



Council of the European Union
General Secretariat

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Mr Juan Fernando López Aguilar
Chairman, European Parliament Committee on LIBE
BRUSSELS

Brussels, 21 May 2021

Subject: Proposal for Directive of the European Parliament and the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment

Dear Mr López Aguilar,

Following the informal meeting between the representatives of the three institutions, a draft overall compromise package was agreed today by the Permanent Representatives' Committee.

I am therefore now in a position to confirm that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in the compromise package contained in the Annex to this letter (subject to revision by the legal linguists of both institutions), the Council would, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.

On behalf of the Council I also wish to thank you for your close cooperation, which should enable us to reach agreement on this dossier at first reading.

Yours sincerely,

Nuno BRITO
Chairman of the Permanent Representatives' Committee (Part 2)

Copy to: Ylva JOHANSSON, Commissioner
Javier Moreno SÁNCHEZ, EP Rapporteur

PE-CONS No/YY – 2016/0176(COD)

DIRECTIVE (EU) .../...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular points (a) and (b) of Article 79(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee **1**,

Having regard to the opinion of the Committee of the Regions **1**,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Commission's Communication of 3 March 2010 entitled 'Europe 2020: A strategy for smart, sustainable and inclusive growth'³ sets the objective of the Union becoming an economy based on knowledge and innovation, reducing the administrative burden on companies and better matching labour supply with demand ***and identifies the need for a comprehensive labour migration policy and for better integration of migrants.*** Measures to facilitate the admission of third-country national highly ***qualified*** workers have to be seen in that broader context.
- (2) The conclusions of the European Council of 26 and 27 June 2014 state that in order to remain an attractive destination for talents and skills, Europe must compete in the global race for talent. Strategies to maximise the opportunities of legal migration should therefore be developed, including the streamlining of existing rules.
- (3) The European Agenda on Migration adopted on 13 May 2015 calls for an attractive EU wide scheme for highly qualified third-country nationals, and specifies that a review of Council Directive 2009/50/EC is needed to make it more effective in attracting talents to the Union and thereby address both the demographic challenges faced by the Union and labour and skills shortages in key sectors of the Union economy. ***This call is reiterated in the New Pact on Migration and Asylum adopted on 23 September 2020, stating that the reform of the EU Blue Card must bring real EU added value in attracting skills through an effective and flexible EU-wide instrument.***
- (4) ***The European Parliament, in its resolution of 12 April 2016 called for an ambitious and targeted review of the Directive, including on the scope.***

- (5) It is necessary to respond to the challenges identified in the implementation report on Directive 2009/50/EC. The Union should aim at establishing a more attractive and effective EU-wide scheme for highly *qualified* workers. The Union approach on attracting highly *qualified* workers should be further harmonised and the EU Blue Card should be made the primary tool in that regard with faster procedures, more flexible and inclusive admission criteria, and more extensive rights including more facilitated intra-EU mobility. As this would entail substantial changes to Directive 2009/50/EC, that Directive should therefore be repealed and replaced by a new Directive.
- (6) *A clear and transparent* EU-wide admission system to attract and retain highly *qualified* workers into the Union *and promote mobility* should be created. *This Directive should be applicable regardless of whether the initial purpose of residence of the third-country national is highly qualified employment or if he or she resides first on other grounds and changes status towards this purpose subsequently. It is necessary to take into account the priorities, labour market needs and reception capacities of the* Member States. *This Directive should be without prejudice to the competence of the* Member States **|** to issue *national residence permits other than EU Blue Cards for the purpose of highly qualified employment. Moreover, this Directive should not affect the possibility for an EU Blue Card holder to enjoy additional rights and benefits which may be provided by national law, and which are compatible with this Directive.*

- (7) *Member States should apply a level playing field between the EU Blue Card and national residence permits for the purpose of highly qualified employment, in terms of procedural and equal treatment rights, procedures and access to information. In particular, Member States should ensure that EU Blue Card holders and their family members do not enjoy a lower level of procedural safeguards and rights than holders of national residence permits. They should also ensure that applicants for an EU Blue Card are not in a less favourable position than applicants for national residence permits with regard to recognition procedures for employers, and that they are not required to pay a higher level of fees for the handling of their application. Finally, Member States should ensure that the EU Blue Card benefits of the same level of information, promotion and advertisement activities than the national residence permits, for example through information on the national websites on legal migration, information campaigns and training programmes for the competent migration authorities.*
- (8) *In order to reinforce and promote the EU Blue Card scheme and attract highly qualified workers, Member States are encouraged to strengthen advertisement activities and information campaigns concerning the EU Blue Card, including where appropriate towards third countries.*

- (9) *Member States should give effect to this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinions, membership of a national minority, property, birth, disability, age or sexual orientation in accordance, in particular, with Council Directive 2000/43/EC and Council Directive 2000/78/EC. For the principle of non-discrimination to be effective, EU Blue Card holders should be able to seek legal redress and lodge complaints as provided for by national law, if they face any kind of discrimination, including in the labour market.*
- (10) *Having regard to the Eurostat report ‘ICT specialists – statistics on hard-to-fill vacancies in enterprises’ of December 2018 and its conclusions regarding a widespread shortage of highly-skilled workers in the ICT (Information and Communication Technologies) sector in the labour markets of Member States, higher professional skills should be considered equivalent to higher education qualifications for the purpose of applying for an EU Blue Card in two ‘higher’ positions: Information and Communications Technology Services Managers (ISCO-08 classification 133) and Information and Communications Technology Professionals (ISCO-08 classification 25).*

Considering that a bachelor degree takes at least three years to complete, the relevant period of required professional experience should be three years. This length of professional experience also appears justified given the fast pace of technological evolution in the ICT sector and the changing needs of employers.

Member States are encouraged to facilitate the assessment and validation of higher professional skills for the purpose of the Blue Card.

It is envisaged that the list of occupations in the Annex could be amended, in particular following an assessment to this end by the Commission on the basis of, among other sources, the information provided by the Member States regarding the needs of their labour markets, for the purpose of recognising professional experience under this Directive in other fields of activity. This assessment is to be provided every two years.

For the occupations not listed in Annex, Member States may accept applications for an EU Blue Card on the basis of evidence of higher professional skills, 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.

- (11) *The concept of highly qualified employment should entail that the person employed not only has a high level of competence, as proven by higher professional qualifications, but also that the work to be carried out is inherently regarded as demanding such competence. While in the modern labour market a direct link between the qualifications and the job is not always and necessarily required, the tasks and duties related to the work contract for highly qualified employment should be so specialised and complex that the required level of competence to perform those duties is usually associated with completion of education programmes and resulting qualifications at ISCED (International Standard Classification of Education) 2011 levels 6, 7 and 8, or, where appropriate, to the broadly equivalent EQF (European Qualifications Framework) levels 6, 7 and 8, according to the national law of the Member State concerned, or, for specific occupations, with comparable higher professional skills.*
- (12) This Directive should not affect the right of the Member States to determine the volumes of admission of third-country nationals coming from third countries to their territory in order to seek work in accordance with Article 79(5) of the Treaty *on the Functioning of the European Union (TFEU)*. On that basis, Member States should be able to either consider an application for an EU Blue Card inadmissible or reject it. ■

- (13) Beneficiaries of international protection as defined in Article 2(a) of Directive 2011/95/EU of the European Parliament and of the Council ¹ have a wide set of rights, including labour market access in the Member State having granted them protection. In order to ² enhance their labour market opportunities across the Union, those who are highly *qualified* should be entitled to apply for an EU Blue Card *in Member States other than the one which granted them protection. In those Member States, they* should be subject to the same rules as any other third ³ country national falling within the scope of this Directive, while *this Directive should have no impact on their status in the Member State having granted them international protection. Beneficiaries* of international protection *are also entitled to apply for an* EU Blue Card ⁴ *in the Member State that granted them international protection. In such a case,* for reasons of legal clarity and coherence, the provisions on equal treatment and family reunification of this Directive should not apply to *them*. Those rights should remain regulated under the asylum acquis and, where applicable, Council Directive 2003/86/EC ⁵.
- (14) The transfer of responsibility for protection of beneficiaries of international protection is outside the scope of this Directive: the protection status and the rights associated with it should not be transferred to another Member State on the basis of the issuance of an EU Blue Card.

- (15) In order to facilitate the independent intra-EU mobility and business activities of those highly *qualified* third-country nationals who are beneficiaries of the right to free movement, they should be given access to the EU Blue Card *in accordance with* the same rules as any other third-country national falling within the scope of this Directive. This *entitlement concerns persons enjoying free movement rights based on family ties to a Union citizen in accordance with relevant legislation and it* should apply regardless of whether or not the Union citizen of reference has exercised the fundamental right to move and reside freely under Article 21 TFEU and regardless of whether the third-country national concerned was first an EU Blue Card holder or a beneficiary of the right to free movement. *Those Blue Card holders should thus be entitled to engage in highly qualified employment, perform business trips and take up residence in different Member States regardless of whether or not the third-country national accompanies the Union citizen of reference.* The rights that these third-country nationals acquire as EU Blue Card holders should be without prejudice to rights they may enjoy under Directive 2004/38/EC of the European Parliament and of the Council ¹. For reasons of legal clarity and coherence, in terms of family reunification and equal treatment the rules under Directive 2004/38/EC should prevail. All provisions regarding the beneficiaries of the right to free movement in this Directive should also apply where that right is derived from those third-country nationals who enjoy rights of free movement equivalent to those of Union citizens under agreements either between the Union and its Member States and third countries or between the Union and third countries.

