



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 15 September 2008

**Interinstitutional File:
2007/0228 (CNS)**

13009/08

LIMITE

**MIGR 68
SOC 500**

OUTCOME OF PROCEEDINGS

of: JHA Counsellors

on: 12 September 2008

No. Cion doc: 14490/07 MIGR 104 SOC 413

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

1. The above proposal was considered by the Permanent Representatives Committee at its meeting on 11 September 2008 and by JHA Counsellors at their meeting on 12 September 2008.
2. The results of the discussions are set out in the Annex to this Note, with delegations' comments in the footnotes.

Proposal for a

COUNCIL DIRECTIVE

on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment¹

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 for the purpose of highly qualified employment as holders of an EU Blue Card, and of their family members,
- (b) the conditions for entry and residence of third-country nationals and of their family members under point (a) in Member States other than the first Member State.

¹ **BE, DE, ES, FI, HU** and **AT** maintained scrutiny reservations, while **LT, MT** and **NL** maintained Parliamentary reservations on the entire proposal. 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, the **United Kingdom** and **Ireland** are not taking part in the adoption of this Decision and are not bound by it or subject to its application. **Denmark**, in accordance with Articles 1 and 2 of the Protocol annexed to the Treaty on the European Union and the Treaty establishing the European Community, will not participate in the adoption of this Decision and will not be bound by or subject to its application.

Article 2
*Definitions*²

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 employment of a person who, in the Member State concerned, is protected as an employee under national employment law and/or in accordance with the national practice, irrespective of the legal relationship, for the purpose of exercising of genuine and effective work for or under the direction of someone else for which a person is paid and for which adequate and specific competence, proven by higher professional qualifications, is required;
- (c) "EU Blue Card" means the authorisation 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 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.

² Following a suggestion from NL aimed at including specific provisions on cross-border workers, the Pres. suggested dealing with this issue - which in its view and in the view of several delegations goes beyond the scope of this proposal - , as appropriate, in the context of the *proposal for a Council 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*. If necessary, this issue could also be reflected in a clause to be inserted in the Preamble of this proposal as a recital.

- (g) "higher professional qualifications" means qualifications attested by evidence of higher education qualifications or, by way of derogation, when foreseen by national legislation, by at least five years of professional experience that demonstrates knowledge of a level comparable to higher education qualifications which is relevant in the profession or sector specified in the work contract or binding job offer³.
- (h) "higher education qualification" stands for any degree, diploma or other certificate issued by a competent authority attesting the successful completion of a post-secondary 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 years⁴.
- (i) "professional experience" means the actual and lawful pursuit of the profession concerned.
- (j) "regulated profession" means a regulated profession as defined in Article 3(1) (a) of Directive 2005/36/EC.

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 under the terms of this Directive.
2. This Directive shall not apply to third-country nationals:
 - (a) who are authorized to reside in a Member State on the basis of temporary protection or have applied for authorization to reside on that basis and are awaiting a decision on their status;

³ **NL** maintained a reservation and **PL** a scrutiny reservation on point (g). In particular **NL** expressed concerns about the possibility of carrying out a check of the professional qualifications envisaged in this provision.

⁴ **ES** preferred four rather than three years in relation to point h).

- (b) who are beneficiaries on internal protection under Directive 2004/83 EC or have applied for international protection under this Directive and whose application has not yet given rise to a final decision⁵;
- (c) who are beneficiaries of international protection in accordance with national legislation or practice of the Member State or have applied for international protection in accordance with national legislation or practice of the Member States and whose application has not given rise to a final decision;
- (d) 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;
- (e) who are family members of Union citizens who have exercised, or are exercising, their right to free movement within the Community in conformity with Directive 2004/38/EC;
- (f) 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;
- (g) 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;
- (h) who have been admitted to the territory of a Member State as seasonal workers;
- (i) whose expulsion has been suspended for reasons of fact or law;
- (j) third-country nationals and their family members, whatever their nationality, who, under agreements between the Community and its Member States, on the one hand, and those third countries, on the other hand, enjoy rights of free movement equivalent to those of Union citizens.

