, and you keep the salary threshold at either 4500 euros or 5272 euros, the economy will partly fall apart. Then you have to send away a lot of people. Lots of companies employ highly skilled migrants who do not meet the high salary of 5272 euros gross. A big group cannot get an EU Blue Card, because they do not earn that much.”

At the end of the interview, all of my questions were answered. The interviewee did not have any question himself. He was thanked for the useful answers and the interview was ended.

Kroes Advocaten Immigration Lawyers

After a short introduction about the firm and the work regarding highly skilled migrants, the interview started with the question which scheme the interviewee advises his client to use or if his advice depends on each case. He explained that, in general, the Dutch HSMS is used more often. The recognized sponsorship plays a big role. “Some clients are already recognized as a sponsor and then we recommend the Dutch HSMS. Especially when there is a new firm or when a firm has some difficulties with becoming a recognized sponsor, then we often have a look at the EU Blue Card as an alternative, hence being a recognized sponsor is not mandatory under that scheme.”

Then I asked him about clients who are not a recognized sponsor yet. Do they eventually become a recognized sponsor and use the Dutch HSMS or do they use the EU Blue Card then? “It depends on the goal. If an employer wants to hire a highly skilled migrant now and perhaps in the future another highly skilled migrant, then the EU Blue Card could be attractive. Becoming a recognized sponsor takes the same time as applying for an EU Blue Card. Then we could recommend using the EU Blue Card, because you do not have to make the costs of becoming a recognized sponsor. But often the employer might want to hire more highly skilled migrants in the future and it is also nice if that would be possible within two weeks. Then, it is recommended to become a recognized sponsor and when the employer has been recognized as a sponsor, we automatically use the Dutch HSMS. Sometimes because of the salary threshold, but mostly because of the bypass of the diploma evaluation and the simplified procedure. This also makes the process less expensive, because you do not need to evaluate the diploma. The EU Blue Card does not offer extra benefits to the employers, so then it is more convenient and cheaper to use the Dutch HSMS.”

Subsequently, my question was, when looking at the other requirements of the EU Blue Card, what needs to change in order to choose for the EU Blue Card, not taking into consideration the recognized sponsorship. “The diploma evaluation. That is the big obstacle of the EU Blue Card. The salary threshold is not such an issue. Most people earn a salary that is higher than the threshold. But the diploma evaluation costs extra time. It also leads to insecurity. The Information centre for credential Evaluation (IcDW) does not provide all the requirements for a valid diploma in the diploma evaluation form. When you graduated in the United States or Canada, a transcript is needed. The transcript needs to be sent in a closed envelope to our office and we then send the closed envelope to the IcDW. This is already a hassle. But when you graduated from an American University in Dubai, which is in fact not American and the diploma is thus not American, still a transcript needs to be sent, because the University teaches in the American way. This is not provided anywhere and it leads to insecurity. You cannot calculate the time of the diploma process then and you have to go back to your client. Sometimes a client already had his diploma evaluated by the

IcDW and then it is fine to apply an EU Blue Card. But the diploma evaluation is the biggest obstacle of the EU Blue Card.”

When asked about the salary threshold, he noticed the following. “The difference with the salary threshold of workers under the age of 30 under the Dutch HSMS is large. But we do not necessarily see the salary threshold as an obstacle. The firms that benefit from the lower salary threshold, are the ones that are already established here for a longer time and they hire a different kind of highly skilled worker. We mainly see the choice between the EU Blue Card and the Dutch HSMS with firms that are going to settle in the Netherlands and they hire highly skilled migrants with a salary, which is significantly higher than the threshold. So in this group, we do not see the problem of the salary threshold. However, there are a lot of firms that take into account the salary threshold, because they try to pay as little as possible. In this group, we see that becoming a recognized sponsor is not an issue, because they already exist for a longer time, you then apply for the recognized sponsorship and you then automatically choose the Dutch HSMS.”

Then, I asked about the market conformity of the salary. Under the Dutch HSMS, the salary of the highly skilled worker must be in conformity with the market. The Blue Card Directive does not provide this. The interviewee stated that the market conformity does not really play a role in the decision between the EU Blue Card and the Dutch HSMS. “We always look at what job the highly skilled migrant is going to do and what salary he will get, and if that salary is reasonable. And then we see that it is always fine, that it is never sent to the UWV. Some applications are of course checked by the UWV, but we see that coming. For example a man who is the nephew of a restaurant owner and is going to do service work under the Dutch HSMS after graduating. But then you know upfront that it will be an issue about market conformity. With standard applications, we never see the issue of market conformity and that is why we do not take that into consideration when choosing between the schemes. If you know that the salary is not in conformity with the market under the Dutch HSMS, then it would feel inconvenient to increase the salary even more to be eligible for the EU Blue Card just to avoid the market conformity check. Furthermore, I have never lost a case against the UWV. It is unclear what they exactly check so you actually win the case against them. It is strange to just increase the salary and I think a bit unethical to solve the issue.”