(16) ■ This Directive should not apply to third-country nationals who apply to reside in a Member State as researchers in order to carry out a research project, as they fall within the scope of Directive (EU) 2016/801 of the European Parliament and of the Council ■ which introduces a specific procedure for admitting third-country nationals for the purposes of scientific research. However, *legally residing third-country nationals* admitted under Directive ■ EU ■ 2016/801 *should be entitled to apply for an EU Blue Card under this Directive. Equally, legally residing EU Blue Card holders should be entitled to apply to reside as researchers under Directive 2016/801. In order to ensure such a possibility, Directive 2016/801 should be amended accordingly.*

(17) *While this Directive should not apply to third-country nationals who apply to be admitted to the EU as intra-corporate transferees pursuant to Directive 2014/66/EU, intra-corporate transferees legally residing in the EU should be entitled to apply for an EU Blue Card under this Directive for other purposes than those covered under Directive 2014/66/EU ■ .*

- (18) It is necessary to provide for a flexible demand-driven, *clear and balanced* admission system based on objective criteria, such as a work contract or a binding job offer of at least 6 months, *compliance with the applicable laws, collective agreements or national practices in the relevant occupational branches*, a salary threshold adaptable by the Member States to the situation in its labour market and higher professional qualifications *or, where appropriate, higher professional skills*.
- (19) This Directive is without prejudice to national procedures on the recognition of diplomas. In order to evaluate if the third-country national concerned possesses higher education or equivalent qualifications, reference should be made ■ to ISCED (International Standard Classification of Education) 2011 levels 6, 7 and 8, or, *where appropriate*, to the broadly equivalent EQF (European Qualifications Framework) levels 6, 7 and 8, according to the *national law* of the Member State concerned.

Member States are encouraged to facilitate the recognition of documents attesting the relevant higher professional qualifications of the third-country national concerned and, as concerns beneficiaries of international protection who may not have the necessary documents, to establish appropriate assessments and validation arrangements of their prior higher education qualifications or, where relevant, their higher professional skills.

- (20) In order to ensure a sufficient level of harmonisation in the admission conditions throughout the Union, both a *lower* and *upper* factor ■ for ■ the salary threshold should be determined. *The lower and upper limit for setting the national salary threshold should be determined by multiplying these factors with the average gross annual salary in the Member State concerned. A salary threshold should be chosen, after consultation with the social partners according to national practices, within the range of the lower and upper limit. This salary threshold should set out the minimum salary which a Blue Card holder should earn. Therefore, in order to be admitted under this Directive, applicants should earn a salary which is equal to or greater than the salary threshold chosen by the Member State concerned.*
- (21) *Member States should be able to provide a lower salary threshold ■ for specific professions where it is considered by the Member State concerned that there is a particular lack of available workforce and where such professions belong to major group 1 or 2 of the ISCO ("International Standard Classification of Occupation") classification. In any event, this salary threshold should not be lower than 1.0 times the average gross annual salary in the Member State concerned.*
- (22) *In line with the priorities of the New Skills Agenda, in particular to improve skills matching and to tackle skills shortages, Member States are encouraged, where appropriate, after consultation of the social partners, to compile lists of sectors of employment which face shortages of highly qualified workers.*

(23) ***Member States should be able to provide a lower salary threshold*** ■ to benefit third-country nationals during a certain period after their graduation. This period should be granted each time that the third-country national reaches a level of education relevant for the purposes of this Directive, namely levels 6, 7 or 8 of ISCED 2011 ■ or, ***where appropriate, EQF levels 6, 7 and 8*** ■, according to the national law of the Member State concerned. It should apply whenever the third-country national applies for an initial or renewed EU Blue Card within three years from the date of obtaining the qualifications and in addition, when that third-country national applies for a ■ renewal of the EU Blue Card and ***a period of 24 months has not elapsed since the issuance of the initial EU Blue Card*** ■. After these grace periods – which may run in parallel – have elapsed the young professionals can be reasonably expected to have gained sufficient professional experience in order to fulfil the regular salary threshold. ***In any event, this lower salary threshold should not be lower than 1.0 times the average gross annual salary in the Member State concerned.***

- (24) The conditions of entry and residence of third-country nationals for the purposes of highly *qualified* employment, including the eligibility criteria related to a salary threshold should be defined. *The salary threshold set by the Member State* should not aim to determine salaries and therefore should not derogate from the rules or practices at Member State level or from collective agreements, and should not be used to constitute any harmonisation in this field. *The salary paid to the Blue Card holder should not be lower than the applicable salary threshold but it may be higher, as determined between the employer and the third-country national, in line with market conditions, labour laws, collective agreements and practices in the Member State concerned.* This Directive should fully respect the competences of Member States, particularly on employment, labour and social matters.
- (25) *Member States should be able to require the third-country national to provide for his or her address at the time of application. In case the third-country national does not yet know his or her future address, Member States should accept a temporary address, which could be the address of the employer.*

- (26) *The period of validity for the EU Blue Card should be at least 24 months. In cases where the duration of the work contract is shorter, the EU Blue Card should be issued at least for the duration of the work contract plus three months, for a maximum of 24 months. If the third-country national holds a travel document whose period of validity is shorter than 24 months or the duration of the work contract, the EU Blue Card should be issued at least for the period of validity of the travel document.* Third-country nationals should be allowed to renew their travel document while holding an EU Blue Card.
- (27) Member States should reject applications for an EU Blue Card and be allowed to withdraw or refuse to renew an EU Blue Card if there is a threat to public policy, public security or public health. *A threat to public health is to be understood in line with Regulation (EU) 2016/399.* Any rejection on grounds of public policy or public security should be based on the individual behaviour of the person concerned, in accordance with the principle of proportionality. Illness or disability suffered after the third-country national was admitted to the territory of the first Member State should not constitute the sole ground for withdrawing or refusing to renew an EU Blue Card or for not issuing an EU Blue Card in a second Member State.
- Moreover, Member States should have the possibility not to withdraw or not to refuse to renew an EU Blue Card, where the obligation to present a valid work contract or the applicable salary threshold are temporarily not met due to illness, disability or parental leave.*

- (28) Member States should be allowed to withdraw or refuse to renew an EU Blue Card where the EU Blue Card holder has failed to comply with the conditions for mobility under this Directive, *including in the case of abusive use of mobility rights*, for example by *not respecting the period allowed for carrying out a business activity or by not submitting an application for long-term mobility within the requested time frame in second Member States, or by applying for an EU Blue Card in a second Member State and beginning employment sooner than allowed* while it is clear that the conditions will not be fulfilled and the application will be refused.
- (29) Any decision to reject an application for an EU Blue Card or to withdraw or refuse to renew an EU Blue Card should take into consideration the specific circumstances of the case and *be proportionate*. In particular, where the ground for rejection, *withdrawal or refusal to renew* is related to the *conduct* of the employer, minor misconduct *of the employer* should not in any case constitute the sole ground for rejecting an application or withdrawing or refusing to renew the permit.
- (30) *Any decision rejecting an application for an EU Blue Card should not affect the right of a third-country national to submit another application. The submission of such a new application should not authorise the person concerned to remain in the territory of the Member State concerned, except when provided by national law.*

- (31) Once all the conditions for admission are fulfilled, Member States should issue an EU Blue Card within specified time limits. If a Member State issues residence permits only on its territory and all the conditions of this Directive relating to admission are fulfilled, the Member State should grant the third-country national concerned the requisite visa. It should be ensured that the competent authorities effectively cooperate *for that purpose. In the event that the Member State does not issue visas, it should grant the third-country national concerned an equivalent permit allowing entry.*
- (32) The rules on processing times for EU Blue Card applications should guarantee the swift issuance of permits in all cases. The processing time for examining the application for an EU Blue Card should not include the time required for the recognition of professional qualifications, where applicable, or the time required for issuing a visa, if required. *In case the validity of the EU Blue Card expires during the procedure for renewal, the third-country national should be entitled, until the decision on the application is taken by the competent authorities, to stay, work and enjoy the rights provided for under this Directive in the territory of the Member State which issued the EU Blue Card, but not the right to mobility to a second Member State.*

- (33) *Where a Member State has determined that an application for an EU Blue Card or for intra-EU mobility is to be made by the employer, it should not restrict the procedural safeguards enjoyed by the third-country national concerned during the application procedure, or the rights enjoyed by the EU Blue Card holder during the period of employment or the EU Blue Card renewal procedure.*
- (34) The format of the EU Blue Card should be in accordance with Regulation (EC) No 1030/2002¹, thus enabling the Member States to refer in particular to the information on the conditions under which the person is permitted to work. *Member States should be able to indicate additional information in paper format or store such information in electronic format, as referred to in Article 4 of that Regulation and point a(16) of the Annex thereto, in order to provide more precise information on the employment activity concerned. The provision of this additional information should be optional for Member States and should not constitute an additional requirement that would compromise the single permit and the single application procedure.*
- (35) The Member State concerned should ensure that applicants have the right to challenge before a court or tribunal any decision rejecting an application for an EU Blue Card, or *any decision not to renew or to withdraw* an EU Blue Card. This is without prejudice to the possibility to designate an administrative authority to carry out a prior administrative review of such *decision*.