⁵ In relation to the exclusion, from the scope of the proposal - as already envisaged in the initial Commission proposal -, of beneficiaries of international protection, it was agreed to include a statement from the Council inviting the Commission to consider, this issue in the framework of the establishment of a common asylum system.

- 2a. This Directive shall not apply to third-country nationals covered by Directive 96/71/EC as long as they are posted on the territory of the Member State concerned.
3. This Directive shall be without prejudice to any agreement between the Community and/or 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.
4. The provisions of this Directive shall be without prejudice to the right of the Member States to issue residence permits other than an EU Blue Card for any purpose of 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) 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 for persons to whom it applies in respect of the following provisions of this Directive:
 - (a) Article 5(2) in application of Article 19,
 - (b) Articles 12, 13 (1), second sentence, 13 (2)⁶, 14, 15, 16, 17 (4) and 20.

⁶ PL suggested replacing the reference to Article 13 (1), second sentence and Article 13 (2) with a reference to Article 13 (1) and (2).

Chapter II

CONDITIONS OF ADMISSION

Article 5

Criteria for admission

1. Without prejudice to Article 11 (1), a third-country national who applies to be admitted under the terms of this Directive shall:
 - (a) present a valid work contract or, as foreseen in national legislation, a binding job offer for highly qualified employment of at least one year in the Member State concerned;
 - (b) present the document attesting that he/she fulfils 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 as foreseen in national legislation;
 - (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 job offer as foreseen in national legislation;
 - (d) present a valid travel document, as determined by national law and an application for a visa or a visa, if required, as well as, if appropriate, evidence of a valid residence permit or of a national long-term visa. 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 or, if foreseen by national legislation, having applied for a sickness insurance⁷ for the applicant 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.

⁷ CZ suggested replacing *sickness insurance* with *health insurance*.

- 1a. Member States may require the applicant to provide his/her address in the territory of the Member State concerned.
2. ⁸In addition to the conditions stipulated in paragraph 1, the gross annual salary resulting from the monthly or annual salary specified in the work contract or binding job offer must not be inferior to a relevant salary threshold defined and published for the purpose by the Member States which shall be at least 1,5 times⁹ the average gross annual salary in the Member State concerned.
3. When implementing paragraph 2, Member States may require that all conditions in the applicable laws, collective agreements or practices in the relevant occupational branches for highly qualified employment are met¹⁰.
4. By way of derogation to paragraph 2, and for employment in professions which are in particular need for third country national workers and which belong to the major groups 1 and 2 of the International Standard Classification of Occupations, the salary threshold may be at least 1,2 times the average gross annual salary. In this case, the Member State concerned shall communicate each year to the Commission the list of the professions for which a derogation has been decided¹¹.
5. This Article shall be without prejudice to the applicable collective agreements or practices in the relevant occupational branches for highly qualified employment.

⁸ **CZ, HU and SE** maintained reservations on paragraph 2. In relation to the concerns expressed by these delegations it was agreed to insert the following clause in the Preamble as a recital:

Considering that this Directive aims only at defining conditions of entry and residence for highly qualified employment purposes including eligibility criteria related to a salary threshold, that the sole purpose of this salary threshold is to help to determine, on the basis of a statistical observation, the scope of the European Blue Card established by each Member State from common rules, it does not interfere in any way in terms of determination of wages and in the rules or practices at national level that may determine them, nor does it constitute any harmonisation in this field; it finally fully respects the competences of Member States, particularly on social matters.

⁹ **NL, AT and SK**, which maintained a reservation on this provisions, felt that the coefficient factor 1,5 is too high.

¹⁰ **BE, DE, IT and PL** maintained scrutiny reservations on paragraph 3, which results from a compromise suggestion submitted by **SE**.

¹¹ **DE** maintained a scrutiny reservation on paragraph 4.

Article 6

Derogation

[deleted]

Article 7

Volumes of admission

This Directive shall not affect the right of Member States to determine volumes of admission of third-country nationals coming for highly qualified employment.

