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From:	General Secretariat of the Council
To:	Delegations
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Subject:	Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment

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At its meeting on 30 March, the Working Party on Integration, Migration and Expulsion examined the Presidency compromise suggestions as set out in document 7598/17. Comments made by delegations during that meeting as well as subsequently in writing appear in the footnotes of the Annex.

As a result of these comments, the Presidency has introduced modifications in the text to be discussed at the meeting of JHA Counsellors on 24 April. These modifications are indicated in **bold** and the deleted text is marked with ~~striketrough~~.

2016/0176 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment<sup>1</sup>**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Having regard to the opinion of the Committee of the Regions<sup>3</sup>,

Acting in accordance with the ordinary legislative procedure,

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<sup>1</sup> **AT, DE, EL, HU, SI:** general scrutiny reservations. **SI:** parliamentary reservation. **Cion, ES, NL, PT:** reservations on the replacement of term "highly skilled employment" with "highly qualified employment" as this sends an overall negative signal and is not in line with the idea of a review of the Directive. **DE:** scrutiny reservation on the use of the term "highly qualified employment" instead of "highly skilled employment".

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

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

Whereas:

- (1) The Commission's Communication of 3 March 2010 entitled 'Europe 2020: A strategy for smart, sustainable and inclusive growth'<sup>4</sup> sets the objective of the Union becoming an economy based on knowledge and innovation, reducing the administrative burden on companies and better matching labour supply with demand. Measures to facilitate the admission of third-country national highly qualified workers have to be seen in that broader context.
- (2) The conclusions of the European Council of 26 and 27 June 2014 state that in order to remain an attractive destination for talents and skills, Europe must compete in the global race for talent. Strategies to maximise the opportunities of legal migration should therefore be developed, including the streamlining of existing rules.
- (3) The European Agenda on Migration adopted on 13 May 2015 calls for an attractive EU-wide scheme for highly qualified third-country nationals, and specifies that a review of Council Directive 2009/50/EC<sup>5</sup> is needed to make it more effective in attracting talents to the Union and thereby address both the demographic challenges faced by the Union and labour and skills shortages in key sectors of the Union economy.
- (4) It is necessary to respond to the challenges identified in the implementation report on Directive 2009/50/EC. The Union should aim at establishing a more attractive and effective EU-wide scheme for highly qualified workers. The Union approach on attracting highly qualified workers<sup>6</sup> should be further harmonised and the EU Blue Card should be made the primary tool in that regard with faster procedures, more flexible and inclusive admission criteria, and more extensive rights including more facilitated intra-EU mobility. As this would entail substantial changes to Directive 2009/50/EC, that Directive should therefore be repealed and replaced by a new Directive.

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<sup>4</sup> [COM\(2010\) 2020 final](#)

<sup>5</sup> Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (OJ L 155, 18.6.2009, p.17).

<sup>6</sup> **BG:** insert: "..., without prejudice to EU workers' rights provided by Regulation (EU) No 492/2011,..".

- (5) An EU-wide admission system to attract and retain highly qualified workers into the Union should be created. This Directive should be applicable regardless of whether the initial purpose of residence of the third-country national is highly qualified employment or if he or she resides first on other grounds and changes status towards this purpose subsequently. Member States should issue an EU Blue Card instead of a national permit to all applicants falling within the scope of this Directive. Member States should retain the right to issue permits other than the EU Blue Card for any purpose of employment to third-country nationals who fall outside of the scope of this Directive, subject to the limitations following from other directives in the area of labour migration.
- (6)<sup>7</sup> *deleted*
- (6a) The concept of highly qualified employment should entail that the person employed not only has a high level of competence, as proven by higher professional qualifications, but also that the job is inherently regarded as demanding such competence. While in the modern labour market a direct link between the qualifications and the job is not always and necessarily required, the tasks and duties related to the highly qualified job should be so specialised and complex that the required level of competence to perform those duties is usually associated with completion of education programmes and resulting qualifications at ISCED 2011 level 6 (International Standard Classification of Education).<sup>8</sup>

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<sup>7</sup> **ES:** reservation on the deletion of the Recital which stated the following: "*The concept of highly skilled worker should be introduced in this Directive in order to emphasise that, besides formal educational qualifications, where provided for under national law, equivalent professional experience may be taken into account as a criterion for admission*". **ES,** however, stresses that the recognition of skills should be mandatory.

<sup>8</sup> **AT, BG, DE, HU:** scrutiny reservations. **AT, CZ:** scrutiny reservations related to ISCED level 6 and the missing link between the specific qualifications and the employment. **AT:** delete "While in the modern labour market a direct link between the qualifications and the job is not always necessarily required, ...". **Cion:** reservation on the deletion of EQF level 6.

- (7) This Directive should not affect the right of the Member States to determine the volumes of admission of third-country nationals coming from third countries to their territory in order to seek work in accordance with Article 79(5) of the Treaty on the Functioning of the European Union (TFEU). On that basis, Member States should be able to either consider an application for an EU Blue Card inadmissible or reject it.
- (8)<sup>9</sup> Beneficiaries of international protection as defined in Article 2(a) of Directive 2011/95/EU of the European Parliament and of the Council<sup>10</sup> have a wide set of rights including labour market access in the Member State having granted them protection. In order to enhance their labour market opportunities across the Union, those who are highly qualified should be entitled to apply for an EU Blue Card in Member States other than the one which granted them protection. In those Member States, they should be subject to the same rules as any other third-country national falling within the scope of this Directive, while this Directive should have no impact on their status in the Member State having granted them international protection. [In order to support the successful integration of the third-country nationals concerned, a residence period of at least 12 months as a beneficiary of international protection should be required before this Directive becomes applicable to these persons in other Member States.]

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<sup>9</sup> **ES:** scrutiny reservation. **Cion:** reservation on the fact that beneficiaries of international protection cannot apply for a EU Blue Card in the MS that has granted them protection as well as on the 12-month waiting period.

<sup>10</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (OJ L 337, 20.12.2011, p. 9).

- (9) The transfer of responsibility for protection of beneficiaries of international protection is outside the scope of this Directive: the protection status and the rights associated with it should not be transferred to another Member State on the basis of the issuance of an EU Blue Card.
- (10) In order to facilitate the independent intra-EU mobility and business activities of those highly qualified third-country nationals who are beneficiaries of the right to free movement, they should be given access to the EU Blue Card in accordance with the same rules as any other third-country national falling within the scope of this Directive. This entitlement concerns persons enjoying free movement rights based on family ties to a Union citizen in accordance with relevant legislation and it should apply regardless of whether or not the Union citizen of reference has exercised the fundamental right to move and reside freely under Article 21 TFEU and regardless of whether the third-country national concerned was first an EU Blue Card holder or a beneficiary of the right to free movement. Those highly qualified third-country nationals who are beneficiaries of the right to free movement should thus be entitled to engage in highly qualified employment, perform business trips and take up residence in different Member States regardless of whether or not the third-country national accompanies the Union citizen of reference. The rights that these third-country nationals acquire as EU Blue Card holders should be without prejudice to rights they may enjoy under Directive 2004/38/EC of the European Parliament and of the Council<sup>11</sup>. For reasons of legal clarity and coherence, in terms of family reunification and equal treatment the rules under Directive 2004/38/EC should prevail. All provisions regarding the beneficiaries of the right to free movement in this Directive should also apply where that right is derived from those third-country nationals who enjoy rights of free movement equivalent to those of Union citizens under agreements either between the Union and its Member States and third countries or between the Union and third countries.

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<sup>11</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ L 158, 30.4.2004, p. 77).

- (11)<sup>12</sup> This Directive should not apply to categories of third-country nationals to whom a particular scheme under Union law, with specific entry conditions and sets of rights, applies when the inclusion of those categories in this Directive would go against the rationale of the particular scheme, create unnecessary legal complexity or entail a risk of abuses. This Directive should not apply to third-country nationals who apply to reside in a Member State as researchers in order to carry out a research project, as they fall within the scope of Directive (EU) 2016/801 of the European Parliament and of the Council<sup>13</sup> which introduces a specific procedure for admitting third-country nationals for the purposes of scientific research. However, once admitted under Directive (EU) 2016/801, legally residing researchers should be entitled to apply for an EU Blue Card under this Directive for other purposes than those covered under Directive (EU) 2016/801. The same applies for legally residing intra-corporate transferees who once admitted under Directive 2014/66/EU should be entitled to apply for an EU Blue Card under this Directive for other purposes than those covered under Directive 2014/66/EU.
- (12) This Directive should not affect the possibility for an EU Blue Card holder to enjoy additional rights and benefits which may be provided by national law, and which are compatible with this Directive.
- (13) It is necessary to provide for a flexible demand-driven admission system based on objective criteria, such as a work contract or a binding job offer of at least 6 months, a salary threshold adaptable by the Member States to the situation in its labour market and higher professional qualifications.

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<sup>12</sup> **BE:** would like to add the following clarification in the recital: "*In addition, this Directive should not apply to third-country nationals who apply to reside in a Member State in the framework of an intra-corporate transfer as they fall within the scope of Directive (EU) 2014/66 of the European Parliament and of the Council which introduces a specific procedure for admitting third-country nationals for the purpose of work as an intra-corporate transferee.*" **DE:** "for other purposes " should be clarified.

<sup>13</sup> Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (OJ L 132, 21.05.2016, p. 21).

- (14)<sup>14</sup> This Directive is without prejudice to national procedures on the recognition of diplomas. In order to evaluate if the third-country national concerned possesses higher education or equivalent qualifications, reference should be made to ISCED. Member States are encouraged to facilitate the recognition of documents attesting the relevant higher education qualifications.
- (15) In order to ensure a sufficient level of harmonisation in the admission conditions throughout the Union, both **a lower ~~minimum~~ and upper factor ~~maximum~~ factors for calculating for** the salary threshold should be determined. The ~~minimum and maximum~~ **lower and upper limit for setting the** national salary thresholds should be determined by multiplying these factors with the average gross annual salary in the Member State concerned. **A salary threshold should be chosen within the range of the lower and upper limit. This salary threshold should set out the minimum salary which a Blue Card holder should earn. Therefore, in order to be admitted under this Directive, applicants should earn a salary which is equal to or greater than the salary threshold chosen by the Member State concerned.**<sup>15</sup>

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<sup>14</sup> **AT:** scrutiny reservations related to the reference to ISCED. **Cion:** reservation on the deletion of a reference to EQF as it appears in the Cion proposal. Furthermore, the last sentence of the recital should appear as a shall-clause in the text of the proposal.

