



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

**COUNCIL DIRECTIVE**

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

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### 1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

This proposal forms part of the EU efforts to develop a comprehensive immigration policy. The Hague Programme of November 2004, recognised that "legal migration will play an important role in enhancing the knowledge-based economy in Europe, in advancing economic development, and thus contributing to the implementation of the Lisbon strategy", and asked the Commission to present a policy plan on legal migration "including admission procedures, capable of responding promptly to fluctuating demands for migrant labour in the labour market". The December 2006 European Council agreed on a series of steps to be taken during 2007, including to "develop, as far as legal migration is concerned, well-managed migration policies, fully respecting national competences, to assist Member States to meet existing and future labour needs (...) the forthcoming Commission proposals within the framework of the Policy Plan on Legal Migration of December 2005 should be rapidly examined".

This proposal is presented – together with the proposal for a "framework directive" – in accordance with the December 2005 Commission Communication on a Policy Plan on Legal Migration (COM(2005)669), that foresaw the adoption between 2007 and 2009 of five legislative proposals on labour immigration. This approach aims at laying down admission conditions for specific categories of migrants (highly qualified workers, seasonal workers, remunerated trainees and intra-corporate transferees) on the one hand and securing the legal status of already admitted third-country workers and introducing procedural simplifications for the applicants on the other.

–The present proposal seeks to respond to the above political mandates. It aims, in particular, to improve the EU's ability to attract and - where necessary - retain third-country highly qualified workers so as to increase the contribution of legal immigration to enhancing the competitiveness of the EU economy by complementing the set of other measures the EU is putting in place to achieve the goals of the Lisbon Strategy. It specifically aims at effectively and promptly responding to fluctuating demands for highly qualified immigrant labour - and to offset present and upcoming skill shortages - by creating a level playing field at EU level to facilitate and harmonise the admission of this category of workers and by promoting their efficient allocation and re-allocation on the EU labour market.

This proposal aims to fulfil these objectives in a way which does not undermine the ability of developing countries to deliver basic social services and to progress towards the achievement of the Millennium Development Goals (MDGs). As such, it will include measures to promote circular migration.

To achieve these objectives, the Commission proposes to create a common fast-track and flexible procedure for the admission of highly qualified third-country immigrants, as well as attractive residence conditions for them and their family members, including certain facilitations for those who would wish to move to a second Member State for highly qualified employment.

- **General context**

With regard to economic immigration, the current situation and prospects of EU labour markets can be broadly described as a 'need' scenario. Some Member States are already experiencing substantial labour and skills shortages in certain sectors of the economy, which cannot be filled within the national labour markets and concern the full range of qualifications. Eurostat projections indicate that in the EU the total population is expected to decline by 2025 and the working-age population by 2011, even if not all Member States will be affected to the same degree. Another element to consider is the continuous growth of employment in high-education sectors in respect to other sectors of the EU economy. Analysis shows, therefore, that the EU will increasingly need a highly qualified workforce to sustain its economy, even though immigration cannot in itself be the solution.

The EU as a whole, however, seems not to be considered attractive by highly qualified professionals in a context of very high international competition: for example, the EU is the main destination for unskilled to medium-skilled workers from the Maghreb (87% of such immigrants), while 54% of the highly qualified immigrants from these same countries reside in the USA and Canada. The attractiveness of the EU compared to such countries suffers from the fact that at present highly qualified migrants must face 27 different admission systems, do not have the possibility of easily moving from one country to another for work, and in several cases lengthy and cumbersome procedures make them opt for non-EU countries granting more favourable conditions for entry and stay. The scale of the problem is difficult to quantify, as presently only ten Member States have specific schemes for admitting highly qualified workers and, as these schemes differ, data are not comparable. For the other Member States, specific statistics do not exist or are partial. Only very rough estimations can be provided: for example, around 74 300 professionals were admitted into 15 Member States in 2003. However, even where specific schemes exist, these are exclusively national and do not allow any facilitation for highly qualified third-country workers needing or wishing to move to another Member State for employment, therefore segmenting the EU labour market and not allowing for more efficient (re-)allocation of the necessary workforce.

Since the Tampere European Council of October 1999, the Commission has sought agreement on common rules for economic migration, which is a cornerstone of any immigration policy. In 2001 the Commission proposed a Directive on "the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities". Whilst the other European Institutions gave positive opinions, discussion in Council was limited to a first reading of the text, which was officially withdrawn in 2006.

- **Existing provisions in the area of the proposal**

Council Directive 2003/109/EC of 25.11.2003 concerning the status of third-country nationals who are long-term residents determines the conditions for conferring this status on third-country nationals legally residing in a Member State, and the terms under which a long-term resident can move to a second Member State. Council Directive 2003/86/EC of 22.9.2003 on the right to family reunification determines the conditions under which this right can be exercised. This proposal derogates from these instruments insofar as it lays down provisions on the acquisition the EC long-term

resident status which would not penalise highly qualified workers allowed to move to different Member States for highly qualified work, and as it provides for more favourable conditions for family reunification and for a priority right to move to a second Member State after EC long-term resident status has been acquired.

In parallel, the Commission will present a proposal for a Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State. The two proposals have been drafted so as to be mutually compatible and consistent.

- **Consistency with the other policies and objectives of the Union**

Measures to attract and retain highly qualified third-country workers under a needs-based approach are part of the broader framework identified by the Lisbon Strategy and the Integrated Guidelines for Growth and Jobs, where both macro and microeconomic policies are clearly identified so as to foster the EU's competitiveness, including by attracting more people into employment, improving the adaptability of workers and enterprises, as well as the flexibility of labour markets. However, these measures require time to deliver, while training the existing workforce (or other similar actions) will in most cases not be adequate to respond to EU companies' needs for doctors, engineers, etc. Highly qualified immigrants can thus be an asset.

The proposal also complies with EU's development policy with its central focus on eradication of poverty and the achievement of MDGs. In this respect it recognizes that it may have different impact on different countries outside of the Union and seeks to minimize negative and maximize positive impacts of highly skilled migration on developing countries that already face lack of human resources in certain sectors. This instrument must be regarded within the broader context of the EU development and immigration policies, including operational measures, funding, agreements already in place or planned.

This proposal complies with fundamental rights, as it recognises and safeguards the rights of highly qualified immigrants (and their family members) as workers and as residents in the EU, including procedural guarantees and the right to family life. Personal data that authorities are required to handle when implementing this proposal will need to be processed in accordance with Directive 95/46/EC on the protection of individuals with regard to the processing of personal data.