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

(36) *Since this Directive aims to address labour and skills shortages in key sectors in the EU labour market, Member States should be able to check whether a vacancy which an applicant for an EU Blue Card intends to fill could instead be filled by national or Union workforce, by third-country nationals lawfully resident in the concerned Member State and already forming part of its labour market by virtue of Union or national law, or by EU long-term residents wishing to move to that Member State for highly qualified employment in accordance with Chapter III of the Directive 2003/109/EC. In case Member States decide to make use of this possibility, they should communicate this in a clear, accessible and transparent way to applicants and employers, including online. This check should not be part of the EU Blue Card renewal procedure in the first Member State. In case of long-term mobility, taking into account the situation of the labour market should only be possible if that Member State has also introduced checks for applicants coming from third countries.*

- (37) In implementing this Directive, Member States should refrain from pursuing active recruitment in developing countries in sectors suffering from a lack of personnel. Ethical recruitment policies and principles applicable to public and private sector employers should be developed in key sectors, for example the health sector. This is consistent with EU's commitment to the 2010 WHO Global Code on the International Recruitment of Health Personnel in addition to the Council and Member States' conclusions of 14 May 2007 on the European Programme for Action to tackle the critical shortage of health workers in developing countries (2007-2013) and the education sector, as appropriate. These principles and policies should be strengthened by the development and application of mechanisms, guidelines and other tools to facilitate, as appropriate, circular and temporary migration, as well as other measures that would minimise negative and maximise positive impacts of highly *qualified* immigration on developing countries in order to turn "brain drain" into "brain gain".
- (38) *In line with the priorities of the New Skills Agenda, in particular to improve skills matching and to tackle skills shortages, Member States are encouraged, where appropriate, after consultation of the social partners, to compile lists of sectors of employment which face shortages of highly qualified workers.*

- (39) A simplified procedure for employers which have been recognised for that purpose should be provided, optional for Member States. The status of recognised employer should bring specific facilitation in terms of procedures and admission conditions – amounting to a simplified procedure – under this Directive and Member States should include sufficient safeguards against abuse. ***In accordance with the principle of proportionality, these safeguards must take into account the gravity and nature of the misconduct.*** Where the status of recognised employer is withdrawn during the period of validity of an EU Blue Card issued under the simplified procedure, regular admission conditions should apply upon renewing that EU Blue Card, unless the third-country national concerned is employed by another recognised employer.
- (40) ***In order to ensure that the criteria for admission are still fulfilled, Member States should be allowed to require that, during the first twelve months of legal employment as an EU Blue Card holder, a change of employer or other significant changes, be subject to a communication, including a check of the labour market situation. After these first twelve months, Member States should be able to require only the communication to the competent authorities of a change of employer or a change affecting the fulfilment of the criteria for admission as set out in Article 5, including, where necessary, the new work contract. No check of the labour market situation should be carried out. This procedure should be limited to an assessment of the elements that have changed.***

- (41) In order to promote innovative entrepreneurship, third-country nationals admitted under this Directive *may* be given the *possibility* to exercise in parallel a self-employed activity without it affecting the right of residence as an EU Blue Card holder. This ■ should be without prejudice to the continuous obligation to meet the conditions for admission under this Directive, and the EU Blue Card holder should therefore remain in highly *qualified* employed activity. *Member States should have the possibility to lay down in their national law the conditions for access to self-employed activity. Member States should also be entitled to limit the scope of allowed self-employed activity. Member States shall give EU Blue Card holders access to self-employed activities under no less favourable conditions than those provided for under existing national schemes. Any income derived from self-employment will not contribute towards meeting the salary threshold required to qualify as an EU Blue Card holder.*
- (42) *In order to enhance the contribution that the EU Blue Card holder may make through his higher professional qualifications, Member States should also have the possibility to lay down in their national law provisions allowing EU Blue Card holders to engage in other professional activities which are complementary to their main activity as an EU Blue Card holder. Any income derived from these professional activities will not contribute towards meeting the salary threshold required to qualify as an EU Blue Card holder.*

- (43) Equal treatment *should be* granted to EU Blue Card holders ■ in respect of those branches of social security listed in Article 3 of Regulation (EC) No 883/2004 of the European Parliament and of the Council ■. This Directive does not harmonise the social security legislation of Member States. It is limited to applying the principle of equal treatment in the field of social security to the third-country nationals falling within its scope.
- (44) In the event of mobility between Member States, Regulation (EU) No 1231/2010 of the European Parliament and of the Council ■ applies. This Directive should not confer more rights to the mobile EU Blue Card holder than those already provided for in existing Union law in the field of social security for third-country nationals who have cross-border interests between Member States.
- (45) Professional qualifications acquired by a third-country national in another Member State should be recognised in the same way as those of Union citizens. Qualifications acquired in a third country should be taken into account in accordance with Directive 2005/36/EC of the European Parliament and of the Council ■. ***This Directive should be without prejudice to the conditions set out under national law for the exercise of regulated professions. It should also not prevent Member States from maintaining national restrictions on access to employment which entails at least occasional involvement in the exercise of public authority and the responsibility for safeguarding the general interest of the State, and national rules on activities reserved to nationals, Union citizens or EEA citizens, including in case of mobility to other Member States, which existed at the time of the entry force of the Directive.***

- (46) The rights acquired by a beneficiary of international protection as an EU Blue Card holder should be without prejudice to rights enjoyed by the person concerned under Directive 2011/95/EU and under the Geneva Convention in the Member State which granted the protection status. In that Member State, in order to avoid situations of conflicting rules, the provisions on equal treatment and family reunification of this Directive should not apply. Persons who are beneficiaries of international protection in one Member State and EU Blue Card holders in another should enjoy the same rights including equality of treatment with nationals of the Member State of residence *and family reunification rights* as any other EU Blue Card holders in the latter Member State. *The status of a beneficiary of international protection is without prejudice to the fact that the person is also an EU Blue Card holder or that his or her EU Blue Card expires.*
- (47) Favourable conditions for family reunification and ■ access to work for spouses should be a fundamental element of this Directive in order to facilitate the attraction of highly *qualified* workers. Specific derogations from Council Directive 2003/86/EC, *which is applicable in both the first and the second Member States*, should be provided for in order to reach this aim. *Member States should have the possibility to restrict the scope of self-employed activities in which spouses may engage, under the same conditions that apply to EU Blue Card holders.* Conditions related to integration or waiting periods should not be applied before allowing family reunification, as highly *qualified* workers and their families are likely to have a favourable starting point regarding integration in the host community. With the aim of facilitating the swift entry of highly *qualified* workers, residence permits to their family members should be issued at the same time as the EU Blue Card, where the relevant conditions are fulfilled and the applications were lodged simultaneously.

- (48) *Derogations from Council Directive 2003/109/EC should be provided for in order to attract highly **qualified** workers and encourage their continuous stay in the Union, while enabling mobility within the Union as well as circular migration ■. EU Blue Card holders who have availed themselves of the possibility to move from one Member State to another Member State should be granted easier access to EU long-term resident status, by allowing them to cumulate periods of residence in different Member States, provided they can demonstrate the number of years of legal and continuous residence required under Article 4(1) of Council Directive 2003/109/EC as holders of an EU Blue Card, of a national permit for highly qualified employment, an authorisation as a student or researcher in accordance with Directive (EU) 2016/801 or as beneficiaries of international protection. They should also demonstrate two years of legal and continuous residence as an EU Blue Card holder immediately prior to the submission of the relevant application within the territory of the Member State where the application for the EU long-term resident status is submitted. As provided for in Council Directive 2003/109/EC, only half of the periods of residence for study purposes may be taken into account in the calculation of the five years of legal and continuous residence, in the Member States where periods of residence for study purposes are taken into account for the calculation of continuous residence.*

- (49) In order to foster the mobility of highly *qualified* workers between the Union and their countries of origin, derogations from Directive 2003/109/EC should be provided for in order to allow longer periods of absence than those provided for in that Directive after highly *qualified* third-country workers have acquired the EU long-term resident status.
- (50) The occupational and geographical mobility of third-country highly *qualified* workers should be recognised as an important contributor to improving labour market efficiency across the Union, addressing skills shortages and offsetting regional imbalances. Mobility within the Union should be facilitated.
- (51) *This Directive shall be without prejudice to the provisions of Directive 96/71/EC of the European Parliament and of the Council and Directive 2014/67/EU of the European Parliament and of the Council.*
- (52) Existing legal uncertainty surrounding business trips of highly *qualified* workers should be addressed by defining this notion and setting a list of activities that in any case should be considered as business activities in all Member States. *These activities should be directly linked to the interests of the employer in the first Member State and related to the duties of the Blue Card holder in the employment for which the Blue Card was granted.* Second Member States should not be allowed to require from EU Blue Card holders engaging in business activities a *visa*, work permit or any other authorisation than the EU Blue Card issued by the first Member State. Where the EU Blue Card is issued by a Member State not applying the Schengen acquis in full, its holder should be entitled to enter and stay in one or several second Member States for the purpose of business activity for up to 90 days in any 180-day period based on the EU Blue Card.

- (53) EU Blue Card holders should be allowed to move to a second Member State under simplified conditions where they intend to apply for a new EU Blue Card based on an existing work contract or binding job offer. Second Member States should not be allowed to require from EU Blue Card holders any other authorisation than the EU Blue Card issued by the first Member State. As soon as they submit *a complete* application for an EU Blue Card within the deadline provided for in this Directive, *it should be possible for the second Member State to allow them to begin employment.* EU Blue Card holders should be *entitled to begin employment at the latest 30 days after submitting the application.* *Mobility* should *be* demand-driven and therefore a work contract should always be required in the second Member State, *all the conditions in applicable laws, collective agreements or practices in the relevant occupational branch should be met* and the salary should meet the threshold set by the second Member State in accordance with this Directive.
- (54) *Where EU Blue Card holders intend to apply for an EU Blue Card in a second Member State in order to exercise a regulated profession, their professional qualifications should be recognised in the same way as those of Union citizens exercising the right to free movement, in accordance with Directive 2005/36/EC and other applicable Union and national law.*
- (55) While some special rules are provided in this Directive regarding entry and stay in a second Member State for the purpose of business activity, as well as moving to a second Member State to *reside and work there under the* EU Blue Card in its territory, all the other rules governing the movement of persons across borders as laid down in the relevant provisions of the Schengen acquis apply.