<sup>15</sup> **PRES:** *This Recital has been amended in order to address Member State concerns that the Recital was too complicated. The amendments also seek to make it clear that the Blue Card holder should earn a salary that is either equal to or greater than the salary threshold chosen by that Member State.*



~~Member States should fix their national threshold in accordance with the situation and organisation of their respective labour markets and their general immigration policies. In order to ensure harmonisation and coherence, Eurostat national accounts data provided by Member States should be used to determine the average gross annual salary in the Member State concerned by dividing the total amount of salaries by the number of employees, and adjusting this figure for full time employment.~~<sup>16</sup>

- (16) Member States should be able to provide a lower salary threshold for specific professions where it is considered by the Member State concerned that there is a particular lack of available workforce and where such professions belong to major group 1 or 2 of the ISCO ("International Standard Classification of Occupation") classification.
- (17)<sup>17</sup> Member States should be able to provide a lower salary threshold to benefit third-country nationals during a certain period after their graduation. This period should be granted each time that the third-country national reaches a level of education relevant for the purposes of this Directive, namely levels 6, 7 or 8 of ISCED 2011 according to the national law of the Member State concerned. It should apply whenever the third-country national applies for an initial or renewed EU Blue Card within three years from the date of obtaining the qualifications and in addition, when that third-country national applies for a renewal of the EU Blue Card and a period of 24 months has not elapsed since the issuance of the initial EU Blue Card. After these grace periods – which may run in parallel – have elapsed the young professionals can be reasonably expected to have gained sufficient professional experience in order to fulfil the regular salary threshold.

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<sup>16</sup> **SI:** scrutiny reservation on "adjusting this figure to full time employment", also the text is too complex. In addition, the references to "minimum" and "maximum national salary thresholds" are confusing. **AT:** scrutiny reservation suggesting that the last sentence could be moved to the operative part of the text. **FR:** reservations. **BE, HR:** national data should be used to calculate the average gross annual salary. **BE, FR:** the data Eurostat uses for the calculation of the average salary is outdated. **HR:** the calculation method is too complex. **ES, LV** (scrutiny reservation): the recital is too detailed and complex. **SK** suggests to use the term "*remuneration*" instead of the word "salary".

<sup>17</sup> **AT:** reservation related to the reference to ISCED level 6.

- (18)<sup>18</sup> The conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, including the eligibility criteria related to a salary threshold should be defined. The salary threshold set by the Member State should not aim to determine salaries and therefore should not derogate from the rules or practices at Member State level or from collective agreements, and should not be used to constitute any harmonisation in this field. The salary offered for a specific job should be freely determined between the employer and the applicant while respecting the applicable salary threshold and the applicable labour laws, collective agreements and practices in the Member States concerned. The salary paid **should** ~~may~~ not be lower than the applicable threshold and **it should be** in line with the applicable labour laws, collective agreements and practices in the Member State concerned, but it may be higher, in line with market conditions. This Directive should fully respect the competences of Member States, particularly on employment, labour and social matters.
- ~~(19) It should not be necessary for a third-country national to hold a travel document whose validity covers the whole duration of the initial EU Blue Card. Third-country nationals should be allowed to renew their travel document while holding an EU Blue Card.<sup>19</sup>~~
- (20) Member States should reject applications for an EU Blue Card and be allowed to withdraw or refuse to renew an EU Blue Card if there is a threat to public policy, public security or public health. Any rejection on grounds of public policy or public security should be based on the individual behaviour of the person concerned, in accordance with the principle of proportionality. Member States should ensure that checks conducted on EU Blue Card holder and on his employer in relation to withdrawal or non-renewal of the EU Blue Card should not be disproportionate. Illness or disability suffered after the third-country national was admitted to the territory of the first Member State should not constitute the sole ground for withdrawing or refusing to renew an EU Blue Card or for not issuing an EU Blue Card in a second Member State<sup>20</sup>. Moreover, Member States should have the possibility not to withdraw or not to refuse to renew an EU Blue Card, where the applicable salary threshold is temporarily not attained due to illness, disability or parental leave.

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<sup>18</sup> **AT, PT, SI:** scrutiny reservations.

<sup>19</sup> **PRES:** *Recital 19 has been deleted as it no longer reflects the content of Article 5(1)(d).*

<sup>20</sup> **DE:** this sentence should be deleted as the reasons indicated in it are covered by the general principle of proportionality.

- (21) Member States should be allowed to withdraw or refuse to renew an EU Blue Card where the EU Blue Card holder has either failed to comply with the conditions for mobility under this Directive or has exercised his or her mobility rights in an abusive manner, for example by applying for an EU Blue Card in a second Member States and beginning employment immediately while it is clear that the conditions will not be fulfilled and the application will be refused.
- (22) Any decision to reject an application for an EU Blue Card or to withdraw or refuse to renew an EU Blue Card should take into consideration the specific circumstances of the case and respect the principle of proportionality. In particular, where the ground for rejection is related to the activity of the employer, minor misconduct should not in any case constitute the sole ground for rejecting an application or withdrawing or refusing to renew the permit.
- (23) Once all the conditions for admission are fulfilled, Member States should issue an EU Blue Card within specified time limits. If a Member State issues residence permits only on its territory and all the conditions of this Directive relating to admission are fulfilled, the Member State should grant the third-country national every facility to obtain the requisite visa. It should be ensured that the competent authorities effectively cooperate for that purpose. In the event that the Member State does not issue visas, it should grant the third-country national concerned an equivalent permit allowing entry.
- (24) The rules on processing times for EU Blue Card applications should guarantee the swift issuance of permits in all cases. The processing time for examining the application for an EU Blue Card should not include the time required for the recognition of professional qualifications, where applicable, or the time required for issuing a visa, if required.

- (25) The format of the EU Blue Card should be in accordance with Regulation (EC) No 1030/2002<sup>21</sup>, thus enabling the Member States to refer in particular to the information on the conditions under which the person is permitted to work. Member States should be able to indicate additional information in paper format or store such information in electronic format, as referred to in Article 4 of that Regulation and point a(16) of the Annex thereto, in order to provide more precise information on the employment activity concerned. The provision of this additional information should be optional for Member States and should not constitute an additional requirement that would compromise the single permit and the single application procedure.
- (26) The Member State concerned should ensure that applicants have the right to challenge before a court or tribunal any decision rejecting an application for an EU Blue Card, or not renewing or withdrawing an EU Blue Card. This is without prejudice to the possibility to designate an administrative authority to carry out a prior administrative review of such decisions.

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<sup>21</sup> Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ L 157, 15.6.2002, p. 1).

(27)<sup>22</sup> Since the EU Blue Card scheme is motivated by the need to address labour and skills shortages in key sectors in the EU labour market, Member States should be able to check whether a vacancy which a Blue Card applicant intends to fill could instead be filled by a member of the national or Union workforce, by third-country nationals lawfully resident in the Member State and already forming part of its labour market by virtue of Union or national law, or by EU long-term residents wishing to move to that Member State for highly qualified employment in accordance with Chapter III of the Directive 2003/109/EC. In case Member States decide to make use of this possibility, they should communicate this in a clear, accessible and transparent way to applicants and employers, including online. For EU Blue Cards in a second Member State, taking into account the situation of the labour market should only be possible if that Member State has also introduced checks for first applications for third-country nationals coming from third countries ~~and after a separate notification.~~<sup>23</sup>

(28) *deleted*

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<sup>22</sup> **AT, DE:** scrutiny reservations.

<sup>23</sup> **PRES:** *This text was deleted as it is no longer reflected in Article 20(6).*

(29) In implementing this Directive, Member States should refrain from pursuing active recruitment in developing countries in sectors suffering from a lack of personnel. Ethical recruitment policies and principles applicable to public and private sector employers should be developed in key sectors, for example the health sector. This is consistent with EU's commitment to the 2010 WHO Global Code on the International Recruitment of Health Personnel<sup>24</sup> in addition to the Council and Member States' conclusions of 14 May 2007 on the European Programme for Action to tackle the critical shortage of health workers in developing countries (2007-2013) and the education sector, as appropriate. These principles and policies should be strengthened by the development and application of mechanisms, guidelines and other tools to facilitate, as appropriate, circular and temporary migration, as well as other measures that would minimise negative and maximise positive impacts of highly qualified immigration on developing countries in order to turn "brain drain" into "brain gain".

(29a)<sup>25</sup>In accordance with the principle of proportionality, the level of fees required by Member States for the processing of EU Blue Card applications should not be disproportionate or excessive. **The level at which these fees are set may take into account the services actually provided for the processing of applications and the issuance of permits, but** ~~the level at which these fees are set~~ must not have either the object or the effect of creating an obstacle to the obtaining of the status conferred by this Directive.<sup>26</sup> ~~The level of fees set by Member States for the processing of EU Blue Card applications by Member States may however reflect the verifications which the Member State is required to carry out for the purposes of this Directive.~~

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<sup>24</sup> The [WHO Global Code of Practice on the International Recruitment of Health Personnel](#), adopted on 21 May 2010 by the Sixty-third World Health Assembly in [resolution WHA63.16](#).

<sup>25</sup> **EL:** scrutiny reservation.

<sup>26</sup> **PRES:** *This Recital has been amended to reflect the content of Article 10 of the Single Permit Directive (2011/98/EU) upon the advice of the Council Legal Service to address the concern of a Member State.*

- (30) A simplified procedure for employers which have been recognised for that purpose should be provided, optional for Member States. The status of recognised employer should bring specific facilitation in terms of procedures and admission conditions – amounting to a *simplified procedure* – under this Directive and Member States should include sufficient safeguards against abuse. In accordance with the principle of proportionality, these safeguards must take into account the gravity and nature of the misconduct. Where the status of recognised employer is withdrawn during the period of validity of an EU Blue Card issued under the simplified procedure, regular admission conditions should apply upon renewing that EU Blue Card, unless the third-country national concerned is employed by another recognised employer.
- (31) In order to promote innovative entrepreneurship, third-country nationals admitted under this Directive may be given the possibility to exercise in parallel a self-employed activity without it affecting the right of residence as an EU Blue Card holder. This should be without prejudice to the continuous obligation to meet the conditions for admission under this Directive, and the EU Blue Card holder should therefore remain in highly qualified employed activity. Member States should have the possibility to lay down in their national law the conditions for access to self-employed activity. Member States should also be entitled to limit the scope of allowed self-employed activity. Any income derived from self-employment will not contribute towards meeting the salary threshold required to qualify as an EU Blue Card holder.
- (31a)<sup>27</sup> In order to enhance the contribution that the EU Blue Card holder may make through his higher professional qualifications, Member States should also have the possibility to lay down in their national law provisions allowing EU Blue Card holders to engage in other professional activities which are complementary to their main activity as an EU Blue Card holder. Any income derived from these professional activities will not contribute towards meeting the salary threshold required to qualify as an EU Blue Card holder.

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<sup>27</sup> **AT, FR:** scrutiny reservations.

- (32)<sup>28</sup> Equal treatment as granted to EU Blue Card holders should include equal treatment in respect of those branches of social security listed in Article 3 of Regulation (EC) No 883/2004 of the European Parliament and of the Council<sup>29</sup>. This Directive does not harmonise the social security legislation of Member States. It is limited to applying the principle of equal treatment in the field of social security to the third-country nationals falling within its scope. This Directive should not grant rights in relation to situations which lie outside the scope of Union law such as, for example, the situation of family members residing in a third country. That should not, however, affect the right of survivors who derive rights from EU Blue Card holders to receive pensions when residing in a third country.
- (33) In the event of mobility between Member States, Regulation (EU) No 1231/2010 of the European Parliament and of the Council<sup>30</sup> applies. This Directive should not confer more rights to the mobile EU Blue Card holder than those already provided for in existing Union law in the field of social security for third-country nationals who have cross-border interests between Member States.