Subsequently, my question was about the mobility that comes with the EU Blue Card. “It does not play a role. We explain it to our clients, but we see it as an advantage for the employee. The employer, especially in the labour market nowadays, is not eager to increase the mobility of his employee. The employer is already happy that the highly skilled workers chooses to work in the Netherlands and not in other EU Member States. So the employers do not find that decisive. Sometimes we advise employees and then I have to explain that the mobility is quite limited. The advantage you have... Some say that they have lived somewhere else. But did you have an EU Blue Card there? In Germany yes, because it is the main

scheme, but in other Member States that is often not the case. And then you cannot cumulate the residence periods of different schemes in order to fulfil the period of five years to obtain a long-term residence status. So we have never seen that the mobility right is decisive in choosing the EU Blue Card.

Things that could be improved to make the EU Blue Card more attractive are the following. “When you look at the ICT Directive, you must have a bachelor’s diploma or relevant professional experience, allowing you to bypass the diploma requirement.” The Blue Card Directive knows the same requirement, but the Netherlands did not implement the professional experience requirement. “So it would already make a difference if the Netherlands would implement that article of the Blue Card Directive correctly.”

“Implementing professional experience in Dutch law will in some cases reduce the processing time. Just like the ICT Directive, you only have to send the CV with the application and that is it. The processing times of the applications are really important. A recognized sponsor in the Netherlands can apply within a short period for an EU Blue Card as well. Once you are a recognized sponsor, you choose the Dutch HSMS. If you fulfil the conditions of the EU Blue Card, then you immediately fulfil the conditions of the Dutch HSMS, and not vice versa. The Dutch HSMS is the standard application. For one client, which only has highly skilled employees who earn more than the salary threshold of the EU Blue Card, we always apply for the Dutch HSMS. That is just what we do, it is the standard procedure, although, as Kroes Advocaten, we are also very much focused on the EU Blue Card. The first few years of the EU Blue Card, we had a market share of 50 per cent of all EU Blue Card applications. Of the ten applications made, we made five of them. So we also make applications for the EU Blue Card, but applying for the Dutch HSMS is the standard process.”

Another improvement for the EU Blue Card concerns the salary threshold. “The difference with the Dutch HSMS is very big when you look at the salary threshold of highly skilled migrants younger than 30 years old. You see that we do not have one system, the Dutch HSMS and the EU Blue Card are two systems. The Netherlands had to implement the Blue Card Directive. If it would have been voluntary, then we would not have chosen to implement the Blue Card Directive. You either make the EU Blue Card more similar to the Dutch HSMS, or you, which is the proposal of the Commission, only allow the EU Blue Card Scheme.”

“Because usually we are only in contact with employers, we actually never get the question from employees about bringing their parents. Highly skilled workers who have started working do sometimes ask about bringing their parents. We used to have an elderly policy, but that has been abolished. Nowadays, you cannot bring your parents and you could only try via Article 8 EVRM, but that is very complicated. So we sometimes receive a request from a highly skilled employee, but never from an employer. It is not a condition. The same goes for bringing a nanny.”

“The system of recognized sponsorship is very good. Your application is handled very fast. The recognized sponsorship is very good for the strategic position of the Netherlands. It would be good if there is an opportunity of recognized sponsorship on European level as a voluntary option. For the future EU Blue Card, it would be good if recognized sponsorship would still be allowed. There should be a minimum level of harmonization and the Netherlands should be allowed to require additional conditions. But the Netherlands should lobby for that, but I can imagine that the recognized sponsorship would be of added value.”

“Concerning the processing times, it is difficult to shorten it on a European level. In practice, in the Netherlands, the processing time of the EU Blue Card, without recognized sponsorship, is six to eight weeks. But it plays a big role. When a client only wants to hire one highly skilled migrant, then we choose for the EU Blue Card if the processing time is irrelevant. If we explain that, when you become a recognized sponsor, the processing time is only two weeks and the clients might want to hire another highly skilled migrant in the future, then the client immediately wants to become a recognized sponsor. The Dutch HSMS is then chosen, because the standards are much lower.”

At the end of the interview, all of my questions were answered. The interviewee did not have any question himself. He was thanked for the useful answers and the interview was ended.