## 2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

*Consultation methods, main sectors targeted and general profile of respondents*

A public consultation was carried out with the Green Paper on an EU approach to managing economic migration. All the relevant contributions are available on [http://ec.europa.eu/justice\\_home/news/consulting\\_public/economic\\_migration/news\\_contributions\\_economic\\_migration\\_en.htm](http://ec.europa.eu/justice_home/news/consulting_public/economic_migration/news_contributions_economic_migration_en.htm)). A public hearing was held on 14 June 2005.

Further consultations were held by means of seminars and workshops. Member States were consulted within the framework of the Commission's Committee on Immigration and Asylum. Through the external study commissioned to support the impact assessment, further consultation of the main stakeholders was undertaken by means of questionnaires and interviews.

Summary of responses and how they have been taken into account

The analysis of the contributions received showed general support for a common EU policy on economic immigration, albeit with important differences in the approach to be followed and in the expected end result. Some clear elements emerged, i.e. the need for EU common rules regulating all immigration for employment or at least the conditions of admission for some key categories of economic immigrants (highly qualified and seasonal workers). These two categories were considered vital for EU competitiveness. Another clear request was to propose simple, non-bureaucratic and flexible solutions. As a large number of Member States were not in favour of a horizontal approach, the Commission considered that a sectorial approach was more realistic and would better respond to the requests for flexibility.

The Commission took account of comments made on its Policy Plan on Legal Migration and in connection with the study for the impact assessment.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The following options were considered:

Option A - status quo. Member States' immigration policies widely differ on admission of highly qualified workers. Such workers are increasingly needed to fill existing and arising gaps on the labour market, but the EU substantially fails in attracting them. In the absence of common action in this field, the situation may not substantially change.

Option B - to establish a basic common policy for the admission of highly qualified workers. A minimum set of entry conditions would be proposed, leaving to Member States broad autonomy in defining the distinctive elements of their national legislation. Residence and work conditions would not be tackled. This option would have only a limited effect in attracting these workers or in improving the efficiency of the EU labour market: the overall impact on the macroeconomic environment would be quite limited.

Option C - to simplify the admission system, by setting up an EU point-system and a fast-track admission procedure, allowing immediate family reunification and creating a skill-matching database. This option could strongly promote and facilitate the migration of third-country highly qualified workers to the EU. However, unless the points are set at EU level (which could be in contrast with subsidiarity for the time being), immigrants would continue to face very different admission conditions.

Option D - to establish a set of common criteria and a fast-track procedure for entry

plus favourable residence conditions (working and residence rights, immediate family reunification, quicker acquisition of EC long-term status, etc.). The effective integration of third-country highly qualified workers into the labour market and society would be the best way to maximise their contribution to economic growth and competitiveness, and it would really improve the EU's ability to deal with the present and expected challenges. However, the effects of such a policy would be limited to ~~single~~ individual Member States.

Option E1 - to foster intra-EU mobility through coordination of national priority lists and by creating an EU Blue Card and a database for Blue Card holders. Intra-EU mobility would be a strong incentive for third-country highly qualified workers to enter the EU labour market, and could play a primary role in relieving the labour shortages in certain areas/sectors. Further tools could help in matching labour supply and demand (i.e. the EU Blue Card Database). This policy option could achieve notable and positive effects on labour market efficiency and on the EU macroeconomic environment.

Option E2 - to extend to highly qualified workers the provisions on intra-EU mobility contained in Directive 2003/109/EC. This option also includes the point system under Option C. However, the intra-EU mobility under this option could be more limited than under Option E1. Therefore, the whole relevance and effectiveness of this policy option could be more limited.

Option F - communication, coordination and cooperation. The envisaged actions could support, to a certain degree, the establishment of a basic common ground facilitating attraction of highly qualified workers and more their efficient allocation in the EU labour market. However, it would have limited effectiveness.

The Commission carried out an impact assessment listed in the Work Programme, whose report is accessible on [to be added].

### 3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The proposal establishes a fast-track procedure for the admission of highly qualified third-country workers, based on a common definition and criteria: work contract, professional qualifications and a salary above a minimum level set at national level. A specific scheme for "young professionals" is envisaged. Workers admitted will be issued a residence permit allowing them to work ("EU Blue Card"): this permit will endow on them and their families a series of rights, including favourable conditions for family reunification. Access to the Member State of residence's labour market will be restricted for the first two years.

The proposal also includes the possibility for an "EU Blue Card" holder to move for work to a second Member State under certain conditions and after two years of legal residence in the first Member State. To facilitate intra-EU mobility, derogations from Council Directive 2003/109/EC are provided for, in particular the possibility to cumulate periods of residence in different Member States in order to obtain EC long-term residence status. Once this status has been granted, the provisions on mobility of Directive 2003/109/EC will apply, but Member States will have to grant preference to

these professionals over other third-country workers applying to be admitted.

- **Legal basis**

This proposal concerns conditions of entry and residence for third-country nationals and standards on procedures for issuing the necessary permits. It also lays down the conditions under which a third-country national may reside in a second Member State. Consequently, the appropriate legal base is Article 63(3)(a) and (4) of the EC Treaty.

- **Subsidiarity principle**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Community.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reason(s).

If Member States act alone, they may not be able to face international competition for highly qualified third-country workers.

There will be a series of different entry and residence conditions for these workers, each national system being closed and in competition with the others. This could lead to distortions in immigrants' choices, and more importantly would over-complicate the re-allocation of the necessary labour force as needs change on labour markets, with the possibility of losing a highly qualified workforce already present in the EU.

Community action will better achieve the objectives of the proposal for the following reason(s).

The EU's main attractiveness compared to its competitors is the possibility of accessing 27 labour markets, and thus to grow professionally while responding to EU companies' concrete needs. But this can only be provided through Community action (also needed to derogate from EC acquis so as to create facilitated conditions for acquiring EC long-term residence) and can be implemented only if there is a common system for admitting such workers.

Common action will ensure that these workers:

- (1) are admitted under common rules;
- (2) enjoy the same level of rights throughout the EU;
- (3) will have the possibility of moving from one Member State to another so as to adapt and respond promptly to fluctuating demands for highly qualified migrant labour;
- (4) are fully integrated into the EU.

The proposal will leave sufficient room for Member States to adapt the scheme to their national labour market's needs and will not impinge on Member States' responsibility to determine the numbers of economic immigrants entering the EU in order to seek work.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

The instrument chosen is a Directive, which gives Member States a high degree of flexibility in terms of implementation. Under Article 63, penultimate subparagraph, of the EC Treaty, Member States are free to maintain or introduce measures other than those set out in the Directive, provided they are compatible with the Treaty and with international agreements.

- **Choice of instruments**

Proposed instruments: directive.