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<sup>28</sup> **BG, FR, NL:** scrutiny reservations. **NL, SE:** add "...pensions, *under the same conditions as nationals of the MS concerned*, when residing in a third country".

<sup>29</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

<sup>30</sup> Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality (OJ L 344, 29.12.2010, p. 1).



- (34)<sup>31</sup> Professional qualifications acquired by a third-country national in another Member State should be recognised in the same way as those of Union citizens. Qualifications acquired in a third country should be taken into account in accordance with Directive 2005/36/EC of the European Parliament and of the Council<sup>32</sup>. ~~Where a third-country national is applying for an EU Blue Card to practise an unregulated profession, Member States should avoid excessive formal requirements and full recognition procedures regarding qualifications, wherever sufficient evidence can be otherwise obtained.~~<sup>33</sup> This Directive should be without prejudice to the conditions set out under national law for the exercise of regulated professions, **existing national restrictions on access to employment which entails involvement in the exercise of public authority and the responsibility for safeguarding the general interest of the State, and existing national rules on activities reserved to nationals, Union citizens or EEA citizens**, including in case of mobility to other Member States.
- (35) The rights acquired by a beneficiary of international protection as an EU Blue Card holder should be without prejudice to rights enjoyed by the person concerned under Directive 2011/95/EU and under the Geneva Convention in the Member State which granted the protection status. In that Member State, in order to avoid situations of conflicting rules, the provisions on equal treatment and family reunification of this Directive should not apply. Persons who are beneficiaries of international protection in one Member State and EU Blue Card holders in another should enjoy the same rights including equality of treatment with nationals of the Member State of residence as any other EU Blue Card holders in the latter Member State.

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<sup>31</sup> **BG:** scrutiny reservation. **DE** suggests to add at the end of the recital the following: "... regulated professions *and without prejudice to the restrictions on access to employment where the employment activities entail involvement in the exercise of public authority and the responsibility for safeguarding the general interest of the State and where, in accordance with existing national law, these activities are reserved to nationals, Union citizens and EEA nationals.*"

<sup>32</sup> Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).

<sup>33</sup> **PRES:** *This sentence was deleted as the same point is made in Recital 14 which reads: "Member States are encouraged to facilitate the recognition of documents attesting the relevant higher education qualifications."*

(36)<sup>34</sup> Favourable conditions for family reunification and access to work for spouses should be a fundamental element of this Directive in order to facilitate the attraction of highly qualified workers. Specific derogations from Council Directive 2003/86/EC, which is applicable in both the first and the second Member States, should be provided for in order to reach this aim. Member States should have the possibility to lay down in their national law the conditions for access of spouses to self-employed activity. Conditions related to integration or waiting periods should not be applied before allowing family reunification, as highly qualified workers and their families are likely to have favourable starting point regarding integration in the host community. With the aim of facilitating the swift entry of highly qualified workers, residence permits to their family members should be issued at the same time as the EU Blue Card, where the relevant conditions are fulfilled and the applications were lodged simultaneously.

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<sup>34</sup> **AT:** scrutiny reservation. **EL:** reservation concerning access to employment by family members.

- (37) In order to attract highly qualified workers and encourage their continuous stay in the Union, while enabling mobility within the Union as well as circular migration, derogations from Council Directive 2003/109/EC<sup>35</sup> should be provided for in order to give EU Blue Card holders easier access to EU long-term resident status. Where the EU long-term resident status is obtained after three years and before the regular residence period of five years has been reached, Member States should be allowed to withdraw the status where the person does not have sufficient resources to maintain himself or herself and the members of his or her family without having recourse to the social assistance system of the Member State concerned. **Member States' authorities retain a margin of manoeuvre with regard to the interpretation of the 'sufficient resources' requirement, provided that this does not undermine the objectives of this Directive and the effectiveness thereof.** However, Member States should not withdraw the status where such a measure would be disproportionate. **This could occur, for example, where the person does not have sufficient resources due to illness or accident, or due to involuntary unemployment where the person has subsequently registered as a jobseeker or begun vocational training.**<sup>36</sup>
- (38) In order to foster the mobility of highly qualified workers between the Union and their countries of origin, derogations from Directive 2003/109/EC should be provided for in order to allow longer periods of absence than those provided for in that Directive after highly qualified third-country workers have acquired the EU long-term resident status.

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<sup>35</sup> Council Directive 2003/109/EC of 25 November 2003 on the status of third-country nationals who are long-term residents (OJ L 16, 23.1.2004, p. 44).

<sup>36</sup> **PL:** scrutiny reservation.

(39) The occupational and geographical mobility of third-country highly qualified workers should be recognised as an important contributor to improving labour market efficiency across the Union, addressing skills shortages and offsetting regional imbalances. Mobility within the Union should be facilitated.

~~(39a)<sup>37</sup> Where an EU Blue Card holder is posted to the territory of a Member State other than the Member State which granted him the EU Blue Card, this Directive shall be without prejudice to the provisions of Directive 96/71/EC of the European Parliament and of the Council and Directive 2014/67/EU of the European Parliament and of the Council.~~

(40)<sup>38</sup> Existing legal uncertainty surrounding business trips of highly qualified workers should be addressed by defining this notion and setting a list of activities that in any case should be considered as business activities in all Member States. These activities should be directly linked to the interests of the employer in the first Member State and related to the duties of the Blue Card holder in the employment for which the Blue Card was granted. Second Member States should not be allowed to require from EU Blue Card holders engaging in business activities a visa, work permit or any other authorisation than the EU Blue Card issued by the first Member State. Where the EU Blue Card is issued by a Member State not applying the Schengen acquis in full, its holder should be entitled to enter and stay in one or several second Member States for the purpose of business activity for up to 90 days in any 180-day period based on the EU Blue Card.

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<sup>37</sup> **PRES:** *The last sentence of this Recital has been reinserted (and slightly reworded) since it is still applicable to cases where the status is withdrawn where the person does not have sufficient resources to maintain himself.*

<sup>38</sup> **AT, FR:** scrutiny reservations. **DE** suggests to insert the following: "... than the EU Blue Card issued by the first Member State. *This Directive should be without prejudice to the conditions of the second Member State set out under its national law for the exercise of regulated professions and without prejudice to the restrictions of the second Member State on access to employment where the employment activities entail involvement in the exercise of public authority and the responsibility for safeguarding the general interest of the State and where, in accordance with existing national law, these activities are reserved to nationals, Union citizens and EEA nationals.* Where the EU Blue Card is issued ..." **PRES:** *This is stated in Recital 34.* **FR** proposes to move the indicative list of business activities in Article 2 (1) to this Recital. **PRES:** *Moving the indicative list of business activities to the Recital would reduce the harmonising value of the definition of 'business activity' even further, while also reducing the clarity of the sub-article.*

- (41)<sup>39</sup> EU Blue Card holders should be allowed to move to a second Member State under simplified conditions where they intend to apply for a new EU Blue Card based on an existing work contract or binding job offer. Second Member States should not be allowed to require from EU Blue Card holders any other authorisation than the EU Blue Card issued by the first Member State. As soon as they submit an application for an EU Blue Card within the deadline provided for in this Directive, it should be possible for the second Member State to allow them to begin employment. In the second Member State the procedure for issuing an EU Blue Card should be simplified compared to the first EU Blue Card; as the mobile EU Blue Card holder has already exercised highly qualified activity in one Member State for a certain period of time, the second Member State should not have the need to control all the same details for a second time. However, mobility should remain demand-driven and therefore a work contract should always be required in the second Member State, and the salary should meet the threshold set by the second Member State in accordance with this Directive.
- (42) While some special rules are provided in this Directive regarding entry and stay in a second Member State for the purpose of business activity, as well as moving to a second Member State to apply for a new EU Blue Card in its territory, all the other rules governing the movement of persons across borders as laid down in the relevant provisions of the Schengen *acquis* apply.

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<sup>39</sup> **AT:** scrutiny reservation on "In the second Member State the procedure for issuing an EU Blue Card should be simplified compared to the first EU Blue Card."

- (43) Where the EU Blue Card is issued by a Member State not applying the Schengen *acquis* in full and the EU Blue Card holder, in the mobility situations provided for in this Directive, crosses an external border within the meaning of Regulation (EU) 2016/399 of the European Parliament and of the Council<sup>40</sup>, a Member State should be entitled to require evidence that the EU Blue Card holder is entering its territory either for the purpose of business activities or in order to apply for a new EU Blue Card based on a work contract or binding job offer. In the case of mobility for carrying out business activities, that Member State should be able to require evidence of the business purpose of the stay, such as invitations, entry tickets, or documents describing the business activities of the company and the position of the EU Blue Card holder in the company.
- (44) Where the EU Blue Card holder moves to a second Member State to apply for an EU Blue Card and he or she is accompanied by family members, that Member State should be able to require evidence of their lawful residence in the first Member State. Besides, in case of crossing of an external border within the meaning of Regulation (EU) 2016/399, the Members States applying the Schengen *acquis* in full should consult the Schengen information system and should refuse entry or object to the mobility of persons for whom an alert for the purposes of refusing entry or stay, as referred to in Regulation (EC) No 1987/2006 of the European Parliament and of the Council<sup>41</sup>, has been issued in that system.

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<sup>40</sup> Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23 03 2016, p. 1).

<sup>41</sup> Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 381, 28.12.2006, p. 4).

- (44a) <sup>42</sup>This Directive should allow the second Member State to request that the EU Blue Card holder, who moves on the basis of an EU Blue Card issued by the first Member State and whose application in the second Member State is rejected, leaves its territory. Where the EU Blue Card holder still has a valid EU Blue Card issued by the first Member State, the second Member State should be able to request that the EU Blue Card holder goes back to the first Member State in accordance with Directive 2008/115/EC of the European Parliament and of the Council<sup>43</sup>. Where the EU Blue Card issued by the first Member State is withdrawn or has expired during the examination of the application, it should be possible for the second Member State to either decide to return the EU Blue Card holder to a third country, in accordance with Directive 2008/115/EC, or request the first Member State to allow re-entry of the EU Blue Card holder to its territory without unnecessary formalities or delay. In this latter case, the first Member State should issue the EU Blue Card holder with a document allowing re-entry to its territory.
- (45) For the purpose of residence of beneficiaries of international protection across Member States, it is necessary to ensure that Member States other than the one which issued international protection are informed of the protection background of the persons concerned in order to enable Member States to comply with their obligations regarding the principle of non-refoulement.

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<sup>42</sup> **AT:** the term unnecessary is vague in "without unnecessary formalities". **FR, HU:** scrutiny reservations.

<sup>43</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

- (46) Where a Member State intends to expel a person who has acquired an EU Blue Card in that Member State and who is a beneficiary of international protection in another Member State, that person should enjoy the protection against expulsion guaranteed under Directive 2011/95/EU and under Article 33 of the Convention Relating to the Status of Refugees of 28 July 1951, as amended by the Protocol signed in New York on 31 January 1967 (the Geneva Convention).
- (47) Where the expulsion of a beneficiary of international protection outside the territory of the Member States is permitted under Directive 2011/95/EU, Member States should be obliged to ensure that all information is obtained from relevant sources, including, where appropriate, from the Member State that granted international protection, and that it is thoroughly assessed with a view to guaranteeing that the decision to expel that beneficiary is in accordance with Article 4 of the Charter of Fundamental Rights of the European Union.
- (48) Specific reporting provisions should be provided for to monitor the implementation of this Directive, with a view to identifying and possibly counteracting its possible impacts in terms of brain drain in developing countries and in order to avoid brain waste.
- (49) Since the objectives of this Directive, namely the establishment of a special admission procedure and the adoption of conditions of entry and residence, and the rights, applicable to third-country nationals for the purpose of highly qualified employment and their family members, cannot be sufficiently achieved by the Member States, especially – to better exploit the EU’s overall attractiveness – as regards ensuring their mobility between Member States and offering a clear and single set of admission criteria across the Member States, and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.