Chapter III

EU BLUE CARD, PROCEDURE AND TRANSPARENCY

Article 8

EU Blue Card

1. A person who has applied and fulfils the requirements set out in Article 5 and for whom the competent authorities have taken a positive decision in accordance with Article 9 shall be issued an EU Blue Card.

The Member State concerned shall grant the third-country national every facility to obtain the requisite visas.

2. Member States shall set a standard period of validity of the EU Blue Card , which shall be comprised between one and four years. If the work contract covers a period less than this period, the EU Blue Card shall be issued or renewed for the duration of the work contract plus three months¹².

¹² **NL** and **AT** maintained scrutiny reservations on paragraph 2, in relation to the period of validity of the EU Blue Card.
SK, which also maintained a reservation on this provision, suggested deleting the words *plus three months* at the end of paragraph 2. This suggestion was opposed by **several delegations**.

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 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. 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) the rights recognised to them in 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 Article 5 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, and when considering renewals or authorisations pursuant to Article 13(1) during the first two years of legal employment as holder of 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.

Member States may verify whether the concerned vacancy could not be filled by national or Community manpower, or by third-country nationals lawfully resident in that Member State and already forming part of its labour market by virtue of Community or national legislation, as well as by EC long-term residents wishing to move to that Member State for highly qualified employment in accordance with Chapter III of Council Directive 2003/109/EC or with Article 20 of this Directive.

- 2a. An application for an EU Blue Card may also be considered as not admissible on the grounds of Article 7.
- 2b. Member States may reject an application for an EU Blue Card in order to ensure ethical recruitment in sectors suffering from a lack of qualified personnel in the countries of origin.
3. Member States may reject an application for an EU Blue Card if the employer has been sanctioned in conformity with national legislation for undeclared work and/or illegal employment.

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 this Directive 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 communication pursuant to Article 13(2) second paragraph and 14(4) shall not be considered to be a sufficient reason for withdrawing or not renewing the EU Blue Card if the holder can prove that the communication did not reach the competent authorities for a reason independent from his/her will.

3. Member States may withdraw or refuse to renew an EU Blue Card issued on the basis of this Directive in the following cases:
- (a) for reasons of public policy, public security or public health;
 - (b) wherever the holder of an EU Blue Card does not have sufficient resources to maintain himself/herself and, where applicable, the members of his/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 and pensions as well as the number of family members. Such evaluation shall not take place during the period of unemployment referred to in Article 14.
 - (c) if the person concerned has not communicated his/her address;
 - (d) when the holder of an EU Blue Card applies for social assistance, provided that the Member State has informed him/her in advance in writing in this respect.

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 and/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 residing in that Member State as holder of a valid residence permit or national long-stay visa.
3. 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 valid residence permit but is legally present in its territory.

4. By way of derogation from paragraph 2, Member States may provide that application can only be submitted from outside the territory of the Member States, provided that such limitations, either for all the third-country nationals or for specific categories of third-country nationals, are already set out in the existing legislation at the time of the adoption of this Directive.

Article 12

Procedural safeguards

1. The competent authorities of the Member States shall adopt a decision on the complete application for an EU Blue Card and notify the applicant in writing, in accordance with the notification procedures laid down in the national legislation of the concerned Member State, as soon as possible and at the latest within ninety days after the date on which the application was lodged.

Any consequence of no decision being taken by the end of the period provided for in this provision shall be determined by national legislation of the relevant Member State.

2. If the information or documents supplied in support of the application are inadequate, 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 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, 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 a legal challenge in the Member State concerned, in accordance with national law. The notification shall specify the reasons for the decision, the possible redress procedures available and the time limit for taking action¹³.

¹³ SE maintained a reservation on paragraph 3.

Chapter IV

RIGHTS

Article 13

*Labour market access*¹⁴

1. For the first two years of legal employment 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 Article 5. After these first two years, Member States may grant to the persons concerned equal treatment with nationals as regards access to highly qualified employment.
2. For the first two years of legal employment in the Member State concerned as holder of an EU Blue Card, modifications that affect the conditions for admission or changes in employer 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). Member States may determine under which conditions such modifications only require prior communication. After these first two years and when Member State does not make use of the possibility foreseen in paragraph 1 regarding equal treatment, the person concerned shall communicate, according to national procedures, changes that affect the conditions of Article 5 to the competent authorities of the Member State of residence.
3. Member States may retain restrictions on access to employment, 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.