Other means would not be adequate for the following reason(s).

A Directive is the appropriate instrument for this action: it sets binding minimum standards but gives Member States flexibility in respect of labour market needs and legal framework.

#### 4) BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

#### 5) ADDITIONAL INFORMATION

- **Review/revision/sunset clause**

The proposal includes a review clause.

- **Correlation table**

The Member States are required to communicate to the Commission the text of national provisions transposing the Directive as well as a correlation table between those provisions and this Directive.

- **Detailed explanation of the proposal**

##### Article 1

The proposal has two purposes. The first is to introduce a special procedure for the entry and residence of third-country nationals applying to reside in the EU for the purpose of highly qualified employment, for more than three months. The second purpose is to give effect to Article 63(4) of the EC Treaty and determine the conditions in which third-country nationals who are legally residing in a Member State under the terms of this proposal may reside with their family members in other Member States.

##### Article 2

The proposal refers to the notion of "highly qualified employment". This definition is

based on two elements: the first is the requirement of exercising an economic activity in an employed capacity, therefore excluding third-country nationals wishing to carry out a self-employed activity. The second covers the necessary "higher professional qualifications" requirements. In this respect and in order to include professionals who do not necessarily need a post-secondary diploma to exercise their activity (experienced managers, certain IT professionals, etc) the proposal allows taking into account of a minimum of three years professional experience in the profession, instead of the higher education qualifications. .

#### Articles 3 and 4

The proposal does not cover EU citizens and their family members, including those whose eligibility for employment in a particular Member State is restricted by transitional arrangements. It also does not cover third-country nationals who are EC long-term residents or refugees, those residing in a Member State on a strictly temporary basis in accordance with EC legislation or under commitments contained in international agreements, and other limited categories.

The proposal does not allow Member States to grant more favourable conditions for first entry into the Community, so as not to undermine the scope of the Directive. As residence conditions (including for family reunification) affect the situation of the third-country nationals concerned only in respect of the Member State of residence, Member States remain free to grant more favourable conditions.

#### Article 5

This article sets down the conditions the applicant must fulfil, those specific to this proposal being:

- 1) As admission is demand-driven, a work contract or a binding job offer must be presented;
- 2) The salary specified in the work contract must be at least equal to a certain threshold set at national level. Member States are free to set this threshold at a level compatible with their labour market and immigration policies. However, it has been considered necessary to set a relative minimum threshold - linked in primis to the minimum wage set out in national laws - to ensure that Member States do not empty this criteria by setting a level which would be too low for a national or EU highly qualified worker to accept the vacancy, although corresponding to his/her qualifications. Furthermore, this proposal provides for an enhanced form of intra-EU mobility once the highly qualified third-country worker has acquired EC long-term residence: the relative common minimum level seeks to ensure that the admission decisions of a Member State do not negatively affect the others in the medium term. It should also ensure that the applicant has the means to maintain him/herself - and cover return costs if necessary - without having recourse to the social assistance system of the Member State concerned.
- 3) For unregulated professions, the applicant must prove that he/she has the necessary higher education qualifications or at least three years of professional experience in the profession concerned that can be considered as equivalent to higher education qualifications; Member States shall not ask proof of both. In case of regulated professions, the applicant must fulfil the requirements set out in national or EC law.

## Article 6

This derogation concerns young professionals of less than 30 years of age, who are likely not to have enough professional experience to claim high salaries. In this case, the ancillary mandatory condition is to have completed higher education studies in a field related to the activity to be performed according to the work contract. A further softening of the salary criteria is proposed for young professionals having studied in the EU.

## Articles 7, 9 and 10

The proposal does not create a right of admission. These provisions lay down the mandatory and possible grounds for refusal (as well as for withdrawal and non-renewal), notably the non-fulfilment of the criteria, the existence of quotas and the possibility for the Member States to carry out a labour market test. This later possibility refers in particular to the Council Resolution of 20 June 1994 on limitations on admission of third-country nationals to the territory of the Member States for employment. The principle of Community preference as expressed in the relevant provisions of the Acts of Accession of 2003 and 2005 constitutes primary law and therefore the Directive shall be automatically applied in conformity with the Acts of Accession by those Member States that still make use of the transitional arrangements, as long as they do.

## Articles 8, 11 and 12

Applicants (and not family members) for whom a positive decision has been taken by the Member State concerned shall receive a residence permit called EU Blue Card stating the conditions under which they are allowed to work. A fast-track procedure (30 days) is foreseen, as well as a right for legally residing third-country nationals to apply for this scheme and change legal status in case of positive decision.

## Articles 13, 14 and 15

The proposal sees highly qualified workers as a potential for the EU economy, but considers that their rights should depend on the length of stay.

A progressive integration of the highly qualified worker into the labour market requires that every change in the working position in the first two years of legal residence of a holder of the EU Blue Card must be authorised by the authorities of the Member State concerned, as for first entry. After this period the person concerned should no longer need to demonstrate that he/she meets the salary and qualification requirements for taking up an highly qualified work, this being left to the assessment of the employer and to the market. To avoid abuses, a notification requirement is introduced.

A three-month unemployment period is allowed: the conditions under which a new working relation can be authorised depend on the length of stay, as above. These provisions apply irrespective of the Member State of residence (first or second) until EC long-term residence is acquired.

Article 15 states the areas where equal treatment must be recognised, the aim being to establish the most favourable conditions possible. Only study grants, procedures for

obtaining housing and social assistance are limited: these are not rights to which the worker would be entitled on the basis of his/her contributions. Furthermore, these workers are supposed to earn relatively high salaries, therefore they would most likely not be eligible under national rules.

#### Article 16

This article contains those derogations to Directive 2003/86/EC considered necessary to set out an attractive scheme for highly qualified third-country workers and follows a different logic from the family reunification directive, which is a tool to foster integration of third-country nationals who could reasonably become permanent residents. In line with similar schemes already existing in the Member States and in other countries, it provides for immediate family reunification also in cases of temporary residence and access to the labour market for the spouses. To achieve this aim, it also foresees that possible national integration measures should be imposed only once the family members are on the EU territory.

#### Article 17

This proposal aims to encourage the geographic mobility of highly qualified workers. Derogations to Directive 2003/109/EC thus aim at not penalising mobile workers, by allowing them to cumulate periods of residence in two (or at the maximum three) Member States in order to fulfil the main condition for obtaining the EC long-term residence status. The derogations on the periods of absence from the EU should be subject to strict conditions in order to sustain the circular migration policy and to limit possible brain drain effects.