- (56) Where the EU Blue Card is issued by a Member State not applying the Schengen acquis in full and the EU Blue Card holder, in the mobility situations provided for in this Directive, crosses an external border within the meaning of Regulation (EU) 2016/399 of the European Parliament and of the Council ¹, a Member State should be entitled to require evidence that the EU Blue Card holder is entering its territory either for the purpose of business activities or in order to *reside and work there under the* EU Blue Card based on a work contract or binding job offer. In the case of mobility for carrying out business activities, that Member State should be able to require evidence of the business purpose of the stay, such as invitations, entry tickets, or documents describing the business activities of the company and the position of the EU Blue Card holder in the company.
- (57) Where the EU Blue Card holder moves to a second Member State to apply for an EU Blue Card and he or she is accompanied by family members, that Member State should be able to require *the family members to present* their ² residence *permit issued* in the first Member State. Besides, in case of crossing of an external border within the meaning of Regulation (EU) 2016/399, the Members States applying the Schengen acquis in full should consult the Schengen information system and should refuse entry or object to the mobility of persons for whom an alert for the purposes of refusing entry or stay, as referred to in Regulation (EC) No 1987/2006 of the European Parliament and of the Council ³, has been issued in that system

- (58) *This Directive should allow the second Member State to request that the EU Blue Card holder, who moves on the basis of an EU Blue Card issued by the first Member State and whose application in the second Member State is rejected, leaves its territory. Where the EU Blue Card holder still has a valid EU Blue Card issued by the first Member State, the second Member State should be able to request that the EU Blue Card holder goes back to the first Member State in accordance with Directive 2008/115/EC of the European Parliament and of the Council¹. Where the EU Blue Card issued by the first Member State is withdrawn or has expired during the examination of the application, it should be possible for the second Member State to either decide to return the EU Blue Card holder to a third country, in accordance with Directive 2008/115/EC, or request the first Member State to allow re-entry of the EU Blue Card holder to its territory without unnecessary formalities or delay. In this latter case, the first Member State should issue the EU Blue Card holder with a document allowing re-entry to its territory.*
- (59) For the purpose of residence of beneficiaries of international protection across Member States, it is necessary to ensure that Member States other than the one which issued international protection are informed of the protection background of the persons concerned in order to enable Member States to comply with their obligations regarding the principle of non-refoulement.

¹ *Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).*

- (60) Where a Member State intends to expel a person who has acquired an EU Blue Card in that Member State and who is a beneficiary of international protection in another Member State, that person should enjoy the protection against expulsion guaranteed under Directive 2011/95/EU and under Article 33 of the Convention Relating to the Status of Refugees of 28 July 1951, as amended by the Protocol signed in New York on 31 January 1967 (the Geneva Convention).
- (61) Where the expulsion of a beneficiary of international protection outside the territory of the Member States is permitted under Directive 2011/95/EU, Member States should be obliged to ensure that all information is obtained from relevant sources, including, where appropriate, from the Member State that granted international protection, and that it is thoroughly assessed with a view to guaranteeing that the decision to expel that beneficiary is in accordance with Article 4 of the Charter of Fundamental Rights of the European Union.
- (62) Specific reporting provisions should be provided for to monitor the implementation of this Directive, with a view to identifying and possibly counteracting its possible impacts in terms of brain drain in developing countries and in order to avoid brain waste.

- (63) Since the objectives of this Directive, namely the establishment of a special admission procedure and the adoption of conditions of entry and residence, and the rights, applicable to third-country nationals for the purpose of highly *qualified* employment and their family members, cannot be sufficiently achieved by the Member States, especially – to better exploit the EU’s overall attractiveness – as regards ensuring their mobility between Member States and offering a clear and single set of admission criteria across the Member States, and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (64) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in accordance with Article 6 of the Treaty on European Union (TEU).

- (65) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents¹, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (66) In accordance with Articles 1 and 2 and Article 4a(1) of Protocol 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to TEU and TFEU, and without prejudice to Article 4 of² that Protocol, *Ireland is* not taking part in the adoption of this Directive and *is* not bound by or subject to its application.
- (67) In accordance with Articles 1 and 2 of the Protocol 22 on the position of Denmark annexed to TEU and TFEU, Denmark is not taking part in the adoption of this Directive, and is not bound by it or subject to its application.
- (68) Directive 2009/50/EC should therefore be repealed,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I
GENERAL PROVISIONS

Article 1
Subject matter

This Directive lays down:

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

Article 2
Definitions

For the purposes of this Directive:

- (a) "third-country national" means any person who is not a citizen of the Union within the meaning of Article 20(1) of the Treaty *on the Functioning of the European Union*;
- (b) "highly *qualified* employment" means the employment of a person who:
 - in the Member State concerned, is protected as an employee under national employment law or in accordance with national practice, irrespective of the legal relationship, for the purpose of exercising genuine and effective work for, or under the direction of, someone else;
 - is paid; and
 - has the required ■ higher professional qualifications;

- (c) "EU Blue Card" means the residence permit bearing the term "EU Blue Card" entitling its holder to reside and work in the territory of a Member State under the terms of this Directive;
- (d) "first Member State" means the Member State which first grants a third-country national an "EU Blue Card";
- (e) "second Member State" means any Member State in which the EU Blue Card holder intends to exercise or exercises the right of mobility within the meaning of this Directive, other than the first Member State;
- (f) "family members" means third-country nationals as defined in Article 4(1) of Directive 2003/86/EC;
- (g) "higher professional qualifications" means qualifications attested by evidence of higher education qualifications or higher professional skills;
- (h) "higher education qualifications" means any diploma, certificate or other evidence of formal qualifications issued by a competent authority attesting the successful completion of a post-secondary higher education or equivalent tertiary education programme, namely a set of courses provided by an educational establishment recognised as a higher education institution or equivalent tertiary educational institution by the State in which it is situated, where the studies needed to acquire those qualifications lasted at least three years and correspond at least to ISCED 2011 level 6 or, *where appropriate*, to EQF level 6, according to national law;

- (i) "higher professional skills", *as concerns the occupations listed in the Annex*, means *knowledge, skills and competences attested by professional experience of a level comparable to higher education qualifications, which are relevant in the profession or sector specified in the work contract or binding job offer, and which have been acquired over the duration defined in the Annex for each relevant occupation ; as concerns other occupations, only where provided for by national law or national procedures, means knowledge, skills and competences attested by at least five years of professional experience of a level comparable to higher education qualifications and which are relevant in the profession or sector specified in the work contract or binding job offer;*

ANNEX I – List of occupations referred to in Article 2, point (i)

- Information and communications technology managers and professionals, who have acquired at least three years of relevant professional experience within seven years prior to the application for an EU Blue Card, belonging to the following groups in the ISCO-08 classification:

- 133 Information and communications technology service managers;***
- 25 Information and communications technology professional.***

- (j) "professional experience" means the actual and lawful pursuit of the profession concerned;
- (k) "regulated profession" means a regulated profession as defined in Article 3(1) (a) of Directive 2005/36/EC;

- (l) "business activity" means a temporary activity *directly* related to the business interests of the employer *and to the professional duties of the EU Blue Card holder based on the employment contract in the first Member State, including at least* attending internal and external business meetings, attending conferences and seminars, negotiating business deals, undertaking sales or marketing activities, ■ exploring business opportunities, or attending and receiving training;
- (m) "international protection" has the meaning as defined in Article 2(a) of Directive 2011/95/EU of the European Parliament and of the Council.

Article 3

Scope

1. This Directive shall apply to third-country nationals who apply to be admitted or who have been admitted to the territory of a Member State for the purpose of highly *qualified* employment.
2. This Directive shall not apply to third-country nationals:
 - (a) who seek international protection and are awaiting a decision on their status or who are beneficiaries of temporary protection in accordance with the Council Directive 2001/55/EC ■ in a Member State;
 - (b) who seek protection in accordance with national law, international obligations or practice of the Member State and are awaiting a decision on their status, or who are beneficiaries of protection in accordance with national law, international obligations or practice of the Member State;
 - (c) who apply to reside in a Member State as researchers within the meaning of Directive (EU) 2016/801 in order to carry out a research project;

- (d) who enjoy EU long-term resident status in a Member State in accordance with Directive 2003/109/EC and exercise their right to reside in another Member State in order to carry out an economic activity in an employed or self-employed capacity;
- (e) who enter a Member State under commitments contained in an international agreement facilitating the entry and temporary stay of certain categories of trade and investment-related natural persons, with the exception of third-country nationals who have been admitted to the territory of a Member State as intra-corporate transferees pursuant to Directive 2014/66/EU of the European Parliament and of the Council ¹;
- (f) whose expulsion has been suspended for reasons of fact or law;
- (g) who are covered by Directive 96/71/EC of the European Parliament and of the Council ² as long as they are posted on the territory of the Member State concerned;
- (h) who under agreements between the Union and its Member States and third countries, *as nationals of those third countries*, enjoy rights of free movement equivalent to those of Union citizens.

3. This Directive shall be without prejudice to **■** *the right of the Member States to issue residence permits* other **■** than an EU Blue Card **■** for the purpose of highly *qualified* employment. *Such residence permits shall not confer the right of residence in the other Member States as provided for in this Directive.*

Article 4

More favourable provisions

1. This Directive shall be without prejudice to more favourable provisions of:
- (a) Union law, including bilateral or multilateral agreements concluded between the Union or the Union and its Member States on the one hand and one or more third countries on the other;
 - (b) bilateral or multilateral agreements **■** concluded between one or more Member States and one or more third countries;
2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions in respect of Articles 8(5), 11, 15(4), 16, 17 and 18(4).

CHAPTER II
CRITERIA FOR ADMISSION, REFUSAL AND WITHDRAWAL

Article 5

Criteria for admission

1. *As regards the admission of a third-country national under this Directive, the applicant shall:*
 - (a) present a valid work contract or, as provided for in national law, a binding job offer for highly *qualified* employment, of at least six months in the Member State concerned;
 - (b) *for unregulated professions, present the documents attesting relevant higher professional qualifications in relation to the work to be carried out ;*
 - (c) for regulated professions, present *the documents* attesting fulfilment of the conditions set out under national law for the exercise by Union citizens of the regulated profession specified in the work contract or binding job offer as provided for in national law;
 - (d) present a valid travel document, as determined by national law, and, if required, an application for a visa or a valid visa or, where applicable, a valid residence permit or a valid long-stay visa ■ .
 - (e) *provide* evidence of having or, if provided for by national law, having applied for a sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or resulting from, the work contract.