¹⁴ CZ maintained a reservation and MT a scrutiny reservation on Article 13. In relation to paragraph 1, CZ felt that the possibility of change should be limited to the job for which the person was admitted. Along the same lines, with respect to paragraph 2, this delegation considered that only changes in the employer should be subject to previous authorisation.

4. Member States may retain restrictions to access to employment in cases where, in accordance with existing national or Community legislation, these activities are reserved to nationals, EU or EEA citizens.
5. 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, in particular in respect to the rights of nationals of these Member States in terms of access to the labour market.

Article 14

Temporary unemployment

1. Unemployment in itself shall not constitute a reason for withdrawing an EU Blue Card, unless the period of unemployment exceeds three consecutive months, or it occurs more than once during the period of validity of an EU Blue Card.
2. During the period referred to in paragraph one, the holder of the EU Blue Card shall be allowed to seek and take up employment under the conditions set out in Article 13¹⁵.
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 (2) has been granted or denied. The communication under Article 13(2) shall automatically end the period of unemployment.
4. The holder of the EU Blue Card shall communicate the beginning of the period of unemployment to the competent authorities of the Member State of residence, according to national procedures.

¹⁵ CZ, which wanted to exclude persons who have committed serious infringements of their work contracts, maintained a reservation on paragraph 2.

Article 15

*Equal treatment*¹⁶

1. Holders of an EU Blue Card shall enjoy equal treatment with nationals of the Member State that issued the Blue Card at least 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 training¹⁷;
 - (d) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;
 - (e) provisions in national legislations regarding the 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 Community¹⁸,

¹⁶ **HU** and **AT** maintained scrutiny reservations on Article 15.

¹⁷ **HU** maintained a reservation on point c).

¹⁸ **CZ**, which felt that this area falls within the exclusive competence of the Member States, maintained a reservation on point (e), while **ES** maintained a scrutiny reservation on this provision.

DE and **AT**, which also maintained reservations on point (e), suggested inserting the following clause, identical to that contained in Article 12 (c) of the researchers Directive: *The special provisions in the Annex to Council Regulation (EC) No 859/2003 of 14 May 2003 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 these provisions solely on the basis of nationality shall apply accordingly.*

The **Cion** wondered if the following clause, that was agreed to be inserted in the Preamble as a recital, covers already the **DE** at **AT** concerns:

This Directive should not confer to EU Blue Card holders more rights than those already provided in existing Community legislation in the field of social security for third-country nationals, who have cross-border elements between Member States.

- (f) without prejudice to existing bilateral agreements, payment of income related acquired statutory pensions in respect of old age, at the rate applied by virtue of the law of the debtor Member State or States when moving to a third country¹⁹;
 - (g) [deleted]
 - (h) 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 offices²⁰;
 - (i) free access to the entire territory of the Member State concerned, within the limits provided for by national legislation.
2. With respect to the provisions of paragraph 1, points (c) and (h) Member States 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, and procedures for obtaining housing to cases where the holder of the EU Blue Card has been granted long-term resident status. Access to university may be subject to specific prerequisites according to national law.

With respect to the provisions of paragraph 1, point (c), the Member State concerned may restrict equal treatment to cases where the registered or usual place of residence of the EU Blue Card holder, or that of family member for whom he/she claims benefits, lies within the territory of the Member State concerned.

With the respect to paragraph 1, point (h), this provision is without prejudice to the freedom of individuals to choose their contractual partners in accordance with Community and national law.²¹.

3. The right to equal treatment as laid down in paragraph 1 is without prejudice to the right of the Member State to withdraw or to refuse to renew the EU Blue Card in accordance with Article 10.

¹⁹ **BE** and **SE** maintained scrutiny reservations on point f).

²⁰ **SI** maintained reservations on point h), in particular in relation to *procedures for obtaining housing*.

²¹ The **Cion** felt that this provision needs to be further considered.