- (50) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in accordance with Article 6 of the Treaty on European Union (TEU).
- (51) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents<sup>44</sup>, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (52) In accordance with Articles 1 and 2 and Article 4a(1) of Protocol 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to TEU and TFEU, and without prejudice to Article 4 of ~~the~~ that Protocol, those Member States are not taking part in the adoption of this Directive and are not bound by or subject to its application.
- (53) In accordance with Articles 1 and 2 of the Protocol 22 on the position of Denmark annexed to TEU and TFEU, Denmark is not taking part in the adoption of this Directive, and is not bound by it or subject to its application.
- (54) Directive 2009/50/EC should therefore be repealed,

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<sup>44</sup> OJ C 3, 17.12.2011, p. 14.

HAVE ADOPTED THIS DIRECTIVE:

## **Chapter I**

### **GENERAL PROVISIONS**

#### *Article 1*

#### *Subject matter*

This Directive lays down:

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

*Article 2*  
*Definitions*

For the purposes of this Directive:

- (a) "third-country national" means any person who is not a citizen of the Union within the meaning of Article 20(1) of the Treaty on the functioning of the European Union;
- (b)<sup>45</sup> "highly qualified employment" means employment in a position demanding higher professional qualifications, where the employed person:
- in the Member State concerned, is protected as an employee under national employment law or in accordance with national practice, irrespective of the legal relationship, for the purpose of exercising genuine and effective work for, or under the direction of, someone else;
  - is paid; and
  - has the required competence, as proven by higher professional qualifications.
- (c) "EU Blue Card" means the residence permit bearing the term "EU Blue Card" entitling its holder to reside and work in the territory of a Member State under the terms of this Directive;
- (d) "first Member State" means the Member State which first grants a third-country national an "EU Blue Card";
- (e) "second Member State" means any Member State in which the EU Blue Card holder intends to exercise or exercises the right of mobility within the meaning of this Directive, other than the first Member State;

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<sup>45</sup> **AT, DE:** scrutiny reservations. **BG :** opposed to making professional skills comparable with education qualifications.

- (f) "family members" means third-country nationals as defined in Article 4(1) of Directive 2003/86/EC;
- (g) "higher professional qualifications" means qualifications attested by evidence of higher education qualifications or, where provided for by national law, higher professional skills<sup>46</sup>;
- (h) "higher education qualifications" means any diploma, certificate or other evidence of formal qualifications issued by a competent authority attesting the successful completion of a post-secondary higher education or equivalent tertiary education programme, namely a set of courses provided by an educational establishment recognised as a higher education institution or equivalent tertiary educational institution by the State in which it is situated, where the studies needed to acquire those qualifications lasted at least three years and correspond at least to ISCED 2011 level 6, according to national law;<sup>47</sup>
- (i) "higher professional skills" means knowledge, skills and competences attested where provided for by national law or national procedures by at least **three** five-years of professional experience of a level comparable to higher education qualifications and which is relevant in the profession or sector specified in the work contract or binding job offer;<sup>48</sup>

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<sup>46</sup> **CZ, FR:** concerns regarding the equivalence between education qualifications and professional skills. **BG:** opposed to making professional skills comparable with education qualifications. **PRES:** "Higher professional skills" are included within the definition of "higher professional qualifications" only where this is provided for in national law. **ES:** reservation, the recognition of professional skills should be mandatory. **Cion:** reservation on this being an optional clause.

<sup>47</sup> **AT:** reservation as opposed to a reference to ISCED level 6. **Cion:** reservation on the deletion of EQF level 6.

<sup>48</sup> **BG:** reservation. **PRES:** "Higher professional skills" are only included within the definition of "higher professional qualifications" where this is provided for in national law. However, the Presidency has incorporated the request of a Member State that provides for higher professional skills in its national law to lower the number of years of professional experience to three years, as in the original CION Proposal. It is worth emphasising that these three years of professional experience must be of a level comparable to higher education qualifications and relevant to the profession or sector specified in the work contract or binding job offer.

- (j) "professional experience" means the actual and lawful pursuit of the profession concerned;
- (k) "regulated profession" means a regulated profession as defined in Article 3(1) (a) of Directive 2005/36/EC;
- (l) <sup>49</sup> "business activity" means a temporary activity **directly** <sup>50</sup> related to the business interests of the employer and to the professional duties of the EU Blue Card holder **based on the employment contract** <sup>51</sup> in the first Member State, including at least attending internal and external business meetings, attending conferences and seminars, negotiating business deals, undertaking sales or marketing activities, exploring business opportunities, or attending and receiving training;
- (m) "international protection" has the meaning as defined in Article 2(a) of Directive 2011/95/EU of the European Parliament and of the Council.

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<sup>49</sup> **FR:** The indicative list of business activities should move to Recital 40. **PRES:** *Removing the indicative list of ‘business activities’ from the operative part of the text reduces the harmonising value of the definition of ‘business activity’ even further, while also reducing the clarity of the sub-article. AT (supported by CZ, HU, PL, SI):* prefers a closed and better defined list; opposed to unjustified or problematic extensive use of sales and marketing activities and training possibilities within the short-term mobility. **AT** suggested the following definition: *"business activity" means one of the following temporary activities related to the business interests of the employer in the first Member State when the Blue Card holder is not engaged in the supply of a service in the framework of a contract between the employer and a consumer: ~~including at least~~ attending internal and external business meetings for consultation with colleagues and business associates, attending conferences and seminars, negotiating business deals which exclude direct sales or services to the general public, ~~undertaking sales or marketing activities~~, exploring business opportunities (without exercising in-depth market research activities), attending and managing the organization of trade fairs and exhibitions for the purpose of promoting the employer or his/her products or services, purchasing goods or services for the employer or attending and receiving training which is confined to observation, familiarization and class room instruction only."* **BE** supports an open list but would prefer the wording suggested by **AT** for the activities mentioned with the exception of "without exercising in-depth market research activities". **SK:** supports a closed list of business activities in the definition.

<sup>50</sup> **PRES:** *This has been aligned with the contents of Recital 40, as requested by a number of Member States during the last Working Party.*

<sup>51</sup> **PRES:** *Likewise, this change was requested by a number of Member States during the last Working Party. More general wording ("based on the employment contract", rather than "as defined in the employment contract") as often the employment contract does not include all the duties of an employee, but only a brief job description.*

## Article 3

### Scope

1. This Directive shall apply to third-country nationals who apply to be admitted or who have been admitted to the territory of a Member State for the purpose of highly qualified employment.
2. This Directive shall not apply to third-country nationals:<sup>52</sup>
  - (a) who seek international protection and are awaiting a decision on their status or who are beneficiaries of temporary protection in accordance with the Council Directive 2001/55/EC<sup>53</sup> in a Member State;
  - (b) who seek protection in accordance with national law, international obligations or practice of the Member State and are awaiting a decision on their status, or who are beneficiaries of protection in accordance with national law, international obligations or practice of the Member State;
  - (c) who apply to reside in a Member State as researchers within the meaning of Directive (EU) 2016/801 in order to carry out a research project;

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<sup>52</sup> **AT, CZ, ES, HU, LV, LT, SK:** reservations regarding the dual statuses of family members of EU citizens, which could lead to practical and legal problems. **ES** could support the inclusion of family members of EU citizens if a specific provision is introduced that clarifies which provisions of this Directive apply to family members. **PRES:** *It is more appropriate to place a general explanatory provision that clarifies which provisions apply to these persons in the Recitals, rather than in the operative part of the text. This is already catered for in Recital 10 of the Presidency compromise text. The current text also includes specific provisions [Article 15(5), 16(9) and 21(8)] which outline where the free movement acquis prevails. In all other circumstances, the provisions of the Blue Card Directive apply.*

<sup>53</sup> Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212, 7.8.2001, p. 12).

- (d) who enjoy EU long-term resident status in a Member State in accordance with Directive 2003/109/EC and exercise their right to reside in another Member State in order to carry out an economic activity in an employed or self-employed capacity;
- (e)<sup>54</sup> who enter a Member State under commitments contained in an international agreement facilitating the entry and temporary stay of certain categories of trade and investment-related natural persons, with the exception of third-country nationals who have been admitted to the territory of a Member State as intra-corporate transferees pursuant to Directive 2014/66/EU of the European Parliament and of the Council<sup>55</sup>;
- (f) who have been admitted to the territory of a Member State as seasonal workers pursuant to Directive 2014/36/EU of the European Parliament and of the Council<sup>56</sup>;
- (g) whose expulsion has been suspended for reasons of fact or law;
- (h) who are covered by Directive 96/71/EC of the European Parliament and of the Council as long as they are posted on the territory of the Member State concerned;
- (i)<sup>57</sup> who under agreements between the Union and its Member States and third countries enjoy rights of free movement equivalent to those of Union citizens.

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<sup>54</sup> **BE:** the wording of this provision is not clear suggesting to delete "with the exception of third-country nationals who have been admitted to the territory of a Member State as intra-corporate transferees pursuant to Directive 2014/66/EU of the European Parliament and of the Council" and suggesting insert a new point e bis): "*who apply to reside in a Member State as intra-corporate transferees within the meaning of Directive EU 2014/66*". **PRES:** *ICTs are not in the same position as researchers. An ICT applicant can never fall under the Blue Card Directive as his or her employment contract was concluded in a third country.*

<sup>55</sup> Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (OJ L 157, 27.5.2014, p. 1).

<sup>56</sup> Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers (OJ L 94, 28.3.2014, p. 375).

<sup>57</sup> **BE:** it is not clear what categories are covered under this provision the wording of which is very wide and could also cover family members of EU citizens who have exercised their right to free movement and covered by the scope of this Directive.

2a.<sup>58</sup> This Directive shall apply to beneficiaries of international protection where [,after having resided for at least 12 months in the Member State which granted them the international protection,] they apply to be admitted to the territory of another Member State for the purpose of highly qualified employment under the terms of this Directive.

3. This Directive shall be without prejudice to any agreement between the Union and its Member States or between the Member States and one or more third countries, that lists the professions which do 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 which are signatories to these agreements.

