

Conditions of entry and residence of third-country nationals for the purposes of highly qualified employment

2007/0228(CNS) - 25/06/2009 - Final act

PURPOSE: to establish the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment and to provide for the establishment of an EU Blue Card.

LEGISLATIVE ACT: Council Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment.

CONTENT: the Council adopted a Directive aimed at facilitating conditions of entry and residence in the EU of third-country citizens for the purpose of highly qualified employment.

General purpose of the Directive: the Directive is intended to contribute to addressing labour shortages by fostering the admission and mobility - for the purposes of highly qualified employment - of third-country nationals for stays of more than three months, in order to make the Community more attractive to such workers from around the world and sustain its competitiveness and economic growth. To that end, the Directive establishes a fast-track procedure for issuing a special residence and work permit called the "**EU Blue Card**".

The Blue Card will facilitate holder's access to the labour market and entitle them to a series of socio-economic rights and favourable conditions for family reunification and movement across the EU.

Scope: the Directive shall apply to third-country nationals who apply to be admitted to the territory of a Member State for the purpose of highly qualified employment.

It shall not apply to third-country nationals:

- who are authorised to reside in a Member State on the basis of temporary protection and are awaiting a decision on their status;
- who are refugees or have applied for recognition as refugees and whose application has not yet given rise to a final decision;
- who have applied to reside in a Member State as researchers within the meaning of Directive 2005/71/EC;
- who are family members of Union citizens who have exercised, or are exercising, their right to free movement within the Community;
- who enjoy EC long-term resident status in a Member State;
- who enter a Member State under commitments contained in an international agreement facilitating the entry and temporary stay of certain categories of persons;
- who have been admitted to the territory of a Member State as seasonal workers;
- whose expulsion has been suspended for reasons of fact or law;
- who are covered by Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.

This Directive shall be without prejudice to any agreement between the Community (and/or its Member States) and one or more third countries, that lists the professions which should not fall under this Directive in order to assure ethical recruitment, in sectors suffering from a lack of personnel in developing countries (health, education, etc.).

Criteria for admission: the Directive determines the common criteria to be set by the EU Member States for applicants for the Blue Card without prejudice to more advantageous conditions provided for by national laws. Therefore, an EU Blue Card may be issued to thirdcountry nationals who:

- present a valid work contract or a binding job offer of at least one year in the Member State concerned;
- present a document attesting fulfilment of the conditions set out under national law for the exercise by Union citizens of the regulated profession specified in the work contract;
- for unregulated professions, present the documents attesting the relevant higher professional qualifications in the occupation or sector specified in the work contract or binding job offer;
- present a valid travel document - residence permit, longterm visa, etc;
- present evidence of sickness insurance that covers them during the work contract;
- are not considered to pose a threat to public policy, public security or public health;
- provide their address in the territory of the Member State concerned.

In addition to those specific conditions, the Directive establishes **criteria relating to salary**. The gross annual salary specified in the work contract of EU Blue Card holders shall not be inferior to a relevant salary threshold defined by the Member States, which shall be at least 1.5 times the average gross annual salary in the Member State concerned (however, there are derogations provided for certain professions). In any event, the Member States shall hold collective agreements or practices applicable in the relevant occupational branches.

Volumes of admission: the Directive shall not affect the right of a Member State to determine the volume of admission of third-country nationals entering its territory for the purposes of highly qualified employment (in other words, they may set admission quotas to limit the possible number of highly qualified workers admitted). Moreover, they may not grant residence permits for employment in certain professions, certain economic sectors or specified regions.

EU Blue Card: a third-country national who has applied and fulfils the requirements set out in the Directive and for whom the competent authorities have taken a positive decision shall be issued with an EU Blue Card, with a **duration of between one and four years**. A Blue Card may also be issued or renewed for smaller periods in order to cover the work contract plus three months.