P&D Care

After a short introduction about the firm and their work regarding highly skilled migrants, the interview started with the question which scheme P&D Care mainly sees in practice. The interviewee explained that, as long as the EU Blue Card exists, they have never had to apply for a EU Blue Card on behalf of an employer. “Besides the ICT Directive, most of our applications fall under the Dutch HSMS. The reason for not applying for the EU Blue Card, is that the EU Blue Card does not directly offer benefits to the employer, but more to the highly skilled employee. An important attractive aspect of the Dutch HSMS is the salary threshold, which is much lower than the salary threshold under the EU Blue Card. It is also easier to be eligible for the Dutch HSMS, because a diploma evaluation is not applicable. Furthermore, it is very easy, administratively, for a recognized sponsor to apply under the Dutch HSMS.”

When P&D Care starts collaborating with a new client, they always advise the Dutch HSMS if the conditions of recognized sponsorship are met. “The main reason is the short processing time of two weeks under the Dutch HSMS. When an employer is not a recognized sponsor, it can take up to three months. P&D Care is, on average, called in two months before the highly skilled migrant starts working in order to take care of housing, preparing documents et cetera.”

The market conformity of the salary does not play a role. “P&D Care is a service provider and takes care of all aspects concerning the arrival of a highly skilled migrant. The employers want the best support for their new highly skilled workers, which are mostly workers with a high position within the firm and a high salary. The market conformity condition under the Dutch HSMS is not of significant meaning.”

Subsequently, my question was whether the mobility under the EU Blue Card plays a role or not. The interviewee has never seen that the mobility plays a role for their clients. Moreover, she thinks that employers would like to keep their highly skilled employees, hence invest in their employees by training and providing them additional services. Employers then do not want their highly skilled employees to leave to another Member State.

Then the question was how the Netherlands could attract more highly skilled migrants in general. The interviewee experiences that the Netherlands is an attractive destination when having to choose between a few countries. “The Netherlands is already doing well in being attractive to highly skilled migrants, because of the workload, the amount of holidays, the 30% rule, the short processing time, being political stable and the image of being a friendly country.” Things that could be improved are the following. The 30% rule has been reduced from ten to eight years, and now from eight to five years. The interviewee has heard from several highly skilled migrants who just arrived that they think that it is a pity that the 30% rule has been reduced to five years. “Furthermore, there should be more assistance for the partners of highly

skilled workers entering the labour market. They often do not speak Dutch or have not yet learnt Dutch, which complicates the search for a job. So it could be good to invest time, energy or money to improve that aspect. Moreover, there should be more international schools in order to make the Netherlands more attractive. Tilburg does not have an international school. Only Breda and Eindhoven offer an international school, but Eindhoven even has a waiting list. Housing is not a very big problem, because the highly skilled worker has a sufficient salary to be able to afford housing. However, P&D Care helps their clients with finding housing as well, which accelerates the process of finding housing.” There is, however, a lack of short stay apartments notices the interviewee. She also noted that more and more highly skilled workers want to buy a house.

Then, I asked about not having the right to bring your parents. The interviewee has not heard that not being allowed to bring your parents is an issue. However, she thinks those issues will mainly be discussed between the employee and the employer. “Some highly skilled workers let their parents come over when they are, for example, expecting a baby, but then a short residence permit of three months is provided, which is sufficient.” So the interviewee thinks that there is not a problem regarding family rights.

At the end of the interview, all of my questions were answered. The interviewee did not have any question herself. She was thanked for the useful answers and the interview was ended.

Boxx global expat solutions

After a short introduction about the firm and their work regarding highly skilled migrants, the interview started with the question which scheme P&D Care mainly sees in practice. The interviewee explained that Boxx examines which scheme is most applicable to a specific situation and which one fits best with the situation. Most of the time, the Dutch HSMS is the most convenient scheme to use. “The application process is very fast compared to the EU Blue Card. The EU Blue Card also has additional requirements like the higher salary threshold, the diploma requirement and the longer processing time. Our clients then go for the Dutch HSMS, because the highly skilled worker is needed soon.” Most of Boxx’ clients are recognized sponsor. “Although with the EU Blue Card you do not have to be a recognized sponsor, the burden of proof is much more under the EU Blue Card Scheme. Most of our clients use the Dutch HSMS, because of the uncomplicated procedure. Clients who are not a recognized sponsor yet, will become one, because it is then easier to hire a highly skilled worker in the future and the recognized sponsorship is for indefinite time.”