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4. *deleted*<sup>60</sup>

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<sup>58</sup> **Cion, NL:** reservations on the fact that beneficiaries of international protection cannot apply for a EU Blue Card in the MS that has granted them protection as well as on the 12-month waiting period. **NL:** by way of a compromise, could agree to a may-clause. **DE, ES:** scrutiny reservations on this approach to beneficiaries of international protection. **FR, PT** (reservations): beneficiaries of international protection should be able to apply for a EU Blue Card also in the MS that has granted them protection. **FI, BE:** scrutiny reservations on the 12-month period. **CZ, SI, SK:** opposed to the inclusion of beneficiaries of international protection in the scope of the Directive. **FR:** *“This Directive shall apply to beneficiaries of international protection where, after having resided for at least 12 months in the Member State which granted them the international protection, they apply to remain on the territory of this Member State or to be admitted to the territory of another Member State for the purpose of highly skilled qualified employment under the terms of this Directive.”*

<sup>59</sup> **DE:** insert the following new paragraph: *“3a. This Directive shall be without prejudice to the conditions set out under national law for the exercise of regulated professions and without prejudice to the restrictions on access to employment where the employment activities entail involvement in the exercise of public authority and the responsibility for safeguarding the general interest of the State and where, in accordance with existing national law, these activities are reserved to nationals, Union citizens and EEA nationals”.*

<sup>60</sup> **AT, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HU, PL, PT, SI, SE, SK:** it should be clearly stated in the Directive that MS can introduce national schemes for admitting highly skilled third-country nationals. **NL:** scrutiny reservation on the issue of national schemes. **Cion:** reservation on the deletion of a clause stating explicitly that MS shall not issue any other permit than the EU Blue Card for the purpose of highly skilled employment.



*Article 4*  
*More favourable provisions*<sup>61</sup>

1. This Directive shall be without prejudice to more favourable provisions of:
  - (a) Union law, including bilateral or multilateral agreements concluded between the Union or the Union and its Member States on the one hand and one or more third countries on the other;
  - (b) bilateral or multilateral agreements concluded between one or more Member States and one or more third countries;
2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions in respect of Articles 10, 14, 15, 16 and 17(5) <sup>62</sup>.

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<sup>61</sup> **AT, DE, HU, PT, SE, SI:** scrutiny reservations. **NL:** MS should be able to adopt more favourable provisions in relation to all the articles concerning the admission conditions; this would give MS sufficient flexibility to take into account the situation of national labour markets. **Cion:** reservation on the Article as its intention was to have a general standstill clause.

<sup>62</sup> **FR:** scrutiny reservation: finalising the provisions referred to in this article will be subject to adjustments based on the progress of discussions.

## Chapter II

### CRITERIA FOR ADMISSION, REFUSAL AND WITHDRAWAL

#### Article 5<sup>63</sup>

#### Criteria for admission

- 1.<sup>64</sup> As regards the admission of a third-country national under this Directive, the applicant shall:
- (a) present a valid work contract or, as provided for in national law, a binding job offer for highly qualified employment, of at least six months<sup>65</sup> ~~with an employer~~<sup>66</sup> in the Member State concerned;
  - (b) present the documents attesting relevant higher professional qualifications in relation to the work to be carried out as provided for in national law<sup>67</sup>;

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<sup>63</sup> **AT, BG, CZ, FR, SE:** scrutiny reservations on the article.

<sup>64</sup> **DE, FR:** scrutiny reservations on paragraph 1.

<sup>65</sup> **AT, CY, EL, SK:** keep the period of twelve months of the current Directive. **DE:** "... of at least *nine* months..." **NL:** "present a valid work contract .. *of more than 90 days* in the Member State concerned".

<sup>66</sup> **BE, DE:** reservation on adding "with an employer". **PRES:** *The words "with an employer" have been deleted in view of the concerns expressed by CION during the last Working Party. Firstly, it is not clear when an employer is considered to be "in the Member State concerned". Secondly, practice shows that in some (albeit limited) cases, employers may not actually have a physical or legal presence in the Member State concerned, yet still employ a Blue Card holder under a national contract applying the labour law and social security regime of the Member State. Note that this notion is reflected in Article 2(b) (the definition of 'highly skilled employment') which states that the person is 'protected as an employee under national employment law or in accordance with national practice, irrespective of the legal relationship, for the purpose of exercising genuine and effective work for, or under the direction of, someone else.'*

<sup>67</sup> **ES:** scrutiny reservation. **NL:** opposed to "relevant higher professional qualifications in relation to the work to be carried out" insisting on the Cion proposal. **EE:** prefers the word "evidence" instead of "documents". **Cion:** reservation on the deletion on "evidence", "document" is too restrictive, especially in the context of recognition of professional skills.

- (c)<sup>68</sup> for regulated professions, present the documents attesting fulfilment of the conditions set out under national law for the exercise by Union citizens of the regulated profession specified in the work contract or binding job offer as provided for in national law;
- (d)<sup>69</sup> present a valid travel document, as determined by national law, and, if required, an application for a visa or a valid visa or, where applicable, a valid residence permit or a valid long-stay visa. Member States may require the period of validity of the travel document to cover at least the initial duration of the residence permit.
- (e) provide evidence of having or, if provided for by national law, having applied for a sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or resulting from, the work contract.

2<sup>70</sup>. In addition to the conditions laid down in paragraph 1, the gross annual salary resulting from the monthly or annual salary specified in the work contract or binding job offer shall not be inferior to the salary threshold set and published for that purpose by the Member States. The salary threshold set by the Member States shall be at least 1.0 times but not higher than 1.5 times the average gross annual salary in the Member State concerned.

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<sup>68</sup> **DE, ES, FR:** scrutiny reservations. **AT:** the reference to "a document attesting fulfilment of the conditions..." is not clear; the terminology of Directive 2005/36/EC on the recognition of professional qualifications should be used instead.

<sup>69</sup> **DE, FR, SK:** only holders of long-stay visas should be allowed to apply for an EU Blue Card as short-stay visas might be misused in this context.

<sup>70</sup> **LT:** scrutiny reservation on the paragraph. **DE:** the range should be between 1.3 and 1.7, opposed to the minimum of 1.0. **AT:** reservation stating that lowering the threshold does not serve to attract highly qualified people. The range should be between 1.5 and 1.7. **BG, CY, CZ:** maintain the salary threshold of the current Directive (1.5 times the gross annual salary). **PL, SK:** revert to the previous range with the maximum level of 1.7. **SI:** "...the *minimum* salary threshold set by the member States..." **HU** suggests the possibility of allowing the determination of more than one salary threshold within the fork, as e.g. different regions may require different thresholds within one single country in order to make the system inclusive enough.

- 2a.<sup>71</sup> By way of derogation from paragraph 2, Member States may apply a higher threshold of maximum 2.0 times the average gross annual salary in the Member State concerned where:
- the national average gross annual salary is lower than half of the average at EU level;
- and
- there is a significant difference in the levels of the average gross annual salary between regions **in that Member State**, which would cause the national salary threshold for highly qualified workers to be disproportionately low.
- 3<sup>72</sup>. Member States shall require that all conditions in the applicable laws, collective agreements or practices in the relevant occupational branches for highly qualified employment are met.
- 4<sup>73</sup>. By way of derogation from paragraph 2, and for employment in professions which are in particular need of third-country national workers and which belong to major groups 1 and 2 of ISCO, Member States may apply a lower salary threshold of at least 80 percent of the salary threshold set by the Member State concerned in accordance with paragraph 2.

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<sup>71</sup> **PT, SK, SI:** scrutiny reservations. **DE:** doubts concerning creating such an exceptional regime. **ES:** scrutiny reservation as the threshold of 2.0 is too high. **LT:** a range of 1.5 - 2.0 should be introduced and it should be a shall-provision with "and/or" between the two conditions. Alternatively, the range could be between 1.5 and 1.7 in para 2 in which case para 2a could be deleted. **CZ** (reservation): the two conditions should not be cumulative. **PL:** this is a very complex provision which would be very difficult to implement. **AT:** reservation, the paragraph should be deleted.

<sup>72</sup> **DE:** the wording of this provision should be revised, in order to clearly state that highly qualified persons should be employed under the same conditions as nationals.

<sup>73</sup> **CZ:** scrutiny reservation. **FR:** opposed to the salary threshold being lower than 1.0 for this group. Also, MS should be able to decide which group of TCN they wish to attract. **BG:** the wording of the current Directive should be kept with a fixed threshold. **NL:** opposed to "at least". **DE:** there should be no binding obligation for the second Member State. **Cion:** reservation on the may-clause.

5<sup>74</sup>. By way of derogation from paragraph 2, as regards third-country nationals who have obtained a higher education qualification not more than three years before submitting the application for an EU Blue Card, Member States may apply a lower salary threshold than the one set by the Member State concerned in accordance with paragraph 2.

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

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

6. *deleted*

7<sup>75</sup>. Third-country nationals who are considered to pose a threat to public policy, public security or public health shall not be admitted.

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<sup>74</sup> **CZ:** scrutiny reservation. **BG:** the wording of the current Directive should be kept with a fixed threshold. **DE:** scrutiny reservation related to the deletion of the minimum threshold.

**Cion:** reservation on the may-clause.

<sup>75</sup> **DE:** scrutiny reservation. **HU, PL:** this provision should be moved to Articles 6 and 7.

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

Where the national law of a Member State requires an address to be provided at the time of application and the third-country national concerned does not yet know his or her future address, Member States shall accept a temporary address. In such a case, the third-country national shall provide his or her permanent address at the latest when the EU Blue Card pursuant to Article 8 is issued.<sup>76</sup>

#### *Article 5a*

#### *Volumes of admission*

This Directive shall not affect the right of a Member State to determine the volumes of admission of third-country nationals in accordance with Article 79(5) TFEU. On that basis, an application for an EU Blue Card may either be considered inadmissible or be rejected.

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<sup>76</sup> **HU:** it is important that the notification of the address takes place at the beginning of the application procedure. **DE:** it should be clarified in a recital that this article is without prejudice to the existing national obligations to register. **PRES:** *This is not included in any other legal migration Directive. Rather, the possible requirement to register in Member State is found in Article 22 of the Schengen Convention, as amended by Regulation (EU) 610/2013, which applies without prejudice to the Blue Card Directive. This is because Article 5(8) of the Blue Card Directive regulates the provision of an applicant's address during the application procedure, while Article 22 of the Schengen Convention regulates registration after entry on the territory.*

*Article 6<sup>77</sup>*  
*Grounds for refusal*

1. Member States shall reject an application for an EU Blue Card in any of the following cases<sup>78</sup>:
  - (a) where the applicant does not meet the conditions set out in Article 5;
  - (b) where the documents presented have been fraudulently acquired, or falsified or tampered with.
  
- 2<sup>79</sup>. Member States may check whether the concerned vacancy could not be filled by national or Union workforce, by third-country nationals lawfully resident in that Member State and already forming part of its labour market by virtue of Union or national law, or by EU long-term residents wishing to move to that Member State for highly qualified employment in accordance with Chapter III of Directive 2003/109/EC.
  
3. Member States may reject an application for an EU Blue Card where:
  - (a) the employer has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions;
  - (b) the employer's business is being or has been wound up under national insolvency laws or no economic activity is taking place; or

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<sup>77</sup> **EL, HU:** scrutiny reservations.

<sup>78</sup> **BG** (supported by **PL**): insert the following points: c): "*where the person is considered to pose a threat to public policy, public security or health*" and d): "*where the Member State has evidence or serious and objective grounds to establish that the third-country national would reside for purposes other than those for which he or she applies to be admitted*". **PL:** scrutiny reservation.