#### Articles 18, 19, 20 and 21

Article 19 outlines the conditions for intra-EU mobility before the acquisition of EC long-term residence along the broad lines of Directive 2003/109/EC, but allowing Member States to apply the same conditions as for first entry. Article 20 provides for intra-EU mobility after such status has been granted: taking into account the specificities of this category of workers and their limited number in absolute terms, it applies the Directive without the limitations on the total number of persons that Member States may maintain in respect of other EC long-term residents. It also provides that Member States shall give preference to EC long-term residents who are highly qualified over other third-country workers who apply to be admitted on for the same purposes.

A new residence permit is created in Article 18 so to identify the specific status of its holders.

The modalities for exercising family reunification in a second Member State before the sponsor has acquired EC long-term residence reflect Article 16 of Directive 2003/109/EC.

#### Chapter VII

The only provision specific to this proposal is on the obligation for Member States to share information on possible quotas and on annual statistics on its implementation through the network established by Council Decision 2006/688/EC. This data will also

allow monitoring recruitment in developing countries suffering from lack of qualified human resources.

*(Explanatory memorandum validated - 22 451 characters - not complying with DGT norm.)*

Proposal for a

## COUNCIL DIRECTIVE

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3)(a) and (4) thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the opinion of the European Parliament<sup>2</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>3</sup>,

Having regard to the opinion of the Committee of the Regions<sup>4</sup>,

Whereas:

- (1) For the gradual establishment of an area of freedom, security and justice, the Treaty provides for measures to be adopted in the fields of asylum, immigration and protection of the rights of third-country nationals.
- (2) The Treaty provides that the Council is to adopt measures on immigration policy relating to conditions of entry and residence, standards on procedures for the issue by Member States of long-term visas and residence permits, and measures defining the rights and conditions under which nationals of third-countries who are legally resident in a Member State may reside in other Member States.
- (3) The Lisbon European Council in March 2000 set the Community the objective of becoming the most competitive and dynamic knowledge-based economy in the world by 2010.
- (4) The Hague Programme, adopted by the European Council on 4 and 5 November 2004, recognised that legal migration will play an important role in enhancing the knowledge-based economy in Europe, in advancing economic development, and thus in contributing to the implementation of the Lisbon Strategy, and asked the Commission to present a policy plan on legal migration, including admission

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<sup>1</sup> OJ C [...], [...], p. [...].

<sup>2</sup> OJ C [...], [...], p. [...].

<sup>3</sup> OJ C [...], [...], p. [...].

<sup>4</sup> OJ C [...], [...], p. [...].

procedures, capable of responding promptly to fluctuating demands for migrant labour in the labour market.

- (5) The European Council of 14 and 15 December 2006 agreed on a series of steps for 2007, among which to develop well-managed legal immigration policies, fully respecting national competences, to assist Member States to meet existing and future labour needs.
- (6) To achieve the objectives of the Lisbon Process it is also important to foster the mobility within the Union of highly qualified workers who are EU citizens, and in particular from the Member States which acceded in 2004 and 2007. In implementing this Directive, Member States are bound to respect the principle of Community preference as expressed in particular in the relevant provisions of the Acts of Accession of 16 April 2003 and 25 April 2005.
- (7) This Directive is intended to contribute to achieving these goals and addressing these labour shortages by fostering the admission and mobility – for the purposes of highly qualified employment – of third-country nationals for stays of more than three months, in order to make the Community more attractive to such workers from around the world and sustain its competitiveness and economic growth. To reach these goals, it is necessary to facilitate the admission of highly qualified workers and their families by establishing a fast-track admission procedure and by granting them equal social and economic rights with nationals of the host Member State in a number of areas. As concerns these rights, this Directive builds on the corresponding provision of Directive... ["on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third country workers legally residing in a Member State"]<sup>5</sup>.
- (8) Favourable conditions for family reunification and for access to work for the spouses should be a fundamental element of any scheme aiming to attract highly qualified workers. Specific derogations to Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification<sup>6</sup> should be foreseen in order to reach this aim.
- (9) This Directive should be without prejudice to the competence 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. This should include also third-country nationals who seek to remain on the territory of a Member State in order to exercise a paid economic activity and who are legally residents in that Member State under other schemes, such as students having just completed their studies or researchers having been admitted pursuant to Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service<sup>7</sup> and Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research<sup>8</sup>, and who do not enjoy consolidated access to the labour market of the Member State under EC or national legislation.

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<sup>5</sup> OJ L...

<sup>6</sup> OJ L 251, 3.10.2003, p. 12.

<sup>7</sup> OJ L 375, 23.12.2004, p.12.

<sup>8</sup> OJ L 289, 3.11.2005, p.15.

- (10) This Directive should provide for a flexible demand-driven entry system, based on objective criteria such as a minimum salary threshold comparable with the wage levels in the Member States and on professional qualifications. The definition of a common minimum denominator for the national wage threshold is necessary to ensure a minimum level of harmonisation in the admission conditions throughout the EU. Member States should fix their national threshold accordingly to the situation of their respective labour markets and their general immigration policies.
- (11) Derogations from the main scheme in terms of the salary threshold should be laid down for highly qualified applicants under 30 years of age who, due to their relatively limited professional experience and their position on the labour market, may not be in a position to fulfil the salary requirements of the main scheme or, for those who have acquired their higher education qualifications in the European Union.
- (12) Once a Member State has decided to admit a third-country national fulfilling these common criteria, the third-country national should receive a specific residence permit, which should be called EU Blue Card and should allow a progressive access to the labour market, and enjoy the residence and mobility rights accorded to him/her and his/her family.
- (13) The format of the EU Blue Card should be in accordance with the provisions of Regulation 1030/2002, laying down a uniform format for residence permits for third-country nationals<sup>9</sup>, enabling the Member States to refer to the information, in particular under which conditions the person is permitted to work. The horizontal provisions foreseen by Directive... ["on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third country workers legally residing in a Member State"]<sup>10</sup>, should apply mutatis mutandis.
- (14) Third country nationals who are in possession of a valid travel document and an EU Blue Card issued by a Member State applying the Schengen acquis in full, should be allowed to enter into and move freely within the territory of the Member States applying the Schengen acquis in full, for a period up to three months in accordance with ~~may enter into and move freely within the territory of the Member States applying the Schengen acquis in full, for a period up to three months in accordance with Articles 2 (15) and 5 (1) b) of~~ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)<sup>11</sup> and Article 21 of the Schengen acquis - Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (Schengen Implementing Convention)<sup>12</sup>.
- (15) The occupational and geographical mobility of third-country highly qualified workers should be recognised as a primary mechanism for improving labour market efficiency,

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<sup>9</sup> OJ L 157, 15.6.2002, p. 1.

<sup>10</sup> OJ L...