4. When the holder of an EU Blue Card moves to a second Member State in accordance with Article 19 and a positive decision on the issuing of an EU Blue Card has not yet been taken, Member States may limit equal treatment in the areas listed in paragraph 1 of this Article, with the exception of point (b) and (d). If, during this period, Member States allow the applicant to work, equal treatment with nationals of the second Member States with nationals of the second Member States in all areas of paragraph 1 shall be granted.

Article 16

*Family members*²²

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, if the conditions for family reunifications are fulfilled, 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 conditions and measures referred to therein may only be applied after the persons concerned have been granted family reunification²³.
5. By way of derogation from Article 14(2) second sentence of Directive 2003/86/EC and in respect of access to the labour market, Member States shall not apply any time limit²⁴.

²² **DE** and **AT** maintained scrutiny reservations on Article 16.

²³ **AT** maintained its suggestion to delete paragraph 4.

²⁴ **CZ** maintained a reservation on paragraph 5. **CY**, which maintained a scrutiny reservation, suggested replacing *shall* with *may* in paragraph 5. The **Pres.** drew attention to the fact that, should paragraph 5 become optional, this provision would be redundant and should therefore be deleted.

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 holders²⁵

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 years²⁶ immediately prior to the submission of the relevant application.

²⁵ The text of Articles 17 and 18 results from a new compromise suggestion from the **Pres.**, which was the subject of a positive reaction and is still being considered by delegations.

²⁶ According to **DE**, the deadline for acquiring long-term resident status should be increased, for reasons linked to integration, from two to three years.

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) if they are shorter than twelve consecutive months and do not exceed in total eighteen 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 EC long-term resident holder of a long-term residence permit with the remark referred to in Article 18 (2) and of his/her family members having been granted the EC long-term residence status from the territory of the Community to twenty four consecutive months.
5. The derogations to Directive 2003/109/EC set out in paragraphs 3 and 4 may be restricted to 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. Article 15(f) and 16 shall continue to apply for holders of a long-term residence permit with the remark referred to in Article 18 (2), where applicable, after the holder of the EU Blue Card has become an EC long-term resident.

Article 18

Long-term resident permit

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 remark, Member States shall enter "Former EU Blue Card holder".

Chapter V

RESIDENCE IN OTHER MEMBER STATES

Article 19

Conditions

1. After eighteen months of legal residence in the first Member State as holder of an EU Blue Card, the person concerned and his/her family members may 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 Article²⁷.
2. As soon as possible and no later than one month after entering the territory of the second Member State, the holder of the EU Blue Card and/or his/her employer shall present an application for an EU Blue Card to the competent authorities of that Member State and present all the documents proving the fulfilment of the conditions set out in Article 5 for the second Member State. Member States may decide, according to national law, not to allow the applicant to work until the positive decision on the application has been taken by the competent authority.
 - 2a. The application may also be presented to the competent authorities of the second Member State while the holder of the EU Blue Card is still residing in the territory of the first Member State.
3. ²⁸In accordance with the procedures set out in Article 12, the second Member State shall process the application and inform in writing the applicant and the first Member State of its decision to:
 - (a) either 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, or

²⁷ **AT** and **SK** expressed concern on the deadline.

BE and **NL** wondered about the added value of this provision and in particular on the fact of setting a deadline for exercising mobility.

²⁸ **SE** maintained a reservation on paragraph 3, in line with its reservation on Article 12 (3).

- (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. This shall also apply if the Blue Card issued by the first Member State has expired or has been withdrawn during the examination of the application. The provisions of Article 14 shall apply after readmission²⁹.
4. If the EU Blue Card issued by the first Member State expires during the procedure, Member States may issue, if 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.
 5. The applicant and/or his/her employer may be held responsible for the costs related to the return and readmission of the holder of the EU Blue Card and his/her family members, including by reimbursing costs incurred by public funds where applicable, pursuant to paragraph 3(b).
 6. In application of this Article, Member States may continue to apply volumes of admission as specified in Article 7.
 7. From the second time that an EU Blue Card holder, and where applicable, his/her family members, makes use of the possibility to move to other Member States under the terms of this Chapter, “first Member State” shall be understood as the Member States from where he/she moves and “second Member State” as the Member State to which he/she is applying to reside.