<sup>79</sup> **Cion:** reservation on the deletion of the possibility to carry out labour market tests only in cases where the labour market of a MS undergoes serious disturbances as well as on the deletion of the notification procedure.

- (c) the employer has been sanctioned for employment of illegally staying third-country nationals in accordance with Article 9 of Directive 2009/52/EC of the European Parliament and of the Council<sup>80</sup>, or for undeclared work or illegal employment according to national law.
  - (d) the Member State has evidence or serious and objective grounds to establish that the third-country national would reside for purposes other than those for which he or she applies to be admitted.<sup>81</sup>
4. 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 workers in the countries of origin.
  5. Without prejudice to paragraph 1, any decision to reject an application shall take account of the specific circumstances of the case and respect the principle of proportionality.

*Article 7<sup>82</sup>*

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

1. Member States shall withdraw or refuse to renew an EU Blue Card where:<sup>83</sup>
  - (a) the EU Blue Card or the documents presented have been fraudulently acquired, or have been falsified or tampered with;

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<sup>80</sup> Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ L 168, 30.6.2009, p. 24).

<sup>81</sup> **BG, DE:** scrutiny reservations on this being changed to a may-clause. **HU:** it should remain a shall-clause. **Cion:** reservation on the inclusion of this provision.

<sup>82</sup> **DE:** scrutiny reservation on this Article.

<sup>83</sup> **HU:** insert the lack of a valid travel document as a compulsory ground for withdrawal or non-renewal.



- (b) the third-country national no longer holds a valid work contract for highly qualified employment or the qualifications required by points (b) and (c) of Article 5(1) or his or her salary no longer meets the salary threshold as set in accordance with Article 5(2), (4) or (5), as applicable, without prejudice to Article 14;
- (c) the reasons of public policy, public security or public health so require.<sup>84</sup>

2. Member States may withdraw or refuse to renew an EU Blue Card in any of the following cases:

(a) *deleted*

- (a) where appropriate, where the employer has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions;
- (b) wherever the EU Blue Card holder does not have sufficient resources to maintain himself or herself and, where applicable, the members of his or her family without having recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages<sup>85</sup> and pensions as well as the number of family members of the EU Blue Card holder. Such evaluation shall take into account the contributions of the family members to the household income and it shall not take place during the period of unemployment referred to in Article 14;<sup>86</sup>

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<sup>84</sup> **Cion:** reservation.

<sup>85</sup> **DE:** reference should be made to minimum subsistence costs in a particular MS. **PRES:** *The wording in Article 7(2)(b) reflects Article 7(1)(c) of the Family Reunification Directive (2003/86/EC), since the main rationale of this requirement is to ensure that the Blue Card holder can maintain his/her family, since it is already presumed that he can maintain himself if he meets the salary threshold. Nevertheless, Case C-578/08 Chakroun recognises that Member States have some margin of manoeuvre to interpret the ‘sufficient resources’ requirement, provided this does not undermine the objective and effectiveness of the Family Reunification Directive. Therefore, Germany could exercise its margin of manoeuvre to take ‘minimum subsistence costs’ into account, as set out in the jurisprudence of the German constitutional court. Recital 37 has been amended to clarify that Member States retain this margin of manoeuvre.*

<sup>86</sup> **Cion:** reservation on inserting this paragraph.

- (c) where the conditions in the applicable laws, collective agreements or practices in the relevant occupational branches for highly qualified employment are no longer met;
- (d) where the EU Blue Card holder has not complied with the relevant procedures as provided for in Article 13(1b), where applicable, and in Articles 14(3);
- (e) where the third-country national no longer holds a valid travel document;
- (f) where the third-country national fails to comply with the conditions of mobility under Chapter V or makes use of the mobility provisions of Chapter V in an abusive manner.

Where an EU Blue Card is withdrawn or not renewed on the basis of point (e) of paragraph 2, Member States shall, prior to withdrawing or not renewing the EU Blue Card, set a reasonable deadline for the third-country national concerned to obtain and present a valid travel document.

3. The lack of communication pursuant to point (b) of the first subparagraph of Article 13(1b), the second subparagraph of Article 13(1b) or Article 14(3) shall not be considered to be a sufficient reason for withdrawing or not renewing the EU Blue Card if the holder proves that the communication did not reach the competent authorities for a reason independent of the holder's will.
  - 3a. Member States may decide not to withdraw or not to refuse to renew an EU Blue Card where the EU Blue Card holder temporarily [and in any case for no longer than 12 months] does not fulfil the criteria for admission in paragraph 2 or, where applicable, paragraph 4 or 5 of Article 5 as a result of illness, disability or parental leave.
4. Without prejudice to paragraph 1, any decision to withdraw or refuse to renew an EU Blue Card shall take account of the specific circumstances of the case and respect the principle of proportionality.

5. For the purposes of Article 7(1) and (2), the Member State may conduct the appropriate checks on the EU Blue Card holder in accordance with national law, and on his employer, in accordance with national procedures.

*Article 7a*

*Sanctions for non-compliance with conditions of admission*

1. Member States may hold the employer responsible for failure to comply with the conditions of admission and residence laid down in this Directive.
2. The Member State concerned shall provide for sanctions where the employer is held responsible in accordance with paragraph 1. Those sanctions shall be effective, proportionate and dissuasive.

## **Chapter III**

### **EU BLUE CARD AND PROCEDURE**

*Article 8*

*EU Blue Card*

- 1<sup>87</sup>. Where a third-country national fulfils the criteria set out in Article 5 and where no ground for rejection pursuant to Article 6 applies, he or she shall be issued with an EU Blue Card.

Where a Member State only issues residence permits on its territory and the third-country national fulfils all the admission conditions laid down in this Directive, the Member State concerned shall grant the third-country national every facility to obtain the requisite visas.

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<sup>87</sup> **Cion:** reservation on "every facility to obtain".

2<sup>88</sup>. Member States shall set a standard period of validity for the EU Blue Card, which shall be at least 24 months. If the work contract covers a shorter period, the EU Blue Card shall be issued at least for the duration of the work contract plus three months but no longer than the standard period set out in accordance with the first sentence.

3. The EU Blue Card shall be issued by the competent authorities of the Member State using the uniform format as laid down in Regulation (EC) No 1030/2002. In accordance with point (a) 7.5-9 of the Annex to that Regulation, Member States shall indicate on the EU Blue Card the conditions for access to the labour market as set out in Article 13(1) of this Directive. Member States shall enter the words "EU Blue Card" under the heading "type of permit" in the residence permit.<sup>89</sup>

Member States may indicate additional information related to the employment relationship of the EU Blue Card holder in paper format, or store such data in electronic format as referred to in Article 4 of Regulation (EC) No 1030/2002 and in point (a)16 of the Annex thereto.<sup>90</sup>

5<sup>91</sup>. Where an EU Blue Card is issued by a Member State to a third-country national who is a beneficiary of international protection in another Member State, the Member State issuing the EU Blue Card shall enter the following remark in that third-country national's EU Blue Card, under the heading "Remarks": "International protection granted by [name of the Member State] on [date]".

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<sup>88</sup> **BE:** the duration should be 12 months for the initial permit. **ES** objects to the deletion of the period of validity in the case of a renewal of a permit. **Cion:** reservation on the addition of "but no longer than the standard period set out in accordance with the first sentence", which does not appear in the current Directive.

<sup>89</sup> **AT:** reservation on the reference to Article 13(1). **DE:** there should be a possibility to provide for additional information relating to the permit.

<sup>90</sup> **AT:** scrutiny reservation.

<sup>91</sup> **ES:** scrutiny reservation concerning the inclusion of beneficiaries of international protection. **SK:** reservation on the concerning the inclusion of beneficiaries of international protection

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

6. During the period of its validity, the EU Blue Card shall entitle its holder to:
  - (a) enter, re-enter and stay in the territory of the Member State issuing the EU Blue Card;
  - (b) enjoy the rights recognised in this Directive.

#### *Article 9*

#### *Applications for admission*

1. Member States shall determine whether applications for an EU Blue Card are to be made by the third-country national or by the employer. Member States may also allow an application from either of the two.
- 2<sup>92</sup>. The application shall be considered and examined either when the third-country national concerned is residing outside the territory of the Member State to which he or she wishes to be admitted, or when he or she is already residing in the territory of that Member State as holder of a valid residence permit or long-stay visa.

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<sup>92</sup> **DE:** this should be a may-clause.

3<sup>93</sup>. By way of derogation from paragraph 2, a Member State may accept, in accordance with its national law, an application submitted when the third-country national concerned is not in possession of a valid residence permit or long-stay visa but is legally present in its territory.

#### *Article 10*

#### *Procedural safeguards*

1<sup>94</sup>. The competent authorities of the Member States shall adopt a decision on the application for an EU Blue Card and notify the applicant in writing, in accordance with the notification procedures laid down in the national law of the Member State concerned. The decision shall be adopted and notified at the latest within 90 days of the date of submission of the complete application.

Where the employer has been recognised in accordance with Article 12, the decision shall be adopted and notified at the latest within 30 days of the date of submission of the application.<sup>95</sup>

2. *deleted*

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

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<sup>93</sup> **HU:** would like to be able to apply this exception only to those third-country nationals who are visa exempt.

<sup>94</sup> **ES:** prefers a 60-day period. **Cion:** reservation on the deadline of 90 days.

<sup>95</sup> **DE, PL:** the deadline should be 60 days instead of 30 days. **SE:** the deadline of 90 days should apply in this case as well.

4. Any decision rejecting an application for an EU Blue Card, or a decision not to renew or to withdraw an EU Blue Card shall be notified in writing to the third-country national concerned and, where relevant, to his employer in accordance with the notification procedures set out in the relevant national law. The notification shall specify the reasons for the decision and the competent authority with which an appeal may be submitted as well as the time limit for submitting the appeal. Member States shall provide an effective judicial remedy, in accordance with national law.
5. An applicant shall be allowed to submit an application for renewal before the expiry of the EU Blue Card. Member States may set a maximum deadline of 90 days prior to the expiry of the EU Blue Card for submitting an application for renewal.
6. Where the validity of the EU Blue Card permit expires during the procedure for renewal, Member States shall allow the third-country national to stay on their territory until the competent authorities have taken a decision on the application.

*Article 11<sup>96</sup>*

*Fees*

The level of fees required by Member States for the processing of applications shall not be disproportionate or excessive.

*Article 12<sup>97</sup>*

*Recognised employers*

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

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

The recognition procedures shall not entail disproportionate or excessive administrative burden or costs for the employers.

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<sup>96</sup> **FR:** scrutiny reservation on this provision as "disproportionate or excessive" are subjective notions, further clarity should be provided.

<sup>97</sup> **DE, HU:** scrutiny reservations. **BG:** opposed to the introduction of such a notion at EU level.



- 2<sup>98</sup>. The simplified procedures shall include processing of applications as provided for in the second subparagraph of Article 10(1). Applicants shall be exempt from presenting one or more pieces of evidence referred to in points (b) or (e) of Article 5(1) or in Article 5(8).
3. Member States may refuse to recognise an employer pursuant to paragraph 1, where the employer has been sanctioned for:
- (a) employment of illegally staying third-country nationals pursuant to Directive 2009/52/EC, or
  - (b) undeclared work or illegal employment according to national law.