<sup>11</sup> OJ L 105 of 13.4.2006, p.1.

<sup>12</sup> OJ L 239 of 22.9.2000, p.19.

preventing skill shortages and offsetting regional imbalances. In order to respect the principle of Community preference and to avoid possible abuses of the system, the occupational mobility of a third-country highly qualified worker should be limited for the first two years of legal residence in a Member State.

- (16) The geographical mobility within the EU should be controlled and demand-driven during the third-country worker's first period of legal stay. Once EC long-term resident status has been granted, Member States should give preference to these workers when they exercise their right to intra-EU mobility. Derogations from Council Directive 2003/109/EC of 25 November 2003 on the status of third-country nationals who are long-term residents<sup>13</sup> should be included in order not to penalise geographically mobile highly qualified third-country workers who have not yet acquired EC long-term resident status, and to encourage geographical and circular migration.
- (17) The mobility of highly qualified third-country workers between the Community and their countries of origin should be fostered and sustained. Derogations from Council Directive 2003/109/EC of 25 November 2003 on the status of third-country nationals who are long-term residents should be foreseen in order to extend the period of absence from the territory of the Community which is not taken into account for the calculation of the period of legal and continuous residence necessary to be eligible for the EC long-term residence status. Longer periods of absence than those provided for in Council Directive 2003/109/EC should also be allowed after highly qualified third-country workers have acquired EC long-term residence status. In particular, to encourage the circular migration of highly qualified third-country workers originating from developing countries, Member States should take into consideration making use of the possibilities offered in Article 4(3) second subparagraph and Article 9(2) of Council Directive 2003/109/EC to allow for longer periods of absence than those provided for in this Directive. In order to ensure consistency in particular with the underlying development objectives, these derogations should only be applicable if it can be proven that the person concerned has returned to his/her country of origin for work, study or volunteering activities.
- (18) Third-country highly qualified workers should enjoy equal treatment as regards social security. Branches of social security are defined in Council Regulation (EEC) N° 1408/1971 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community<sup>14</sup>. Council Regulation (EC) no 859/2003 of 14 May 2003<sup>15</sup> extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality extends the provisions of Regulation (EEC) No 1408/1971 to third country nationals who are legally residing in the European Union and who are in a cross-border situation. The provisions on equal treatment as regards social security in this proposal also apply directly to persons coming to a Member State directly from a third country. Nevertheless, this Directive should not confer more rights than those already provided in existing Community legislation in the field of

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<sup>13</sup> OJ L 16, 23.1.2004, p. 44.

<sup>14</sup> OJ L 149, 15.7.1971, p. 2. Regulation as ~~last~~-amended by Regulation (EC) No 631/2004 of the European Parliament and of the Council (OJ L 100, 6.4.2004, p. 1).

<sup>15</sup> OJ L 124, 20.5.2003, p. 1.

social security for third-country nationals who have cross-border elements between Member States.

- (19) Professional qualifications acquired by a third-country national in another Member State should be recognised the same way as for Union citizens and qualifications acquired in a third country should be taken into account in conformity with the provisions of Directive 2005/36 of the European Parliament and of the Council of 7 September 2005<sup>16</sup> on the recognition of professional qualifications.
- (20) In implementing this Directive, Member States should refrain from pursuing active recruitment in developing countries in sectors suffering from lack of human resources. Ethical recruitment policies and principles applicable to public and private sector employers should be developed in particular in the health sector, as underlined in 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). These should be strengthened by the development of mechanisms, guidelines and other tools to facilitate circular and temporary migration, as well as other measures that would minimise negative and maximise positive impacts of highly skilled immigration on developing countries. Any such intervention must be taken along the lines of the Joint Africa-EU Declaration on Migration and Development agreed in Tripoli on 22 and 23 November 2006 and with a view of establishing a comprehensive migration policy as called for by the European Council of 14 and 15 December 2006.
- (21) Specific reporting provisions should be foreseen to monitor the implementation of the highly qualified scheme, also with a view to identifying and possibly counteracting its possible impacts in terms of brain drain in developing countries, especially in Sub-Saharan Africa. Data on the professions and the nationality of highly qualified immigrants admitted by Member States should therefore be transmitted annually by Member States through the network created for these purposes by Council Decision 2006/688/EC of 5 October 2006 on the establishment of a mutual information mechanism concerning Member States' measures in the areas of asylum and immigration<sup>17</sup>.
- (22) The objectives of the proposed action, namely the introduction of a special admission procedure and the adoption of conditions of entry and residence applicable to third-country nationals for stays of more than three months in the Member States for the purposes of highly qualified employment, cannot be sufficiently achieved by the Member States, especially as regards ensuring mobility between Member States, and can therefore be better achieved by the Community. The Community is therefore entitled to take measures in accordance with the subsidiarity principle laid down in Article 5 of the Treaty. In accordance with the principle of proportionality set out in that Article, this Directive does not go beyond what is necessary to achieve those objectives.
- (23) This Directive respects the fundamental rights and observes the principles recognized by the Charter of Fundamental Rights of the European Union and the European

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<sup>16</sup> OJ L 255, 30.9.2005, p.22.

<sup>17</sup> OJ L 283, 14.10.2006, p.40.

Convention on Human Rights and Fundamental Freedoms and has to be implemented accordingly.

- (24) Member States should give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation in particular in accordance with Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin<sup>18</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation<sup>19</sup>.
- (25) [In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community and without prejudice to Article 4 of the said Protocol these Member States are not participating in the adoption of this Directive and are not bound by or subject to its application.]
- (26) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not participating in the adoption of this Directive, and is not bound by it or subject to its application.

HAS ADOPTED THIS DIRECTIVE:

## Chapter I

### GENERAL PROVISIONS

#### *Article 1*

#### *Subject matter*

The purpose of this Directive is to determine:

- (a) the conditions of entry and residence for more than three months in the territory of the Member States of third-country nationals and of their family members for the purpose of highly qualified employment,
- (b) the conditions for residence of third-country nationals and of their family members under point (a) in Member States other than the first Member State.

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<sup>18</sup> OJ L 180, 19.7.2000, p. 22.

<sup>19</sup> OJ L 303, 2.12.2000, p. 16.