2. *Member States shall require that all conditions in the applicable laws, collective agreements or practices in the relevant occupational branches for highly qualified employment are met.*
3. In addition to the conditions laid down in *paragraphs 1 and 2*, the gross annual salary resulting from the monthly or annual salary specified in the work contract or binding job offer shall not be inferior to the salary threshold set and published for that purpose by the Member States. The salary threshold *shall be* set by the Member States, *after consultation with the social partners according to national practices, and* be at least 1.0 times but not higher than 1.6 times the average gross annual salary in the Member State concerned.
4. By way of derogation from paragraph 3, and for employment in professions which are in particular need of third-country national workers and which belong to major groups 1 and 2 of ISCO, *Member States may apply a lower salary threshold of at least 80 percent of the salary threshold set by the Member State concerned in accordance with paragraph 3, which in any event shall not be lower than 1.0 times the average gross annual salary in the Member State concerned.*
5. By way of derogation from paragraph 3, as regards third-country nationals who have obtained a higher education qualification not more than three years before submitting the application for an EU Blue Card, *Member States may apply a lower salary threshold of at least 80 percent of the salary threshold set by the Member State concerned in accordance with paragraph 3 , which in any event shall not be lower than 1.0 times the average gross annual salary in the Member State concerned.*

Where the EU Blue Card issued during the period of three years is renewed **■**, the salary threshold referred to in *the first subparagraph* shall *continue to apply if*:

- (a) the *initial* period of three years *has not elapsed; or*
- (b) *a period of 24 months after the issuance of the first EU Blue Card has not elapsed.*

6. *Where an application for an EU Blue Card concerns a third-country national who holds a national residence permit for the purpose of highly qualified employment issued by the same Member State, the concerned Member State shall not:*

- (a) *require the applicant to present the documents provided for in point (b) or (c) of paragraph 1 if the relevant higher professional qualifications were already verified in the context of the application for the national residence permit;*
- (b) *require the applicant to present the evidence provided for in point (e) of paragraph 1 unless the application is submitted in the context of a change of employment, in which case Article 15 shall apply accordingly;*
- (c) *apply Article 7(2)(a) unless the application is submitted in the context of a change of employment, in which case Article 15 shall apply accordingly.*

7. Member States may require the third-country national concerned to provide his or her address in their territory.

Where the national law of a Member State requires an address to be provided at the time of application and the third-country national concerned does not yet know his or her future address, Member States shall accept a temporary address. In such a case, the third-country national shall provide his or her permanent address at the latest when the EU Blue Card pursuant to Article 9 is issued.

Article 6

Volumes of admission

This Directive shall not affect the right of a Member State to determine the volumes of admission of third-country nationals in accordance with Article 79(5) TFEU.

Article 7

Grounds for refusal

1. Member States shall reject an application for an EU Blue Card **■** :
 - (a) where **■** Article 5 *is not complied with; or*
 - (b) where the documents presented have been fraudulently acquired, or falsified or tampered with.
 - (c) *where the third-country national is considered to pose a threat to public policy, public security or public health; or*
 - (d) *where the employer's business was established or operates for the main purpose of facilitating the entry of third-country nationals.*

2. *Member States may reject an application for an EU Blue Card:*
 - (a) where *the competent authorities of the Member State, after checking the labour market situation, for example where there is a high level of unemployment, conclude that the concerned vacancy may be filled by national or Union workforce, by third-country nationals lawfully resident in that Member State and already forming part of its labour market by virtue of Union or national law, or by EU long-term residents wishing to move to that Member State for highly qualified employment in accordance with Chapter III of Directive 2003/109/EC;*

■

- (b) *where* the employer has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions;
 - (c) *where* the employer's business is being or has been wound up under national insolvency laws or no economic activity is taking place; ■
 - (d) *where* the employer has been sanctioned for employment of illegally staying third-country nationals in accordance with Article 9 of Directive 2009/52/EC of the European Parliament and of the Council ■, or for undeclared work or illegal employment according to national law;
 - (e) to ensure ethical recruitment in *professions* suffering from a lack of qualified workers in the countries of origin, *including on the basis of an agreement listing professions for this purpose between the Union and its Member States and one or more third countries on the one hand or between the Member States and one or more third countries on the other hand.*
3. Without prejudice to paragraph 1, any decision to reject an application shall take account of the specific circumstances of the case and respect the principle of proportionality.

Article 8

Withdrawal or non-renewal of the EU Blue Card

1. Member States shall withdraw or refuse to renew an EU Blue Card where:
- (a) the EU Blue Card or the documents presented have been fraudulently acquired, or have been falsified or tampered with;

- (b) the third-country national no longer holds a valid work contract for highly *qualified* employment;
- (c) *the third-country national no longer holds* the qualifications required *in* points (b) *or* (c) of Article 5(1); or ■
- (d) *the salary of the third-country national* no longer meets the salary threshold as set in accordance with Article 5(3), (4) or (5), as applicable ■ .

2. Member States may withdraw or refuse to renew an EU Blue Card ■ :

- (a) for reasons of public policy, public security or public health;
- (b) where appropriate, where the employer has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions;
- (c) *wherever the EU Blue Card holder does not have sufficient resources to maintain himself or herself and, where applicable, the members of his or her family without having recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages or minimum income and pensions as well as the number of family members of the EU Blue Card holder. Such evaluation shall take into account the contributions of the family members to the household income*
- (d) *where the EU Blue Card holder is residing in the Member State concerned for purposes other than those for which he or she was authorised to reside.*

- (e) where the conditions in the applicable laws, collective agreements or practices in the relevant occupational branches for highly *qualified* employment are no longer met;
- (f) where the *EU Blue Card holder* has not *complied with the relevant procedures as provided for* in Article 15 (2) (a), (3), or (4);
- (g) where the third-country national no longer holds a valid travel document ■ , *provided that* prior to withdrawing ■ the EU Blue Card, *the Member State had* set a reasonable deadline for the third-country national concerned to obtain and present a valid travel document;
- (h) *where the third-country national fails to comply with the conditions of mobility under Chapter V.*

3. *By way of derogation from point (f) of paragraph 2, the lack of communication pursuant to point (a) of Article 15(2) or to Article 15(3) or (4) shall not be considered to be a sufficient reason for withdrawing or not renewing the EU Blue Card if the holder proves that the communication did not reach the competent authorities for a reason independent of the holder's will.*
4. *By way of derogation from points (b) and (d) of paragraph 1, Member States may decide not to withdraw or not to refuse to renew an EU Blue Card where the EU Blue Card holder temporarily and in any case for no longer than 12 months does not fulfil the criteria for admission in point (a) of paragraph 1 of Article 5 or paragraph 2 of Article 5 or, where applicable, paragraph 4 or 5 of Article 5 as a result of illness, disability or parental leave.*

5. *By way of derogation from points (b) and (d) of paragraph 1 and point (c) of paragraph 2, the EU Blue Card shall not be withdrawn or not renewed in case of unemployment of the EU Blue Card holder except where:*

(a) the EU Blue Card holder cumulates a period of unemployment exceeding three months and has held an EU Blue Card for less than two years, or

(b) the EU Blue Card holder cumulates a period of unemployment exceeding six months and has held an EU Blue Card for more than two years.

Member States may allow longer periods of unemployment before withdrawing or not renewing the EU Blue Card.

6. *Where a Member State intends to withdraw or not renew the EU Blue Card in accordance with points (b) and (e) of paragraph 2, the competent authority shall notify the EU Blue Card holder in advance and set him or her a reasonable deadline of at least three months to seek new employment subject to the conditions set out in Article 15(1), (2) and (3). The period to seek employment shall be six months where the EU Blue Card holder has been previously employed for, at least, two years.*

7. Without prejudice to paragraph 1, any decision to withdraw or refuse to renew an EU Blue Card shall take account of the specific circumstances of the case and respect the principle of proportionality.

CHAPTER III
EU BLUE CARD AND PROCEDURE

Article 9

EU Blue Card

1. Where a third-country national fulfils the criteria set out in Article 5 and where no ground for rejection pursuant to Article 7 applies, he or she shall be issued with an EU Blue Card.

Where a Member State only issues residence permits on its territory and the third-country national fulfils all the admission conditions laid down in this Directive, the Member State concerned shall issue him or her the requisite visa.
2. Member States shall set a standard period of validity for the EU Blue Card, which shall be at least 24 months. If the work contract covers a shorter period, the EU Blue Card shall be issued at least for the duration of the work contract plus three months ***but no longer than the standard period set out in accordance with the first sentence. If the period of validity of the travel document is shorter than the period set out in accordance with the first or the second sentence, the EU Blue Card shall be issued at least for the period of validity of the travel document.***
3. The EU Blue Card shall be issued by the competent authorities of the Member State using the uniform format as laid down in Regulation (EC) No 1030/2002. In accordance with point (a)¹² of the Annex to that Regulation, Member States ***may*** indicate on the EU Blue Card the conditions for access to the labour market as set out in Article 15(1) of this Directive. Member States shall enter the words "EU Blue Card" under the heading "type of permit" in the residence permit **■**

Member States may indicate additional information related to the employment relationship of the EU Blue Card holder in paper format, or store such data in electronic format as referred to in Article 4 of Regulation (EC) No 1030/2002 and in point (a)16 of the Annex thereto.

4. Where a Member State issues an EU Blue Card to a third-country national to whom it has granted international protection, it shall enter the following remark in that third-country national's EU Blue Card, under the heading "Remarks": "International protection granted by [name of the Member State] on [date]". Where that Member State withdraws the international protection enjoyed by the EU Blue Card holder, it shall, where appropriate, issue a new EU Blue Card not containing that remark.
5. Where an EU Blue Card is issued by a Member State to a third-country national who is a beneficiary of international protection in another Member State, the Member State issuing the EU Blue Card shall enter the *following* remark *in that third-country national's EU Blue Card, under the heading "Remarks": "International protection granted by [name of the Member State] on [date]"*.

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

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

6. ***Where an EU Blue Card is issued by a Member State on the basis of higher professional skills in occupations not listed in the Annex, the Member State issuing the EU Blue Card shall enter the following remark in that third-country national's EU Blue Card, under the heading "Remarks": ["Occupations not listed in the Annex"].***
7. During the period of its validity, the EU Blue Card shall entitle its holder to:
 - (a) enter, re-enter and stay in the territory of the Member State issuing the EU Blue Card;
 - (b) enjoy the rights recognised in this Directive.