When applying the first subparagraph, Member States shall take into account, in accordance with national law, the seriousness of the sanctioned conduct and the time elapsed since the sanction was imposed.

4. Member States shall provide for measures to prevent possible abuses. Those measures may include monitoring, assessment at regular intervals and, where appropriate, inspection in accordance with national law or administrative practice.

Member States may, among other measures, refuse to renew or decide to withdraw the status of recognised employer where the employer has not respected its obligations under this Directive or in cases where the recognition has been fraudulently acquired.

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<sup>98</sup> **HU:** scrutiny reservation. **CZ:** cannot agree with the reference to Article 5(8). **DE:** scrutiny reservations concerning the possible recognition of professional skills by some MS and not by others. **Cion:** reservation on this paragraph.

## Chapter IV

### RIGHTS

#### *Article 13*

#### *Labour market access<sup>99</sup>*

1. EU Blue Card holders shall have access to highly qualified employment in the Member State concerned provided that the criteria for admission laid down in Article 5 are fulfilled.
- 1a.<sup>100</sup> During the first two years of legal employment in the Member State concerned as an EU Blue Card holder, Member States may require that a change of employer be subject to the check set out in Article 6(2).

The right of the Blue Card holder to pursue the employment may be suspended until the outcome of this check confirms that the vacancy concerned could not be filled by the persons listed in Article 6(2).

- 1b. During the first two years of legal employment in the Member State concerned as an EU Blue Card holder, Member States may require that a change of employer and changes which may affect the fulfilment of the criteria for admission as set out in Article 5 are<sup>101</sup>:

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<sup>99</sup> **AT, EL:** scrutiny reservations on the Article.

<sup>100</sup> **Cion:** reservation on this paragraph.

<sup>101</sup> **Cion:** reservation on paragraph 1a preferring a more flexible procedure.

- (a) subject to the prior authorisation in writing of the competent authorities in the Member State concerned in accordance with procedures laid down by national law, to be granted or denied within 30 days<sup>102</sup> of the date of the request made by the EU Blue Card holder; or
- (b) communicated by the EU Blue Card holder or his or her prospective employer in accordance with procedures laid down by national law.

After these first two years, the Member State may only require such changes to be communicated in accordance with the procedures laid down by national law. The communication procedure shall not suspend the right of the EU Blue Card holder to pursue the employment.

- 2<sup>103</sup>. Without prejudice to the criteria for admission set out in Article 5, Member States may allow EU Blue Card holders to engage in self-employed activity in parallel to the activity in highly qualified employment in accordance with conditions laid down in national law. Member States are entitled to limit the scope of allowed self-employed activity.

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<sup>102</sup> **HR, HU, SE:** 30 days is too short. **PL:** 60 days instead.

<sup>103</sup> **DE, HU:** scrutiny reservations. **AT, CZ, DE, PL:** opposed to the deletion of the following sentence as it provides necessary clarification: "Any income derived from self-employment will not contribute towards meeting the salary threshold set out in accordance with Article 5(2)." **Cion:** reservation on the may-clause.

- 2a.<sup>104</sup> Without prejudice to the criteria for admission set out in Article 5, Member States may allow EU Blue Card holders to engage in professional activities other than their main activity as an EU Blue Card holder in accordance with conditions laid down in national law.
- 3.<sup>105</sup> By way of derogation from paragraph 1, Member States may retain restrictions on access to employment provided such employment activities entail occasional involvement in the exercise of public authority and the responsibility for safeguarding the general **interest** of the State and where, in accordance with existing national or Union law these activities are reserved to nationals.
- 3a. Member States may retain restrictions on access to employment activities, in cases where, in accordance with existing national law<sup>106</sup>, these activities are reserved to nationals, Union citizens or EEA citizens.
4. This Article shall apply without prejudice to the principle of preference for Union citizens where applicable under the provisions of the relevant Acts of Accession.

#### *Article 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 where the unemployment occurs more than once during the period of validity of an EU Blue Card.

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<sup>104</sup> **AT** (supported by **PL**): opposed to the deletion of "Any income derived from these activities will not contribute towards meeting the salary threshold set out in accordance with Article 5(2)."

<sup>105</sup> **AT**: the sentence should end with "... the general interest of the State." **Cion**: reservation on "and where, in accordance with existing national law, these activities are reserved to nationals, Union citizens and EEA nationals".

<sup>106</sup> **AT**: "... or *Community* law..."

- 2<sup>107</sup>. During the period referred to in paragraph 1, the EU Blue Card holder shall be allowed to seek and take up employment in accordance with the conditions set out in Article 13.
- 3<sup>108</sup>. The EU Blue Card holder shall communicate the beginning and, where appropriate, the end of the period of unemployment to the competent authorities of the Member State of residence, in accordance with the relevant national procedures.
4. Where Member States require a prior authorisation pursuant to point (a) of the first subparagraph of paragraph 1b of Article 13, they shall allow the EU Blue Card holder to remain on their territory until the necessary authorisation has been granted or denied.

*Article 15*

*Equal treatment*<sup>109</sup>

1. EU Blue Card holders shall enjoy equal treatment with nationals of the Member State issuing the EU Blue Card, as regards:
- (a) terms of employment, including the minimum working age, and working conditions, including pay and dismissal, working hours, leave and holidays, as well as health and safety requirements at the workplace;

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<sup>107</sup> **AT:** scrutiny reservation concerning reference to Article 13.

<sup>108</sup> **AT:** scrutiny reservation.

<sup>109</sup> **AT, DE:** scrutiny reservations on the Article. **PL:** scrutiny reservations on the Article especially in connection with the scope of the proposal.

- (b) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the rights and benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;
- (c) education and vocational training;
- (d) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;
- (e)<sup>110</sup> branches of social security, as defined in Article 3 of Regulation (EC) No 883/2004;
- (f) access to goods and services and the supply of goods and services made available to the public, including procedures for obtaining housing, as well as information and counselling services afforded by employment offices.

2.<sup>111</sup> With respect to point (c) of paragraph 1 the Member State concerned may restrict equal treatment as regards study and maintenance grants and loans or other grants and loans regarding secondary and higher education and vocational training. Access to university and post-secondary education may be subject to specific prerequisites in accordance with national law.

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<sup>110</sup> **DE:** scrutiny reservations.

<sup>111</sup> **DE, FR:** scrutiny reservations on the deletion of the second subparagraph as it appears in doc 6633/17. **AT, EL** suggest to insert the following paragraph: "*With respect to point (e) of paragraph 1, the Member State concerned may restrict equal treatment for family benefits granted for family members who reside in a non-EU third country.*" **PRES:** Article 15 is an equal treatment mechanism. Therefore, the treatment of nationals in respect of family benefits must be extended to Blue Card holders. Therefore, if the Member State does not grant family benefits to nationals with respect to family members who reside in a non-EU country, this treatment is not required with regard to family members of Blue Card holders who reside in a non-EU country.

**EL:** a possibility to derogate from the obligation to provide family benefits similar to the one in Article 12 (2)(b) of the Single Permit Directive (2011/98/EU) should be provided for here.

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

2a. *deleted.*<sup>112</sup>

3. EU Blue Card holders moving to a third country, or their survivors who reside in a third country and who derive rights from the EU Blue Card holder, shall receive, in relation to old age, invalidity and death, statutory pensions based on the EU Blue Card holder's previous employment and acquired in accordance with the legislation referred to in Article 3 of Regulation (EC) No 883/2004, under the same conditions and at the same rates as the nationals of the Member States concerned when they move to a third country.<sup>113</sup>

4. The right to equal treatment laid down in paragraph 1 shall be without prejudice to the right of the Member State to withdraw or to refuse to renew the EU Blue Card in accordance with Article 7.

5. This Article shall not apply to EU Blue Card holders who are beneficiaries of the right to free movement under Union law in the Member State concerned.

6. *deleted.*

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<sup>112</sup> **DE:** prefer to keep the deleted paragraph 2a as it clarified the rights of a Blue Card holder in the case of long-term mobility. **PRES:** *This was deleted as several Member States opposed its inclusion and the need for it was questioned, since it led to unnecessary overregulation. This is because it refers to a period which should not be long since it starts once an application for an EU Blue Card has been submitted and a decision on the application must be taken in not more than 90 days.*

<sup>113</sup> **CZ, DE, SE:** why has the reference to bilateral agreements been deleted? The provisions in this Directive cannot be more advantageous than those established through bilateral agreements. **SE:** refer to "...income related acquired statutory pensions based on ...".

*Article 16<sup>114</sup>*

*Family members*

1. Council Directive 2003/86/EC shall apply with the derogations laid down in this Article.
2. By way of derogation from Articles 3(1) and 8 of Directive 2003/86/EC, family reunification shall not be made dependent on the requirement of the EU Blue Card holder having reasonable prospects of obtaining the right of permanent residence, to hold a residence permit for a period of validity of one year or more or having a minimum period of residence.
3. By way of derogation from the third subparagraph of Article 4(1) and from the second subparagraph of Article 7(2) of Directive 2003/86/EC, the integration conditions and measures referred to therein may only be applied after the persons concerned have been granted family reunification.
- 4<sup>115</sup>. By way of derogation from the first subparagraph of Article 5(4) of Directive 2003/86/EC, where the conditions for family reunification are fulfilled and the complete applications were submitted simultaneously, the decision for family members shall be adopted and notified at the same time as the EU Blue Card. Where the family members join the EU Blue Card holder after the EU Blue Card has been granted to him or her and where the conditions for family reunification are fulfilled, the decision shall be adopted and notified at the latest within 90 days from the date on which the complete application was submitted. Article 10(3) of this Directive shall apply accordingly.

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<sup>114</sup> **DE:** scrutiny reservation on Article 16.

<sup>115</sup> **ES:** reservation on the 90-day deadline. **DE** prefers the text of the current Directive stating that "residence permits to family members shall be granted where the conditions for family reunification are fulfilled."



5. By way of derogation from Article 13(2) and (3) of Directive 2003/86/EC, the duration of validity of the residence permits of family members shall be the same as that of the EU Blue Card insofar as the period of validity of their travel documents allows it.
- 6<sup>116</sup>. By way of derogation from Article 14(1)(b) and (2) of Directive 2003/86/EC, Member States shall not apply any time limit in respect of access to the labour market. **By way of derogation from Article 14(1)(b) of that Directive, and** without prejudice to the restrictions referred to in Article 13(3) of this Directive, family members shall have access to any employment, and to self-employed activity in accordance with applicable requirements under national law, in the Member State concerned.

Before a family member is granted access to employment, Member States may check whether the concerned vacancy could not be filled by national or Union workforce, by third-country nationals lawfully resident in that Member State and already forming part of its labour market by virtue of Union or national law, or by EU long-term residents wishing to move to that Member State for employment in accordance with Chapter III of Directive 2003/109/EC.

- 7<sup>117</sup>. By way of derogation from Article 15(1) of Directive 2003/86/EC, for the purposes of calculation of the five years of residence required for the acquisition of an autonomous residence permit, residence in different Member States shall be cumulated. Member States may require two years of legal and continuous residence immediately prior to the submission of the relevant application within the territory of the Member State where the application for an autonomous residence permit is submitted.