The mobility that comes with the EU Blue Card does not play a role. The interviewee only heard it once or twice that a client asked about it. “You have to start the whole application process all over again in the second Member State, which is devious. Moreover, in certain sectors like the ICT sector, there is a shortage on the labour market and there is a competition between countries. So employers are already happy that a highly skilled worker is choosing to work for them. If this highly skilled worker has the chance to move to another Member State, the employer is scared that he will lose the highly skilled worker. So mobility is therefore difficult for employers.”

Subsequently, my question was what needs to be changed about the EU Blue Card to use it more often in the future. “The burden of proof is most important. You have to provide more documents, like the diploma. The salary threshold is higher as well. These two aspects are most important. In the Netherlands, we have the Dutch HSMS, which is very attractive. Not every Member State has a national HSMS like we have in the Netherlands. I think, for those Member States, the EU Blue Card is more attractive than for us. In the Netherlands, the Dutch HSMS is just very attractive compared to the EU Blue Card. The mobility that comes with the EU Blue Card is not very attractive, because you have to apply again in the second Member State. So that could be an improvement as well. Implementing the five years of professional experience would not really help, because the difference in requirements with the Dutch HSMS remains significant. The Dutch HSMS only requires a certain salary level, which implies a certain level of talent. In some situations, implementing the professional experience could be an improvement. Some workers do not have a higher education qualification, but they have a lot of experience, which suggests they also have a

certain level of talent. The requirement of five years of professional experience could be a solution for those persons.”

The interviewee sometimes experiences that the salary threshold of workers younger than 30 years is quite high. “In some countries, they receive a lower salary. The salary threshold in the Netherlands is then sometimes considered as too high.”

Then the question was how the Netherlands could attract more highly skilled migrants in general. The interviewee mentioned the social integration of family members in order to attract and retain more highly skilled workers. She stated that there should be more assistance for the children of highly skilled workers and for the partners of highly skilled workers entering the labour market. However, employers play a big role in this. The interviewee has not heard that not being allowed to bring your parents is an issue.

At the end of the interview, all of my questions were answered. The interviewee did not have any question herself. She was thanked for the useful answers and the interview was ended.

Ministry of Justice and Security

After a short introduction about the interviewee's work regarding highly skilled migrants, the interview started with the question which scheme is mainly seen in practice taking into account the differences between the Dutch HSMS and the EU Blue Card.

When the negotiations on the EU Blue Card were taking place, the Netherlands wanted to keep their national HSMS. The recognized sponsorship is an important aspect of the national scheme. "With the recognized sponsorship, it is tested if the firm is reliable and if it has sufficient resources. If yes, we facilitate it to apply under the HSMS. The Blue Card Directive did not offer this possibility." That is why, the Netherlands did not want the Blue Card Directive. "The Netherlands wanted to see the possibility of recognized sponsorship in the Blue Card Directive, but this did not happen in the end. The Blue Card Directive was implemented in such a way that it was the least attractive scheme within the possibilities of implementation. The Dutch HSMS was working out very well with the recognized sponsorship, and this was not possible under the EU Blue Card Scheme." Applications under the national HSMS are preferred over applications under the EU Blue Card Scheme. The salary threshold under the Dutch HSMS is, therefore, much lower and the diploma requirement is also an extra obstacle.

The EU Blue Card is very clear in its conditions. "The salary threshold must be at least 1.5 times the average gross annual salary, which is implemented quite strict, and it is revised every year. The Dutch HSMS does not require a diploma, which diminishes the administrative burden. Furthermore, the application process only takes two weeks under the Dutch HSMS, while it may take up to three months under the EU Blue Card. So it is more attractive for employers to apply for the Dutch HSMS than for the EU Blue Card, which was done consciously." The Netherlands does not discourage applications for the EU Blue Card and there is even an increase in applications for the EU Blue Card, but, in absolute terms, the difference in applications for the Dutch HSMS remains big. Applying for the Dutch HSMS is the standard process in practice. That is why, when negotiating on the new EU Blue Card, the process as it is now (fast, few requirements, recognized sponsorship), should be maintained.

If the Netherlands would implement the five years of professional experience, the EU Blue Card would not be made more attractive compared to the Dutch HSMS. Under the Dutch HSMS, no educational level is required. "The firm decides whether a third country national has a certain level of capabilities by paying him or her a certain salary, and then experience in practice is sufficient instead of requiring an educational level. Implementing the five years of experience would mean an administrative burden for the IND." Only when, as with the ICT Directive, solely a CV is required, then it would be doable. However,

the difference with the Dutch HSMS as it is now, would remain significantly big, hence no education level or professional experience is required.