## *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 17(1) of the Treaty;
- (b) "highly qualified employment" means the exercise of genuine and effective work under the direction of someone else for which a person is paid and for which higher education qualifications or at least three years of equivalent professional experience is required;
- (c) "EU Blue Card" means the authorisation bearing the term "EU Blue Card" entitling its holder to reside and work legally in its territory and to move to another Member State for highly qualified employment under the terms of this Directive;
- (d) "first Member State" means the Member State which first granted a third country national the "EU Blue Card";
- (e) "second Member State" means any Member State 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 education qualification" stands for any degree, diploma or other certificate issued by a competent authority attesting the successful completion of a higher education programme, namely a set of courses provided by an educational establishment recognised as a higher education institution by the State in which it is situated. These qualifications are taken into account, for the purposes of this directive, on condition that the studies needed to acquire them lasted at least three years.-
- (h) "higher professional qualifications" means qualifications attested by evidence of higher education qualifications or of at least 3 years of equivalent professional experience.
- (i) "professional experience" means the actual and lawful pursuit of the profession concerned.

## *Article 3*

### *Scope*

1. This Directive shall apply to third-country nationals who apply to be admitted to the territory of a Member State for the purpose of highly qualified employment.
2. This Directive shall not apply to third-country nationals:

- (a) staying in a Member State as applicants for international protection or under temporary protection schemes;
  - (b) who are refugees or have applied for recognition as refugees and whose application has not yet given rise to a final decision;
  - (c) applying to reside in a Member State as researchers within the meaning of Directive 2005/71/EC in order to carry out a research project;
  - (d) who are family members of Union citizens who have exercised, or are exercising, their right to free movement within the Community;
  - (e) who enjoy 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;
  - (f) entering 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;
  - (g) whose expulsion has been suspended for reasons of fact or law.
3. This directive should be without prejudice to any future agreement between the Community or between the Community and its Member States on the one hand and one or more third countries on the other, that would list the professions which should not fall under this directive in order to assure ethical recruitment, in sectors suffering from a lack of personnel, by protecting human resources in the developing countries, signatories to these agreements.

#### *Article 4*

##### *More favourable provisions*

1. This Directive shall be without prejudice to more favourable provisions of:
- (a) Community legislation, including bilateral or multilateral agreements concluded between the Community or between the Community 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 concerning conditions of entry and residence for persons to whom it applies, except for entry into the first Member State.

## Chapter II

### CONDITIONS OF ADMISSION

#### *Article 5*

##### *Criteria for admission*

1. A third-country national who applies to be admitted for the purposes set out in this Directive shall:
  - (a) present a valid work contract or a binding job offer of at least one year in the Member State concerned;
  - (b) fulfil the conditions set out under national legislation for the exercise by EU citizens of the regulated profession specified in the work contract or binding job offer of work;
  - (c) for unregulated professions, present the documents attesting the relevant higher professional qualifications in the occupation or sector specified in the work contract or in the binding offer of work;
  - (d) present a valid travel document, as determined by national law and, if appropriate, evidence of valid residence permit. Member States may require the period of the validity of the travel document to cover at least the initial duration of the residence permit;
  - (e) present evidence of having a sickness insurance for the applicant and his/her family members 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;
  - (f) not be considered to pose a threat to public policy, public security or public health.
2. In addition to the conditions stipulated in paragraph 1, the gross monthly salary specified in the work contract or binding job offer must not be inferior to a national salary threshold defined and published for the purpose by the Member States which shall be at least three times the minimum gross monthly wage as set by national law.

Member States where minimum wages are not defined shall set the national salary threshold to be at least three times the minimum income under which citizens of the Member State concerned are entitled to social assistance in that Member State.

## *Article 6*

### *Derogation*

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

- (a) Member States shall consider fulfilled the condition set out in Article 5 (2) if the gross monthly salary offered corresponds to at least two-thirds of the national salary threshold defined in accordance with Article 5(2);
- (b) Member States may waive the salary requirement provided for in Article 5 (2) on condition that the applicant has completed higher education on site studies and obtained a Bachelor and a Master's degree in a higher education institution situated on the territory of the Community;
- (c) Member States shall not require proof of professional experience in addition to the higher education qualifications, unless this is necessary to fulfil the conditions set out under national legislation for the exercise by EU citizens of the regulated profession specified in the work contract or binding job offer of work.

## *Article 7*

### *Volumes of admission*

Articles 5 and 6 shall be without prejudice to the competence of the Member States to determine volumes of admission of third-country nationals for highly qualified employment.

## **Chapter III**

### **EU BLUE CARD, PROCEDURE AND TRANSPARENCY**

## *Article 8*

### *EU blue card*

1. A person fulfilling the requirements set out in Articles 5 and 6 and for whom a positive decision has been issued by the competent authorities shall be issued an EU Blue Card.
2. The initial validity of an EU Blue Card shall be of two years and shall be renewed for at least the same duration. If the work contract covers a period less than two years, the EU Blue Card shall be issued for the duration of the work contract plus three months.
3. The EU Blue Card shall be issued by the competent authorities of the Member State ~~in accordance with Article 1(2)(a) of~~ using the uniform format as laid down in Regulation (EC) No 1030/2002. In accordance with its Annex a, 7.5-9, Member States shall indicate on the EU Blue Card the conditions for access to the labour

market as set out in Article 13(1) or (2) of this Directive, whichever is applicable. Under the heading “type of permit”, Member States shall enter "EU Blue Card".

~~4. In accordance with Article 1(1) of Regulation 1030/2002 and its Annex a, 7.5-9, Member States shall indicate in the EU Blue Card the conditions for access to the labour market in accordance with Article 13(1) and (2).~~

45. 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 ~~single permit~~ EU Blue Card;
- (b) passage through other Member States in order to exercise the rights under point (a).

56. Holders of the EU Blue Card shall be entitled to the rights recognised to them and their family members by Articles 8, 10(2), 12, 13-19 and 21 of this Directive.

### *Article 9*

#### *Grounds for refusal*

1. Member States shall reject an application for a EU Blue Card whenever the applicant does not meet the conditions set out in Articles 5 and 6 or whenever the documents presented have been fraudulently acquired, or falsified or tampered with.
2. Before taking the decision on an application for an EU Blue Card, Member States may examine the situation of their labour market and apply their national procedures regarding the requirements for filling a vacancy.

For reasons of labour market policy, Member States may give preference to Union citizens, to third-country nationals, when provided for by Community legislation, as well as to third-country nationals who reside legally and receive unemployment benefits in the Member States concerned.

### *Article 10*

#### *Withdrawal or non-renewal of the EU Blue Card*

1. Member States shall withdraw or refuse to renew an EU Blue Card issued on the basis of this Directive in the following cases:
  - (a) when it has been fraudulently acquired, or has been falsified or tampered with, or
  - (b) wherever it appears that the holder did not meet or no longer meets the conditions for entry and residence laid down in Articles 5 and 6 or is residing for purposes other than that for which he/she was authorised to reside.
  - (c) when the holder has not respected the limitations set out in Articles 13(1) and (2) and 14.