Article 10

Applications for admission

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

3. *By way of derogation from paragraph 2, a Member State may accept, in accordance with its national law, an application submitted when the third-country national concerned is not in possession of a valid residence permit or long-stay visa but is legally present in its territory.*

Article 11

Procedural safeguards

1. The competent authorities of the Member States shall adopt a decision on the application for an EU Blue Card and notify the applicant in writing, in accordance with the notification procedures laid down in the national law of the Member State concerned. The *decision* shall be *adopted and notified as soon as possible, but* at the latest within *90* days of the date of submission of the *complete* application.

Where the employer has been recognised in accordance with Article 13, the *decision* shall be *adopted and notified as soon as possible but not later than* 30 days of the date *on which* the *complete* application *was submitted*.

2. Where the information or documents supplied in support of the application are inadequate or incomplete, the competent authorities shall notify the applicant of the additional information that is required and set a reasonable deadline for providing it. The period referred to in paragraph 1 shall be suspended until the authorities have received the additional information or documents required. If the additional information or documents have not been provided within the deadline, the application may be rejected.

3. Any decision rejecting an application for an EU Blue Card, **any decision** to withdraw an EU Blue Card, **or any decision not to renew an EU Blue Card** shall be notified in writing to the third-country national concerned and, where relevant, to his **or her** employer in accordance with the notification procedures set out in the relevant national law. The notification shall specify the reasons for the decision and the competent authority with which an appeal may be submitted as well as the time limit for submitting the appeal. Member States shall provide an effective judicial remedy, in accordance with national law.
4. An applicant shall be allowed to submit an application for renewal before the expiry of the EU Blue Card. Member States may set a maximum deadline of **90** days prior to the expiry of the EU Blue Card for submitting an application for renewal.
5. Where the validity of the EU Blue Card expires during the procedure for renewal, Member States shall allow the third-country national to stay **as an EU Blue Card holder** on their territory until the competent authorities have taken a decision on the application.
6. ***Where Member States issue national residence permits for the purpose of highly qualified employment, they shall grant EU Blue Card holders the same procedural safeguards as those provided for under the national scheme, where these are more favourable than those provided for in paragraphs 1 to 5 of this Article.***

Article 12

Fees

Member States may require the payment of fees for the handling of applications in accordance with this Directive. The level of fees required by a Member State for the processing of applications shall not be disproportionate or excessive.

Where Member States issue national permits for the purpose of highly skilled employment, they shall not require EU Blue Card applicants to pay higher fees than those required from applicants for national permits.

Article 13

Recognised employers

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

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

The recognition procedures shall not entail disproportionate or excessive administrative burden or costs for the employers, **in particular for small and medium-sized enterprises.**

2. The simplified procedures shall include processing of applications as provided for in the second subparagraph of Article 11(1). Applicants shall be exempt from presenting *one or more pieces of* evidence referred to in points (b) or (e) of Article 5(1) or in Article 5(7).
3. *Member States may refuse to recognise an employer pursuant to paragraph 1, where the employer has been sanctioned for:*
 - (a) *employment of illegally staying third-country nationals pursuant to Directive 2009/52/EC, or*
 - (b) *undeclared work or illegal employment according to national law, or*
 - (c) *failing to meet its legal obligations regarding social security, taxation, labour rights or working conditions.*

Any decision to refuse to recognise an employer shall take account of the specific circumstances of the case, including the time elapsed since the sanction was imposed, and respect the principle of proportionality.

4. Member States may **■** refuse to renew or decide to withdraw the status of recognised employer where the employer has not respected its obligations under this Directive or in cases where the recognition has been fraudulently acquired.
5. *Where Member States issue national residence permits for the purpose of highly qualified employment and have established recognition procedures for employers facilitating the issuance of such permits, they shall apply the same recognition procedures to applications for EU Blue Cards, where these procedures are more favourable than those provided for in paragraphs 1 to 4 of this Article.*

Article 14

Sanctions against employers

1. *Member States shall provide for sanctions against employers who have not fulfilled their obligations under this Directive. Those sanctions shall be effective, proportionate and dissuasive.*
2. *Member States shall provide for measures to prevent possible abuses of this Directive. Those measures shall include monitoring, assessment and, where appropriate, inspection in accordance with national law or administrative practice.*

CHAPTER IV

RIGHTS

Article 15

Labour market access

1. EU Blue Card holders shall have **■** access to highly *qualified* employment in the Member State concerned *under the conditions provided for in this Article*.
2. *During the first twelve months of legal employment as an EU Blue Card holder, Member States may:*
 - (a) *require that a change of employer or a change which may affect the fulfilment of the criteria for admission as set out in Article 5 be communicated to the competent authorities in the Member State concerned, in accordance with procedures laid down in national law, and **■***
 - (b) *require that a change of employer be subject to a check of the labour market situation, where Member States carry out such a check in accordance with Article 7(2)(a).*

The right of the Blue Card holder to pursue such a change in employment may be suspended for a maximum of 30 days while the Member State concerned checks that the conditions for admission laid down in Article 5 are fulfilled and that the vacancy concerned could not be filled by the persons listed in Article 7(2)(a). The concerned Member State may oppose the change of employment within those 30 days.

3. *After these first twelve months, Member States may only require that a change of employer or a change affecting the fulfilment of the criteria for admission as set out in Article 5 be communicated in accordance with procedures laid down by national law. The communication procedure shall not suspend the right of the EU Blue Card holder to pursue the new employment.*
4. *During a period of unemployment, the EU Blue Card holder shall be allowed to seek and take up employment in accordance with the conditions set out in this Article. The EU Blue Card holder shall communicate the beginning and, where appropriate, the end of the period of unemployment to the competent authorities of the Member State of residence, in accordance with the relevant national procedures.*
5. *Without prejudice to the criteria for admission set out in Article 5, Member States may allow EU Blue Card holders to engage in self-employed activity in parallel to the activity in highly qualified employment in accordance with conditions laid down in national law. Member States are entitled to limit the scope of allowed self-employed activity. Any such activity shall be subsidiary to their main activity as an EU Blue Card holder.*

6. *Where Member States issue national residence permits for the purpose of highly qualified employment, they shall guarantee EU Blue Card holders access to self-employed activities under no less favourable conditions than those provided for under the national scheme.*
7. *Without prejudice to the criteria for admission set out in Article 5, Member States may allow EU Blue Card holders to engage in professional activities other than their main activity as an EU Blue Card holder in accordance with conditions laid down in national law.*
8. By way of derogation from paragraph 1, Member States may retain restrictions on access to employment, *in accordance with existing national or Union law, provided such employment activities entail at least occasional involvement in the exercise, of public authority and the responsibility for safeguarding the general interest of the State or where such employment activities are reserved to nationals, Union citizens or EEA citizens.*
9. This Article shall apply without prejudice to the principle of preference for Union citizens where applicable under the provisions of the relevant Acts of Accession.

Article 16
Equal treatment

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

2. With respect to point (c) of paragraph 1 the Member State concerned may restrict equal treatment as regards study and maintenance grants and loans or other grants and loans regarding secondary and higher education and vocational training. Access to university and post-secondary education may be subject to specific prerequisites in accordance with national law.

With respect to point (f) of paragraph 1 the Member State concerned may restrict equal treatment as regards procedures for obtaining housing. This shall be without prejudice to the freedom of contract in accordance with Union and national law.

3. EU Blue Card holders moving to a third country, or their survivors who reside in a third country and who derive rights from the EU Blue Card holder, shall receive, in relation to old age, invalidity and death, statutory pensions based on the EU Blue Card holder's previous employment and acquired in accordance with the legislation referred to in Article 3 of Regulation (EC) No 883/2004, under the same conditions and at the same rates as the nationals of the Member States concerned when they move to a third country.
4. The right to equal treatment laid down in paragraph 1 shall be without prejudice to the right of the Member State to withdraw or to refuse to renew the EU Blue Card in accordance with Article 8.
5. This Article shall not apply to EU Blue Card holders who are beneficiaries of the right to free movement under Union law in the Member State concerned.

6. This Article shall apply to EU Blue Card holders who are beneficiaries of international protection only when they reside in a Member State other than the Member State which granted them international protection.
7. *Where Member States issue national residence permits for the purpose of highly qualified employment, they shall grant EU Blue Card holders the same equal treatment rights as the ones granted to holders of national residence permits, where these are more favourable than those provided for in this Article.*

Article 17

Family members

1. Council Directive 2003/86/EC shall apply with the derogations laid down in this Article.
2. By way of derogation from Articles 3(1) and 8 of Directive 2003/86/EC, family reunification shall not be made dependent on the requirement of the EU Blue Card holder having reasonable prospects of obtaining the right of permanent residence, ***to hold a residence permit for a period of validity of one year or more or*** having a minimum period of residence.
3. By way of derogation from the third subparagraph of Article 4(1) and from the second subparagraph of Article 7(2) of Directive 2003/86/EC, the integration conditions and measures referred to therein may only be applied after the persons concerned have been granted family reunification.