²⁹ **AT**, which did not support the obligation for the first Member State to readmit the person concerned in the cases referred to in paragraph 3 b), maintained a reservation on this provision.
The **Pres.** drew attention to the fact that the readmission obligation serves the interest of the Member States.

Article 20

Access to the labour market of the second Member State for holders of [the residence permit "long-term resident –] EU Blue Card"

[deleted]

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 Article 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 or their sponsor, in accordance with national legislation, shall submit an application for a residence permit for a family member to the competent authorities of that Member State.

In cases where the residence permit of the family members 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, Member States shall allow the person to stay in its territory, if necessary by issuing national temporary residence permits, or equivalent authorisations, allowing the applicant to continue to stay legally on their territory with the holder of the EU Blue Card until a decision on the application has been taken by the competent authorities.

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 or their certified copies, as well as a visa, if required;
 - (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. The second Member State may require the Blue Card holder to provide evidence that:
 - (a) he/she has an accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in the Member State concerned.
 - (b) he/she has stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance 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 and pensions as well as the number of family members.
 5. Derogations contained in Article 16 shall continue to apply mutatis mutandis.
 6. Where the family was not already constituted in the first Member State, Article 16 shall apply.

Chapter VI

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.

Those Member States which make use of the provisions of Article 9 (2.b) shall communicate to the Commission and to the other Member States a duly justified decision indicating the countries and sectors concerned.

2. Annually, and for the first time no later than 1 July of [two years after the date of transposition of this Directive], Member States shall communicate, in accordance with Regulation (EC) No 862/2007 of the European Parliament and of the Council on Community statistics on migration and international protection to the Commission statistics on the volumes of third-country nationals who have been granted and, as far as possible, renewed or withdrawn an EU Blue Card during the previous calendar year, indicating their nationality and, as far as possible, their occupation. Statistics on admitted family members shall be communicated likewise, except for information about their occupation. 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.
3. For the purpose of the implementation of Article 5 (2) and, where appropriate, 5 (4), reference will be made to EUROSTAT data.

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 Articles 17, 19 and 22.
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.

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

[...]

LIST OF NEW RECITALS THAT DELEGATIONS AGREED TO INSERT IN THE PREAMBLE

In relation to Article 2, point (h)

For the purpose of this Directive, in order to evaluate if the third-country national concerned possesses higher education qualifications, reference could be made to ISCED 1997 levels 5a and 6.

In relation to Article 5 (2)

Considering that this Directive aims only at defining conditions of entry and residence for highly qualified employment purposes including eligibility criteria related to a salary threshold, that this salary threshold has for sole purpose to help to determine, on the basis of a statistical observation, the scope of the European Blue Card established by each Member State from common rules, it does not interfere in any way in terms of determination of wages and in the rules or practices at national level that may determine them, nor does it constitute any harmonisation in this field; it finally fully respects the competences of Member States, particularly on social matters.

In relation to Article 7

Regarding volumes of admission, Member States retain the possibility not to grant residence permits for employment in general or for certain professions, economic sectors or regions.

In relation to Article 12 (1)

Whereas the deadline for examining the application should not include the time required for the recognition of professional qualifications or the time required for issuing a visa.

The designation of the competent authorities under this Directive is without prejudice to the role and responsibilities of other national authorities and, where applicable, the social partners, with regard to the examination of and the decision on the application.

In relation to Article 15 (1), point (c)

Equal treatment of holders of an EU Blue Card does not cover measures in the field of vocational training which are financed under social assistance schemes.

In relation to Article 15 (1), point (e)

This Directive should not confer to EU Blue Card holders more rights than those already provided in existing Community legislation in the field of social security for third-country nationals, who have cross-border elements between Member States.

In relation to Article 25

In accordance with paragraph 34 of the Interinstitutional agreement on better law making, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables, which will, as far as possible, illustrate the correlation between the Directive and the transposition measures and make them public.