- **format of the Blue Card:** the EU Blue Card shall be issued by the competent authorities of the Member State using the uniform format as laid down in Regulation (EC) No 1030/2002. Under the heading "type of permit" in the residence permit, Member States shall enter "EU Blue Card". During the period of its validity, the EU Blue Card shall entitle its holder to: (i) enter, re-enter and stay in the territory of the Member State issuing the EU Blue Card; and (ii) the rights recognised in this Directive (see below);
- **procedural safeguards:** the competent authorities of the Member States shall adopt a decision on the complete application for an EU Blue Card at the latest within 90 days of the application being lodged. Any decision rejecting an application for an EU Blue Card or withdrawing an EU Blue Card shall be open to legal challenge in the Member State concerned;
- **applications for admission:** Member States shall determine whether applications for an EU Blue Card are to be made by the third-country national and/or by his employer. In principle, the

application shall be examined either when the third-country national concerned is residing outside the territory of the Member State to which he wishes to be admitted or when he is already residing in that Member State as holder of a valid residence permit or national long-stay visa;

- **grounds for refusal:** there are provisions for refusing to grant a Blue Card (in particular, whenever the applicant does not meet the conditions for admission or the documents presented have been fraudulently acquired, or falsified or tampered with). An application may also be refused for ethical reasons (for example, to prevent a “brain drain” from the country of origin) or if the employer has been sanctioned for illegal employment;
- **Community preference:** before taking a decision concerning an application for an EU Blue Card or for renewal, Member States may also examine their labour market conditions and apply quota systems for jobs or even invoke the principle of Community preference or preference for the employment of third-country nationals already living on their territory.

Rights provided for by this Directive in terms of equal treatment: EU Blue Card holders will enjoy equal treatment with nationals of the member state issuing the Blue Card, as regards:

- working conditions, including pay and dismissal;
- freedom of association;
- education, training and recognition of qualifications;
- a number of provisions of national law regarding social security and pensions;
- access to goods and services, including procedures for obtaining housing, information and counselling services;
- free access to the entire territory of the member state concerned within the limits provided for by national law.

However, for the first two years of legal employment as an EU Blue Card holder, access to the labour market for the person concerned shall be restricted to the exercise of their initial work contract. After these first two years, Member States may grant the persons concerned equal treatment with nationals as regards access to highly qualified employment.

Note that unemployment in itself shall not constitute a reason for withdrawing an EU Blue Card. However, the Directive provides for a certain number of **restrictions on equal treatment** in certain areas (for example, education). Moreover, in order to respect the principle of Community preference and to avoid possible abuses of the system, the occupational mobility of a third-country highly qualified worker should be limited for the first two years of legal employment in a Member State.

Family members: these persons shall not be permitted to obtain a Blue Card in the same way as the worker. However, in order to appeal to highly qualified workers to work in the EU, the Directive provides for the principle of family reunification.

Other related provisions: the Directive contains a certain number of specific provisions aimed at linking EU Blue Card holders to the status of EC long-term resident so that EU Blue Card holders who fulfil the requirements for obtaining EC longterm resident status may do so, under certain conditions.

Residing in other Member States: after 18 months of legal residence in the first Member State as an EU Blue Card holder, the person concerned and his family members may move, under certain conditions, to a Member State other than the first Member State for the purpose of highly qualified employment.

Reporting: every three years, and for the first time no later than 19 June 2014, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary. The Commission shall, in particular, assess the relevance of the salary threshold referred to in the Directive and study its impact in terms of “brain drain”.

Implementing measures: annually, and for the first time no later than 19 June 2013, Member States shall communicate to the Commission statistics on the volumes of thirdcountry nationals who have been granted an EU Blue Card and, as far as possible, volumes of third-country nationals whose EU Blue Card has been renewed or withdrawn, during the previous calendar year, indicating their nationality and, as far as possible, their occupation.

Territorial provisions: in accordance with the relevant provisions of the Treaties, the Directive shall not apply to the United Kingdom, Ireland or Denmark.

ENTRY INTO FORCE: 19/06/2009.

TRANSPOSITION: 19/06/2011.