4. By way of derogation from the first subparagraph of Article 5(4) of Directive 2003/86/EC, where the conditions for family reunification are fulfilled and the *complete* applications were submitted simultaneously, *the decision on the application of* family members shall be *adopted and notified* at the same time as the *decision on the application for an* EU Blue Card. Where the family members join the EU Blue Card holder after the EU Blue Card has been granted to him or her and where the conditions for family reunification are fulfilled, *the decision* shall be *adopted and notified as soon as possible but* at the latest within *90* days from the date on which the *complete* application was submitted. *Article 11(2) and (3) of this Directive shall apply accordingly.*
5. By way of derogation from Article 13(2) and (3) of Directive 2003/86/EC, the duration of validity of the residence permits of family members shall be the same as that of the EU Blue Card insofar as the period of validity of their travel documents allows it.
6. By way of derogation from Article 14 (2) of Directive 2003/86/EC, Member States shall not apply any time limit in respect of access to the labour market. *By way of derogation from Article 14(1)(b) of that Directive, and without* prejudice to the restrictions referred to in Article 15(8) of this Directive, family members shall have access to any *employment, and to* self-employed activity in *accordance with applicable requirements under national law, in* the Member State concerned **█** .
7. By way of derogation from Article 15(1) of Directive 2003/86/EC, for the purposes of calculation of the five years of residence required for the acquisition of an autonomous residence permit, residence in different Member States shall be cumulated. *Member States may require two years of legal and continuous residence immediately prior to the submission of the relevant application within the territory of the Member State where the application for an autonomous residence permit is submitted.*

8. This Article shall not apply to *family members of those* EU Blue Card holders who are beneficiaries of the right to free movement under Union law in the Member State concerned.
9. This Article shall apply to *family members of those* EU Blue Card holders who are beneficiaries of international protection only when *those EU Blue Card holders* reside in a Member State other than the Member State which granted them international protection.
10. ***Where Member States issue national residence permits for the purpose of highly qualified employment, they shall grant EU Blue Card holders and their family members the same rights as those granted to holders of national residence permits and their family members, where these are more favourable than those provided for in this Article.***

Article 18

EU long-term resident status for EU Blue Card holders

1. Directive 2003/109/EC shall apply with the derogations laid down in this Article.
2. By way of derogation from Article 4(1) of Directive 2003/109/EC, the EU Blue Card holder having made use of the possibility provided for in Article 21 of this Directive is allowed to cumulate periods of residence in different Member States in order to fulfil the requirement concerning the duration of residence, if that holder has accumulated:

- (a) *the number of years of legal and continuous residence required under Article 4(1) of Directive 2003/109/EC as a holder of an EU Blue Card, of a national residence permit for highly qualified employment, of an authorisation as researcher or, where appropriate, of an authorization as a student in accordance with the second paragraph of Article 4(2) of Directive 2003/109/EC or as a beneficiary of international protection* within the territory of the Member States; and
 - (b) two years of legal and continuous residence as an EU Blue Card holder immediately prior to the submission of the relevant application within the territory of the Member State where the application for the EU long-term resident status is submitted.
3. For the purpose of calculating the five years period of legal and continuous residence in the Union referred to in point (a) of paragraph 2 [of this Directive] and by way of derogation from the first subparagraph of Article 4(3) of Directive 2003/109/EC, periods of absence from the territory of the Member States shall not interrupt the five years period if those periods of absence are shorter than twelve consecutive months and do not exceed in total eighteen months within the five years period of legal and continuous residence.

4. By way of derogation from Article 9(1)(c) of Directive 2003/109/EC, Member States shall extend to 24 consecutive months the period of absence from the territory of the Member States which is allowed to an EU long-term resident holder of a long-term residence permit with the remark referred to in Article 19(2) of this Directive and of his family members having been granted the EU long-term resident status.
5. Point (f) of Article 16(1), **Article 16(3)**, Article 20 and, where applicable, Articles 17 and 22 shall apply to holders of a long-term residence permit with the remark referred to in Article 19(2).
6. Where the EU long-term resident who holds a long-term residence permit with the remark referred to in Article 19(2) of this Directive is exercising his or her right to move to a second Member State pursuant to Chapter III of Directive 2003/109/EC, Article 14(3) and (4 **■**) of that Directive shall not apply. The second Member State may apply measures in accordance with Article 21(8) of this Directive.

Article 19

Long-term residence permit

1. EU Blue Card holders who fulfil the conditions set out in Article 18 of this Directive for the acquisition of the EU long-term resident status shall be issued with a residence permit in accordance with **■** Regulation (EC) No 1030/2002.
2. Member States shall enter the words "Former EU Blue Card holder" in the residence permit referred to in paragraph 1 of this Article under the heading "remarks".

CHAPTER V
MOBILITY BETWEEN MEMBER STATES

Article 20

Short-term mobility

1. Where a third-country national who holds a valid EU Blue Card issued by a Member State applying the Schengen acquis in full enters and stays in one or several second Member States for a period of 90 days in any 180-day period for the purpose of carrying out a business activity, the second Member State shall not require any authorisation for exercising such activity other than the EU Blue Card issued by the first Member State.
2. A third-country national who holds a valid EU Blue Card issued by a Member State not applying the Schengen acquis in full shall be entitled to enter and stay for the purpose of carrying out a business activity in one or several second Member States for up to 90 days in any 180-day period on the basis of the EU Blue Card issued by the first Member State ***and a valid travel document. Where the EU Blue Card holder crosses an internal border where controls have not yet been lifted, the second Member State applying the Schengen Acquis in full may require the EU Blue Card holder to provide evidence of the business purpose of the stay.*** The second Member State shall not require any authorisation for exercising the business activity other than the EU Blue Card issued by the first Member State.

Article 21

Long-term mobility

1. After twelve months of legal residence in the first Member State as an EU Blue Card holder, the third-country national shall be entitled to enter, *reside and work in* a second Member State for the purpose of highly *qualified* employment on the basis of the EU Blue Card and a valid travel document under the conditions set out in this Article.
2. *Where the EU Blue Card is issued by a Member State not applying the Schengen acquis in full and the EU Blue Card holder crosses, for the purpose of long-term-mobility, an internal border where controls have not yet been lifted, the second Member State applying the Schengen Acquis in full may require the EU Blue Card holder to present the valid EU Blue Card issued by the first Member State and a work contract or a binding job offer for highly qualified employment of at least six months in the second Member State.*
3. As soon as possible and no later than one month after *the EU Blue Card holder entered* the territory of the second Member State, the application for an EU Blue Card *shall be submitted* to the competent authority of that Member State, and *shall be accompanied by* all the documents proving the fulfilment of the conditions referred to in paragraph 4 for the second Member State. *Member States shall determine whether the application is to be made by the third-country national or by the employer. Member States may also allow an application from either of the two.*

The EU Blue Card holder shall be allowed to work in the second Member State *at the latest 30 days* after *the submission of the complete* application.

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

4. For the purposes of the application referred to in paragraph 3, the *applicant* shall present:

- (a) the valid EU Blue Card issued by the first Member State;
- (b) a valid work contract or, as provided for in national law, a binding job offer for highly *qualified* employment, of at least six months in the second Member State;
- (c) for regulated professions, *the documents* attesting fulfilment of the conditions set out under national law for the exercise by Union citizens of the regulated profession specified in the work contract or binding job offer as provided for in national law. *For the purpose of applying for an EU Blue Card in a second Member State, EU Blue Card holders shall enjoy equal treatment with Union citizens as regards recognition of professional qualifications, in accordance with applicable Union and national law.*
- (d) a valid travel document, as determined by national law;
- (e) evidence of meeting the salary threshold set in the second Member State in application of paragraph 2 or, where applicable, of paragraphs 4 or 5 of Article 5.

For unregulated profession, where the first Member State has issued the EU Blue Card on the basis of higher professional skills for occupations not listed in the Annex, the applicant may be required to present the documents attesting higher professional qualifications in relation to the work to be carried out, as provided for in the national law of the second Member State.

5. *For the purposes of the application referred to in paragraph 3, the Member State concerned may require the applicant:*
- (a) *for unregulated professions, where the EU Blue Card holder has worked for less than two years in the first Member State, to present the documents attesting higher professional qualifications in relation to the work to be carried out as provided for in national law;*
 - (b) *to provide evidence of having, or if provided for by national law, applied for a sickness insurance for all the risks normally covered for nationals of the Member States concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or resulting from, the work contract.*
6. The second Member State shall reject an application for an EU Blue Card *where:*
- (a) **█** *paragraph 4 is not complied with;*
 - (b) *the documents were fraudulently acquired, or falsified or tampered with;*
 - (c) *the employment does not comply with the conditions laid down in the applicable laws, collective agreements or practices as referred to in Article 5(2);*
 - (d) *the EU Blue Card holder poses a threat to public policy, public security or public health.*
7. *In respect of any application procedure for the purpose of long-term mobility, the procedural safeguards set out in Article 11 (2) and (3) shall apply accordingly. Without prejudice to paragraph 4, a decision to reject an application for long-term mobility shall take account of the specific circumstances of the case and respect the principle of proportionality.*

8. The second Member State may reject an application for an EU Blue Card on the basis of a check *carried out* in accordance with Article 7(2)(a) only if *that* Member State *carries out* such checks *when it is the first Member State*.

9. *The* second Member State shall adopt a decision on an application for an EU Blue Card
■ to either:

■
(a) *where the conditions laid down in this Article are fulfilled, issue an EU Blue Card and allow the third-country national to reside on its territory for the purpose of highly qualified employment; or*

(b) *where the conditions for mobility laid down in this Article are not fulfilled, reject the application and oblige the applicant and his or her family members, in accordance with the procedures provided for in national law, to leave its territory.*

By way of derogation from Article 11(1), the second Member State shall notify the applicant and the first Member State in writing of its decision as soon as possible, but at the latest within 30 days of the date of submission of the complete application.

Under exceptional and duly justified circumstances linked to the complexity of the application, Member States may extend the maximum period by 30 days. They shall inform the applicant of the extension before that maximum period has expired.

In its notification to the first Member State, the second Member State shall specify the grounds referred to in (b) and (d) of paragraph 6 for rejecting the application.

10. Where the EU Blue Card issued by the first Member State expires during the procedure, the second Member State may issue, if so required by national law, national temporary residence permits, or equivalent authorisations, allowing the applicant to continue to stay legally on its territory until a decision on the application has been taken by the competent authorities.
11. From the second time that an EU Blue Card holder and, where applicable, his family members, make use of the possibility to move to another Member State *under this Article and Article 22*, "first Member State" shall be understood as meaning the Member State from where the person concerned moves and "second Member State" as meaning the Member State to which he *or she* is applying to reside. By way of derogation from paragraph 1, an EU Blue Card holder may move to another Member State a second time after six months of legal residence in the first Member State as an EU Blue Card holder.

Article 22

Residence in the second Member State for family members

1. Where the EU Blue Card holder moves to a second Member State in accordance with Article 21 and where the family was already constituted in the first Member State, the members of his or her family shall be *entitled* to accompany **■** or *join the EU Blue Card holder*.