2. The lack of notification pursuant to Article 13(2) shall not be considered to be a sufficient reason for withdrawing or not renewing the EU Blue Card.
3. Member States may withdraw or refuse to renew an EU Blue Card for reasons of public policy, public security or public health.

### *Article 11*

#### *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 his/her employer.
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/she wishes to be admitted or when he/she is already legally resident in the territory of the Member State concerned.
3. The Member State concerned shall grant the third-country national whose application has been accepted every facility to obtain the requisite visas.
4. By way of derogation from paragraph 2, Member States may accept, in accordance with their national legislation, an application submitted when the third-country national concerned is not in possession of a residence permit but is legally present in its territory.

### *Article 12*

#### *Procedural safeguards*

1. The competent authorities of the Member States shall adopt a decision on the complete application and notify the applicant in writing, in accordance with the notification procedures laid down in the national legislation of the concerned Member State, at the latest within 30 days of the date on which the application was lodged. In exceptional cases involving complex applications, the deadline may be extended for a maximum of another 60 days.
2. If the information supplied in support of the application is inadequate, the competent authorities shall notify the applicant of the additional information that is required. The period referred to in paragraph 1 shall be suspended until the authorities have received the additional information required.
3. Any decision rejecting an application for an EU Blue Card, or non-renewing or withdrawing an EU Blue Card, shall be notified in writing to the third-country national concerned and, where relevant, to his/her employer in accordance with the notification procedures under the relevant national legislation and shall be open to challenge before the courts of the Member State concerned. The notification shall specify the reasons for the decision, the possible redress procedures available and the time limit for taking action.

## Chapter IV

### RIGHTS

#### *Article 13*

##### *Labour market access*

1. For the first two years of legal residence in the Member State concerned as holder of an EU Blue Card, access to the labour market for the person concerned shall be restricted to the exercise of paid employment activities which meet the conditions for admission set out in Articles 5 and 6. Modifications of the terms of the work contract that affect the conditions for admission or changes in the work relationship shall be subject to the prior authorisation in writing of the competent authorities of the Member State of residence, according to national procedures and within the time limits set out in Article 12(1).
2. After the first two years of legal residence in the Member State concerned as holder of an EU Blue Card, the person concerned shall enjoy equal treatment with nationals as regards access to highly qualified employment. The holder of the EU Blue Card shall notify changes in his/her work relationship to the competent authorities of the Member State of residence, according to national procedures.
3. Holders of the EU Blue Card who have been granted EC long-term resident status shall enjoy equal treatment with nationals as regards access to employment and self-employed activities.
4. Member States may retain restrictions on access to employment or self-employed activities, provided such activities entail even occasional involvement in the exercise of public authority and responsibility for safeguarding the general interest of the State in cases where, in accordance with existing national or Community legislation, these activities are reserved to nationals.
5. Member States may retain restrictions to access to employment or self-employed activities in cases where, in accordance with existing national or Community legislation, these activities are reserved to nationals, EU or EEA citizens.
6. The provisions set out in this Article shall be applied without prejudice to the principle of Community preference as expressed in the relevant provisions of the Acts of Accession of 16 April 2003 and 25 April 2005.

#### *Article 14*

##### *Temporary unemployment*

1. Unemployment in itself shall not constitute a reason for revoking an EU Blue Card, unless the period of unemployment exceeds three consecutive months.

2. During this period, the holder of the EU Blue Card shall be allowed to seek and take up employment under the conditions set out in Article 13(1) or (2) whichever is applicable.
3. Member States shall allow the holder of the EU Blue Card to remain on their territory until the necessary authorisation pursuant to Article 13(1) has been granted or denied. The notification under Article 13(2) shall automatically end the period of unemployment.

## *Article 15*

### *Equal treatment*

1. Holders of an EU Blue Card shall enjoy equal treatment with nationals as regards:
  - (a) working conditions, including pay and dismissal, as well as health and safety 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 benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;
  - (c) education and vocational training, including study grants in accordance with national law;
  - (de) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;
  - (ed) branches of social security as defined in Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community. Council Regulation (EC) No 859/2003 of 14 May 2003 which extends the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by these provisions solely on the ground of their nationality shall apply accordingly;
  - (fe) social assistance as defined by national law;
  - (gf) payment of acquired pensions when moving to a third country;
  - (hg) tax benefits;
  - (ih) access to goods and services and the supply of goods and services made available to the public, including procedures for obtaining housing and the assistance afforded by employment offices;
  - ~~(i) 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 benefits conferred by such~~

~~organisations, without prejudice to the national provisions on public policy and public security;~~

- (j) free access to the entire territory of the Member State concerned, within the limits provided for by national legislation for reasons of security.
2. Member States may restrict the rights conferred under paragraphs 1(b) and (h) in respect to study grants and procedures for obtaining public housing to cases where the holder of the EU Blue Card has been staying or has the right to stay in its territory for at least three years.
3. Member States may restrict equal treatment as regards social assistance to cases where the holder of the EU Blue Card has been granted EC long-term resident status in accordance with Article 17.

### *Article 16*

#### *Family members*

1. Council Directive 2003/86/EC shall apply with the derogations laid down in this Article.
2. By way of derogation from Articles 3(1) and 8 of Directive 2003/86/EC, family reunification shall not be made dependent on the requirement of the holder of the EU Blue Card having reasonable prospects of obtaining the right of permanent residence and of he/she having a minimum period of residence.
3. By way of derogation from Article 5(4) first subparagraph of Directive 2003/86/EC, residence permits for family members shall be granted at the latest within six months from the date on which the application was lodged.
4. By way of derogation from Articles 4(1) last subparagraph and 7(2) of Directive 2003/86/EC, the integration measures referred to therein may only be applied after the persons concerned have been granted family reunification.
5. By way of derogation from Article 14(2) of Directive 2003/86/EC and in respect of access to the labour market, Member States shall not apply the time limit of 12 months.
6. By way of derogation to 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 may be cumulated.
7. If Member States have recourse to the option provided for in paragraph 6, the provisions set out in Article 17 in respect of accumulation of periods of residence in different Member States by the holder of an EU Blue Card shall apply mutatis mutandis.
8. 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 residence permits issued to the holder of the EU Blue Card insofar as the period of validity of their travel documents allows it.