The interviewee states that the EU Blue Card is in itself not attractive. “Only when the EU Blue Card would be made less strict, so flexible procedures and a lower salary threshold, the Netherlands would be willing to abolish its national HSMS. However, it lacks support from other Member States. Other Member States think that, in order to be eligible for a scheme for highly skilled migrants, it is normal to test the highly educated level.” The interviewee mentioned the value of self-educated persons, who are also highly skilled migrants in the Netherlands. He noticed that 99 per cent of all highly skilled migrants in the Netherlands, who did not have to fulfil the diploma condition under the Dutch HSMS, has at least a bachelor’s diploma without requiring it. “If you know that, then the diploma requirement seems to be an administrative burden if, in the end, it selects itself. But other Member States do not see it like this. It might be that, in the Netherlands, not much value is seen in a master’s degree, as in other countries it is seen as very important.”

About one third of the applications made under the Dutch HSMS are from persons younger than 30 years. There are three salary thresholds: the general salary threshold for persons of 30 years and older, the salary threshold of persons younger than 30 years, and the lower salary threshold for recently graduated persons coming from the orientation year scheme. The interviewee mentioned that the European Commission found these salary thresholds very interesting. “The salary threshold for highly educated persons who have recently graduated has been introduced in the proposal for the new EU Blue Card, which is established at, at least, 80 per cent of the salary threshold. The salary thresholds under the Dutch HSMS do, however, not significantly differ with this new provision in the proposal for the new EU Blue Card. The Netherlands proposed more flexibility in the possibility of differentiating in salary thresholds for different age groups. Other Member States did, however, not agree with this. The interviewee proposes more flexibility in differentiating in salary threshold in Member States. Harmonization is not necessary and it should be left to the Member States.

The Netherlands does not want to change their policy concerning highly skilled migrants. The interviewee states that highly skilled migration is a good thing if you have a good selection system in place. He believes that the Netherlands has a good system, with good selection criteria, in place. That is why, the Netherlands does not want to change this. If the Netherlands would implement the Blue Card Directive as their national scheme, less highly skilled migrants would be attracted. This is not in line with the policy goal of the Netherlands, hence implementing the Blue Card Directive as the Dutch scheme for highly skilled migrants is not reasonable. If the new EU Blue Card would be more flexible (flexible conditions, short procedures, recognized sponsorship), the Netherlands would be a supporter of the new EU Blue Card.

However, the proposal for the new EU Blue Card is not attractive enough for the Netherlands to abolish its own national HSMS.

The proposal for the new EU Blue Card lacks some important provisions. First of all, the interviewee mentioned the possibility to differentiate in salary thresholds. The salary threshold of at least 1.0 times the average gross annual salary is doable, but then differentiating between different groups should be possible. Furthermore, the diploma requirement is still present in the proposal for the new EU Blue Card. However, for recognized sponsors, no evidence attesting the diploma requirement is required, but it should still be tested. The interviewee states that the preference is to not even test this. “So, the recognized sponsorship makes the EU Blue Card a little bit better, but only to a certain extent. It is going in the right direction, but not completely. You can still not oblige firms to become a recognized sponsor under the new Blue Card Directive. Recognized sponsorship is based on trust. When recognized sponsorship would be mandatory, it is possible to, for example, fine a firm if it has damaged this basis of trust and has, thus, committed fraud. If recognized sponsorship is not mandatory, it is the question if this is possible.”

Another proposal from the interviewee is the following. “The new EU Blue Card should only provide minimum requirements and Member States are allowed to adopt a more flexible policy. The question is why an EU Blue Card would even exist then. We argued that it would be in favour of the highly skilled migrant and of the businesses. It would not be at a disadvantage, because you can only make it more attractive and not more unattractive. This is, however, not achievable, but it is a direction in which the solution can be made. It could be an idea to give all national schemes the name ‘EU Blue Card’, in which minimum criteria will be set, but that all Member States have their own conditions. The European Commission could state every year how many Blue Cards were granted and the goal of attracting more highly skilled migrants can be achieved. Communication targets are then very important, but it is an idea...

The interviewee mentions that the two most important criteria for the EU Blue Card, the diploma requirement and the salary threshold, should be made more attractive. “If you provide the opportunity to differentiate from these two most important criteria on a national level, in favour of the highly skilled migrant, many steps can be made.”

The last question concerned the attractiveness of the Netherlands in general. The interviewee stated that, when looking at policies, there is not much more that could be done in order to attract more highly skilled workers. “There are some obstacles regarding the partners of highly skilled workers and their position on the labour market. However, policy wise, there is not much improvement. The Netherlands is seen as very safe, it has a high quality of life, and it has good housing and good schools. These factors contribute to the decision to go work in the Netherlands. A fast residence scheme is then a bonus.”