Directive 2003/86/EC and Article 17 shall apply, subject to the derogations provided for in paragraphs 2 to 7.

Where the family was not already constituted in the first Member State, Article 17 shall apply.

2. *By way of derogation from Article 13(1) of Directive 2003/86/EC, the members of the EU Blue Card holder's family shall be entitled to enter and stay in the second Member State based on the valid residence permits obtained as family members of an EU Blue Card holder in the first Member State.*

Where the residence permits of the family members are issued by a Member State not applying the Schengen acquis in full and the family members of an EU Blue Card holder join him or her, when crossing an internal border where controls have not yet been lifted for the purpose of moving to a second Member State, the second Member State applying the Schengen Acquis in full may require that family members present their residence permits in the first Member State as family members of the EU Blue Card holder.

3. *By way of derogation from Article 5(3) of Directive 2003/86/EC, no later than one month after entering the territory of the second Member State, the family members concerned or the EU Blue Card holder, in accordance with national law, shall submit an application for a residence permit as a family member to the competent authorities of that Member State.*

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

4. *By way of derogation from Articles 5(2) and 7(1) of Directive 2003/86/EC, the second Member State may require the family members concerned to present with their application for a residence permit:*

- (a) their residence permit in the first Member State and a valid travel document, or certified copies thereof;
- (b) evidence that they have resided as members of the family of the EU Blue Card holder in the first Member State;
- (c) *evidence referred to in points (b) of Article 7(1) of Directive 2003/86/EC.*

5. *Where the conditions set out in this Article are fulfilled and the applications were submitted simultaneously, the second Member State shall issue the residence permits for family members at the same time as the EU Blue Card.*

■ By way of derogation from Article 17(4) [of this Directive], where the *conditions set out in this Article are fulfilled and the* family members join the EU Blue Card holder after *the EU Blue Card has been granted to him or her*, residence permits *for family members* shall be granted at the latest within 30 days from the date on which the application was submitted ■ .

■ *In duly justified circumstances linked to the complexity of the application, Member States may extend the period by a maximum of 30 days.*

6. This Article shall apply to *family members of* EU Blue Card holders who are beneficiaries of international protection only when *those EU Blue Card holders* move to reside in a Member State other than the Member State which granted them international protection.
7. This Article shall not apply to *family members of* EU Blue Card holders who are beneficiaries of the right to free movement under Union law in the second Member State.

Article 23

Safeguards and sanctions in cases of mobility

1. *Notwithstanding Article 8(1)(a) and 8(2)(a), where a Blue Card holder makes use of the possibility to move to another Member State pursuant to Article 21, the first Member State shall not withdraw his or her EU Blue Card until the second Member State has taken a decision on the application for long-term mobility.*
2. Where the second Member State rejects the application for an EU Blue Card in accordance with point (b) of Article 21(9), the first Member State shall, upon the request of the second Member State, allow re-entry of the EU Blue Card holder and, where applicable, his *or her* family members, without formalities and without delay. This shall also apply if the EU Blue Card issued by the first Member State has expired or has been withdrawn during the examination of the application. ■

3. The EU Blue Card holder or his *or her* employer in the second Member State may be held responsible for the costs related to the re-entry of the EU Blue Card holder and his *or her* family members referred to in paragraph 2.
4. Member States may *provide for sanctions in accordance with Article 14 against* the employer of the EU Blue Card holder *who is* responsible for *the* failure to comply with the conditions of mobility laid down in this Chapter **■** .
5. Where a Member State withdraws or does not renew an EU Blue Card which contains the remark referred to in Article 9(5) and decides to expel the third-country national, it shall request the Member State mentioned in that remark to confirm whether the person concerned is still a beneficiary of international protection in that Member State. The Member State mentioned in the remark shall reply within one month after receiving the request for information.

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

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

6. Where the EU Blue Card holder or his or her family members cross the external border of a Member State applying the Schengen acquis in full, that Member State shall, *in accordance with Regulation (EU) 2016/399*, consult the Schengen information system. That Member State shall refuse entry for persons for whom an alert for the purposes of refusing entry and stay has been issued in the Schengen information system.

CHAPTER VI FINAL PROVISIONS

Article 24

Access to information and monitoring

1. Member States shall make easily accessible to applicants the information on all the documentary evidence needed for an application and information on entry and residence conditions, including the rights, obligations and procedural safeguards, of the third-country nationals falling under the scope of this Directive and of their family members. This information shall include information on the salary thresholds set in the Member State concerned in accordance with Article 5(3), (4) and (5), and on the applicable fees.

This information shall also include information:

- (a) on business activities allowed in the territory of the Member State concerned to an EU Blue Card holder from another Member State as referred to in Article 20 ;
- (b) on the procedures applicable to obtaining an EU Blue Card as well as residence permits for family members, in a second Member State, as referred to in Article 21 and 22.

In the case where Member States decide to *introduce legislative or regulatory measures in accordance with Article 6 or* make use of the possibility provided for by Article 7(2)(a), *this information shall be communicated in the same way. The information on check of the labour market situation pursuant to Article 7(2)(a) shall specify, where appropriate, the sectors, occupations and regions concerned.*

- 2. *Where Member States issue national residence permits for the purpose of highly qualified employment, they shall ensure the same access to information on the EU Blue Card as on the national residence permits.*
- 3. Member States shall communicate to the Commission ■ upon each modification, *but at least once per year:*
 - (a) the factor they have decided to set for determining the annual salary thresholds, and the resulting nominal amounts, in accordance with *paragraph 2 or, where applicable, paragraphs 4 or 5 of Article 5;*
 - (b) ■ the list of the professions for which a derogation in accordance with Article 5(4) applies;
 - (c) *the list of allowed business activities, as meant in Article 2(l), for the application of Article 20;*

- (d) *information on legislative or regulatory measures in accordance with Article 6, where applicable;*
- (e) *information on a check of the labour market situation provided for in Article 7(2)(a), where applicable.*

Where Member States refuse applications for an EU Blue Card based on ethical recruitment considerations in accordance with Article 7(2)(e), they shall communicate *and justify* to the Commission and to the other Member States *each year* the countries and *professions* concerned.

Member States shall *inform* the Commission **■** of *agreements with third countries concluded in accordance with Article 7(2)(e)*.

Article 25

Statistics

1. Annually, and for the first time by ... **■** at the latest, Member States shall, in accordance with Regulation (EC) No 862/2007 **■**, communicate to the Commission statistics on the numbers of third-country nationals who have been granted an EU Blue Card and on those whose *applications* have been rejected, specifying those rejected in application of Article 6 or 7(2)(a), *on applications considered inadmissible on grounds of Article 6*, as well as on the numbers of third-country nationals whose EU Blue Card has been renewed or withdrawn, during the previous calendar year. Those statistics shall be disaggregated by the citizenship, **■** length of validity of the permits, sex and age of the applicants **■** and, *where available, by occupation, size of the employer's undertaking and* economic sector. Those statistics for third-country nationals who have been granted an EU Blue Card shall be further disaggregated into beneficiaries of international protection, beneficiaries of the right to free movement and those who have acquired EU long-term resident status in accordance with Article 18.

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

For EU Blue Card holders, and members of their families, who have been granted residence permits in a second Member State in accordance with Articles 21 and 22, the information provided shall, in addition, specify the Member State of previous residence.

2. For the purpose of the implementation of paragraphs Article 5(3), (4) and (5), reference shall be made to data *provided by Member States* to Eurostat in accordance with Regulation (EU) No 549/2013 **and, where appropriate, national data.**

Article 26

List of occupations in the Annex

1. *The occupations for which the knowledge, skills and competences attested by a number of required years of relevant professional experience are considered equivalent, for the purpose of applying for an EU Blue Card, to the knowledge, skills and competence attested by higher education qualifications shall be listed in the Annex.*
2. *Every two years, and for the first time no later than [five years after the entry into force of the Directive], the Commission shall report to the European Parliament and the Council on its assessment of the list of occupations in the Annex, in view of the changing needs of the labour market. This report shall be drawn up after consulting national authorities and on the basis of a public consultation which shall include social partners. On the basis of the report, if appropriate, the Commission may submit legislative proposals for the amendment of the Annex.*

Article 27

Reporting

Every *four* years, and for the first time by [five years after the date of entry into force of this Directive], the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States.

This report shall, in particular, *assess* the impact of Articles 5, 13 and *Chapter V*. The Commission shall propose any amendments that are necessary.

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

Article 28

Cooperation between contact points

1. Member States shall appoint contact points which shall be responsible for receiving and transmitting the information needed to implement Articles 18, 20, 21 and 24 and shall cooperate effectively with each other.
2. The Member States' contact points shall in particular cooperate effectively regarding validation arrangements with stakeholders in the education, training, employment and youth sectors, as well as other relevant policy areas, needed to implement Articles 5(1)(b).
3. Member States shall provide appropriate cooperation in the exchange of the information and documentation referred to in paragraph 1. Member States shall give preference to exchanging information via electronic means.

Article 29

Amendment to Directive (EU) 2016/801

In Article 2 of Directive (EU) 2016/801, point (g) is replaced by the following:

"(g) who apply to reside in a Member State for the purpose of highly skilled employment within the meaning of Directive (EU) 2021/...^{+}.*

** Directive (EU) .../... of the European Parliament and of the Council of ... on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment (OJ L ..., p. ...)."*

+ OJ: Please insert in the text the number of the Directive contained in document under interinstitutional code (2016/0176(COD)) and insert the number, name, date and OJ reference of that Directive in the footnote.

Article 30

Repeal of Directive 2009/50/EC

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

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

Article 31
Transposition

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

When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 32
Entry into force

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

Article 33
Addressees

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

For the European Parliament

For the Council

The President

The President

PE - COURRIER EP - ENTRÉE
26-05-2021
N°

Mr Juan Fernando López Aguilar
Chairman of the Committee on Civil Liberties, Justice and Home Affairs (LIBE)

European Parliament
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