### *Article 17*

#### *EC 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 holder of an EU Blue Card having made use of the possibility provided for in Article 19 is allowed to cumulate periods of residence in different Member States in order to fulfil the requirement concerning the duration of residence, if the following conditions are met:
  - (a) five years of legal and continuous residence within the territory of the Community as holder of an EU Blue Card;
  - (b) legal and continuous residence as holder of an EU Blue Card within the territory of the Member State where the application for the long-term resident's EC residence permit is lodged for two years immediately prior to the submission of the relevant application.
3. For the purpose of calculating the period of legal and continuous residence in the Community and by way of derogation from Article 4(3) first subparagraph of Directive 2003/109/EC, periods of absence from the territory of the Community shall not interrupt the period referred to in paragraph 2(a) and shall be taken into account for its calculation if they are shorter than 12 consecutive months and do not exceed in total 16 months within the period referred to in paragraph 2(a). This paragraph shall apply also in cases where the holder of an EU Blue Card has not made use of the possibility provided for in Article 19.
4. By way of derogation from Article 9(1)(c) of Directive 2003/109/EC, Member States shall extend the period of absence allowed to an EU Blue Card holder and of his/her family members having been granted the EC long-term residence status from the territory of the Community to 24 consecutive months.
5. The derogations to Directive 2003/109/EC set out in paragraphs 3 and 4 shall apply only in cases where the third-country national concerned can present evidence that he/she has been absent from the territory of the Community to exercise an economic activity in an employed or self-employed capacity, or to perform a voluntary service, or to study in his/her own country of origin.
6. Articles 13, 15 and 16 shall continue to apply, where applicable, after the holder of the EU Blue Card has been issued a residence permit pursuant to Article 18.

## *Article 18*

### *Residence permit "Long-term resident – EC / EU Blue Card holder"*

1. Holders of the EU Blue Card who fulfil the conditions set out in Article 17 for the acquisition of the EC long term resident status shall be issued a residence permit in accordance with Article 1(2)(a) of Council Regulation (EC) No 1030/2002.
2. Under the heading "type of permit", Member States shall enter "long-term resident – EC / EU Blue Card holder".
3. Holders of the residence permit "long-term resident – EC / EU Blue Card holder" shall be subject to the provisions relating to them and their family members set out in this Directive and in Directive 2003/109/EC.

## **Chapter V**

### **RESIDENCE IN OTHER MEMBER STATES**

## *Article 19*

### *Conditions*

1. After two years of legal residence in the first Member State as holder of an EU Blue Card, the person concerned and his/her family members shall be allowed to move to a Member State other than the first Member State for the purpose of highly qualified employment under the conditions set out in this Article.
2. No later than one month after entering the territory of the second Member State, the holder of the EU Blue Card shall notify his/her presence to the competent authorities of that Member State and present all the documents proving that he/she fulfils the conditions set out in Articles 5 and 6 for the second Member State.
3. In accordance with the procedures set out in Article 12, the second Member State shall process the notification and inform in writing the applicant and the first Member State of its decision to:
  - (a) issue an EU Blue Card and allow the applicant to reside on its territory for highly qualified employment if the conditions set in this Article are fulfilled and under the conditions set out in Articles 8-15;
  - (b) refuse to issue an EU Blue Card and oblige the applicant and his/her family members, in accordance with the procedures provided for by national law, including removal procedures, to leave its territory if the conditions set out in this Article are not fulfilled. The first Member State shall immediately readmit without formalities the holder of the EU Blue Card and his/her family members. The provisions of Article 14 shall apply after readmission.

4. The applicant shall be responsible for the costs related to the return and readmission of him/her self and his/her family members, including by reimbursing costs incurred by public funds where applicable, pursuant to paragraph 3(b).
5. In application of this Article, Member States may continue to apply volumes of admission as specified in Article 7.

#### *Article 20*

##### *Access to the labour market of the second Member State for holders of the residence permit "long-term resident – EC / EU Blue Card holder"*

1. Article 14(4) of Directive 2003/109/EC shall not apply to holders of the residence permit "long-term resident – EC / EU Blue Card holder".
2. ~~If~~ In cases where a Member State decides to apply ~~maintain, in respect of holders of the residence permit "long-term resident – EC / EU Blue Card holder"~~, the restrictions on access to the labour market provided for in Article 14(3) of Directive 2003/109/EC, it shall give preference to holders of the residence permit "long-term resident – EC / EU Blue Card holder" ~~this residence permit, applying to reside on its territory in order to exercise an economic activity in an employed or self-employed capacity in accordance with Directive 2003/109/EC~~, over other third-country nationals applying to reside there for the same purposes.

#### *Article 21*

##### *Residence in the second Member State for family members*

1. When the holder of the EU Blue Card moves to a second Member State in accordance with the provisions of Articles 19 and when the family was already constituted in the first Member State, the members of his/her family shall be authorised to accompany or join him/her.
2. No later than one month after entering the territory of the second Member State, the family members concerned shall notify their presence to the competent authorities of that Member State and present an application for a residence permit.
3. The second Member State may require the family members concerned to present with their application for a residence permit:
  - (a) their residence permit in the first Member State and a valid travel document;
  - (b) evidence that they have resided as members of the family of the holder of the EU Blue Card in the first Member State;
  - (c) evidence that they have a sickness insurance covering all risks in the second Member State, or that the holder of the Blue Card has such insurance for them.

4. Where the family was not already constituted in the first Member State, Article 16 shall apply.

## Chapter VII

### FINAL PROVISIONS

#### *Article 22*

##### *Implementing measures*

1. Member States shall communicate to the Commission and the other Member States if legislative or regulatory measures are enacted in respect of Articles 7, 9(2), 19(5) and 20 through the network established by Decision 2006/688/EC.
2. The information pursuant to paragraph 1 shall include the detail of the measures concerned, translated into an official language of the Institutions of the European Union other than the language of the Member State concerned.
3. Annually, and for the first time no later than 1 April of [one year after the date of transposition of this Directive], Member States shall communicate to the Commission and the other Member States through the network established by Decision 2006/688/EC statistics on the volumes of third-country nationals who have been granted, renewed or withdrawn an EU Blue Card during the previous calendar year, indicating their nationality and their occupation. Statistics on admitted family members shall be communicated likewise. For holders of the EU Blue Card and members of their families admitted in accordance with the provisions of Articles 19 to 21, the information provided shall in addition specify the Member State of previous residence.

#### *Article 23*

##### *Reports*

Every three years, and for the first time no later than [three years after the date of transposition of this Directive], the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary.

#### *Article 24*

##### *Contact points*

1. Member States shall appoint contact points which shall be responsible for receiving and transmitting the information referred to in Article 19.

2. Member States shall provide appropriate cooperation in the exchange of the information and documentation referred to in the first paragraph.

#### *Article 25*

##### *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 entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a 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 26*

##### *Entry into force*

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

*Article 27*  
*Addressees*

This Directive is addressed to the Member States.

Done at Brussels, [...]

*For the Council*  
*The President*  
*[...]*