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<sup>116</sup> **EL:** reservation as it should not be an obligation for MS to grant family members access to self-employment. **SK** suggests that Article 14(2) of Directive 2003/86EC should apply as MS should be able to examine the situation of their labour market before authorizing family members to exercise an employed or self-employed activity. **PRES:** *The cross-references in Article 16(6) have been amended to clarify that the first sentence is a derogation from Article 14(2), while the second sentence refers is a derogation from Article 14(1)(b). The derogation from Article 14(1)(b), which states that access to employment and self-employed activity must be granted “in the same way of the sponsor” is an important facilitation for the family members of Blue Card holders in order to make the scheme attractive and competitive.*

<sup>117</sup> **LT:** opposed to the obligation to cumulate the periods of residence of family members.

8. The provisions set out in Article 17 concerning the accumulation of periods of residence in different Member States by the EU Blue Card holder for the purpose of acquiring the EU long-term resident status shall apply by analogy.
9. This Article shall not apply to family members of those EU Blue Card holders who are beneficiaries of the right to free movement under Union law in the Member State concerned.
10. *deleted.*

*Article 17*

*EU long-term resident status for EU Blue Card holders<sup>118</sup>*

1. Directive 2003/109/EC shall apply with the derogations laid down in this Article.
- 2.<sup>119</sup> By way of derogation from Article 4(1) of Directive 2003/109/EC, Member States may grant EU long-term resident status to third-country nationals who have legally and continuously resided as EU Blue Card holders within their territory for three years immediately prior to the submission of the relevant application.

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<sup>118</sup> **LU:** reservation. **PL:** scrutiny reservation.

<sup>119</sup> **Cion:** reservation on the may-clause as it considerably reduces the attractiveness of the EU Blue Card scheme. **NL, PT:** would prefer a shall-clause for reasons of harmonisation and attractiveness of the EU scheme. **BE, ES:** scrutiny reservations on this issue. **HU:** scrutiny reservation for reasons of legal uncertainty. **CZ:** opposed to the 3-year period although could support the compromise of a may-clause.

The EU long-term resident status granted in accordance with the first subparagraph of this paragraph may be withdrawn before the period of legal and continuous residence of five years referred to in Article 4(1) of Directive 2003/109/EC within the territory of the Member States has been completed, where the third-country national does not have sufficient resources to maintain himself or herself and, where applicable, the members of his or her family, without having recourse to the social assistance system of the Member State concerned. Member States shall not withdraw the EU long-term resident status where the withdrawal would be disproportionate taking into account the reasons underlying the lack of sufficient resources of the third-country national concerned.<sup>120</sup>

3. By way of derogation from Article 4(1) of Directive 2003/109/EC, the EU Blue Card holder having made use of the possibility provided for in Article 20 of this Directive is allowed to cumulate periods of residence in different Member States in order to fulfil the requirement concerning the duration of residence, if that holder has accumulated:
  - (a) five years of legal and continuous residence as an EU Blue Card holder within the territory of the Member States<sup>121</sup>; and
  - (b) two years of legal and continuous residence as an EU Blue Card holder immediately prior to the submission of the relevant application within the territory of the Member State where the application for the EU long-term resident status is submitted.
4. For the purpose of calculating the five years period of legal and continuous residence in the Union referred to in point (a) of paragraph 3 and by way of derogation from the first subparagraph of Article 4(3) of Directive 2003/109/EC, periods of absence from the territory of the Member States shall not interrupt the five years period if those periods of absence are shorter than twelve consecutive months and do not exceed in total eighteen months within the five years period of legal and continuous residence.

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<sup>120</sup> **DE:** the last sentence could end with the word "disproportionate". **FR:** reservation on the reference to "sufficient resources" pointing out that in the Long-term residents' Directive the available resources are evaluated taking into account the level of minimum wages and pensions. **PL:** prefer previous wording as it appeared in doc. 6633/17.

<sup>121</sup> **ES:** scrutiny reservations on the reference to the EU Blue Card holder.

5. By way of derogation from Article 9(1)(c) of Directive 2003/109/EC, Member States shall extend to 24 consecutive months the period of absence from the territory of the Member States which is allowed to an EU long-term resident holder of a long-term residence permit with the remark referred to in Article 18(2) of this Directive and of his family members having been granted the EU long-term resident status.
6. The derogations set out in paragraphs 4 and 5 may be restricted to cases where the third-country national concerned can present evidence that he has been absent from the territory of the Member States to exercise an economic activity in an employed or self-employed capacity, or to perform a voluntary service, or to study in his own country of origin.
7. Article 15(3), Article 19 and, where applicable, Articles 16 and 21 shall apply to holders of a long-term residence permit with the remark referred to in Article 18(2).<sup>122</sup>
8. Where the EU long-term resident who holds a long-term residence permit with the remark referred to in Article 18(2) of this Directive is exercising his or her right to move to a second Member State pursuant to Chapter III of Directive 2003/109/EC, Article 14(3) and (4) of that Directive shall not apply.<sup>123</sup>

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<sup>122</sup> **AT:** scrutiny reservation, especially on references to Articles 16, 19 and 21 regarding concerns related to these Articles.

<sup>123</sup> **FR:** MS should be able to apply a labour market test in this situation. **AT, DE:** Blue Card holders should not be automatically admitted to the second MS, a labour market test should be possible and a direct link with Article 6(2) should be made by explicitly referring to that provision in this paragraph. **AT, DE:** keep the deleted sentence: "The second Member State may apply measures in accordance with Article 20(6) of this Directive".

*Article 18*

*Long-term residence permit*

1. EU Blue Card holders who fulfil the conditions set out in Article 17 of this Directive for the acquisition of the EU long-term resident status shall be issued with a residence permit in accordance with Article 1(2)(a) of Regulation (EC) No 1030/2002.
2. Member States shall enter the words "Former EU Blue Card holder" in the residence permit referred to in paragraph 1 of this Article under the heading "remarks".

## **Chapter V**

### **MOBILITY BETWEEN MEMBER STATES**

*Article 19*

*Short-term mobility in a second Member State<sup>124</sup>*

1. Where a third-country national who holds a valid EU Blue Card issued by a Member State applying the Schengen acquis in full enters and stays in one or several second Member States for a period of 90 days in any 180-day period for the purpose of carrying out a business activity, the second Member State shall not require any authorisation for exercising such activity other than the EU Blue Card issued by the first Member State.

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<sup>124</sup> **BE:** reservation on the Article pointing out that it does not contain sufficient guarantees against social dumping. **AT** (reservation): the authorities of the second MS should be informed as to what activities will be carried out and for how long. For that purpose, work-related decisions and visas should be required. Business activities described in Article 2(1) are very short so it is not clear why 90 days are needed. **BE, IT:** how can it be checked that the person stays for less than 90 days? **HU, IT:** scrutiny reservations.. **Cion:** under Article 23(1)(a) MS have to ensure that information on business activities is available in their territories; MS have to include at least those activities in their national law but they may choose to go beyond that.

2. A third-country national who holds a valid EU Blue Card issued by a Member State not applying the Schengen acquis in full shall be entitled to enter and stay for the purpose of carrying out a business activity in one or several second Member States for up to 90 days in any 180-day period on the basis of the EU Blue Card issued by the first Member State and a valid travel document. The second Member State shall not require any authorisation for exercising the business activity other than the EU Blue Card issued by the first Member State.

125

#### *Article 20*

#### *Long-term mobility in a second Member State<sup>126</sup>*

1. After twelve months of legal residence in the first Member State as an EU Blue Card holder, the third-country national shall be entitled to enter a second Member State for the purpose of highly qualified employment on the basis of the EU Blue Card and a valid travel document under the conditions set out in this Article.
- 2<sup>127</sup>. As soon as possible and no later than one month after entering the territory of the second Member State, the EU Blue Card holder or his or her employer or both shall submit an application for an EU Blue Card to the competent authority of that Member State and present all the documents proving the fulfilment of the conditions referred to in paragraph 3 for the second Member State.

The second Member State may allow the EU Blue Card holder to start working immediately after submitting the application.

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

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<sup>125</sup> **DE** suggests to add the following new paragraph: "*3. This article shall be without prejudice to the conditions set out under national law for the exercise of regulated professions*". **PRES**: This text is already included in Recital 34a.

<sup>126</sup> **AT, DE, ES**: scrutiny reservations on the Article.

<sup>127</sup> **Cion**: reservation.

2a. *deleted*

- 3.<sup>128</sup> For the purposes of the application referred to in paragraph 2, the EU Blue Card holder shall:
- (a) present the valid EU Blue Card issued by the first Member State;
  - (b) present a valid work contract or, as provided for in national law, a binding job offer for highly qualified employment, of at least six months in the second Member State;
  - (c) for regulated professions, present a document attesting fulfilment of the conditions set out under national law for the exercise by Union citizens of the regulated profession specified in the work contract or binding job offer as provided for in national law;
  - (ca)<sup>129</sup> if requested by the Member State concerned, present the documents attesting higher professional qualifications in relation to the work to be carried out as provided for in national law;
  - (d) present a valid travel document, as determined by national law;
  - (e) present evidence of meeting the salary threshold set in the second Member State in application of paragraph 2 or, where applicable, of paragraphs 4 or 5 of Article 5;
  - (f)<sup>130</sup> provide evidence of having, or if provided for by national law, having applied for a sickness insurance for all the risks normally covered for nationals of the Member States concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or resulting from, the work contract.

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<sup>128</sup> **DE:** scrutiny reservation. **LT:** the second MS should be able to require the Blue Card holder to communicate his/her address in the second MS.

<sup>129</sup> **DE, ES:** scrutiny reservations. **EE:** replace "documents" with "*evidence*". **Cion:** reservation on adding this requirement.

<sup>130</sup> **Cion:** reservation on adding point (f).

4. The second Member State shall reject an application for an EU Blue Card in any of the following cases:
  - (a) the conditions set out in paragraph 3 are not fulfilled;
  - (b) the documents were fraudulently acquired, or falsified or tampered with;
  - (c) the employment does not comply with the conditions laid down in the applicable laws, collective agreements or practices as referred to in Article 5(3);
  - (d) the third-country national poses a threat to public policy, public security or public health.
  
6. The second Member State may reject an application for an EU Blue Card on the basis of a check made in accordance with Article 6(2) and only if the second Member State has also introduced such checks for third-country nationals coming from third countries under this Directive.
  
7. The second Member State may reject an application for an EU Blue Card where the third-country national makes use of the possibility to enter and work in second Member States pursuant to this Article in an abusive manner. The second Member State shall notify the first Member State of the rejection for the purpose of point (f) of Article 7(2).
  
- 8<sup>131</sup>. The second Member State shall adopt a decision on an application for an EU Blue Card and notify the applicant and the first Member State in writing at the latest within 90 days of the date of submission of the complete application of its decision to either:
  - (a) where the conditions laid down in this Article are fulfilled, issue an EU Blue Card and allow the third-country national to reside on its territory for the purpose of highly qualified employment; or

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<sup>131</sup> **ES, Cion:** reservations on 90 days.



(b) where the conditions laid down in this Article are not fulfilled, refuse to issue an EU Blue Card.<sup>132</sup>

9. Where the EU Blue Card issued by the first Member State expires during the procedure, the second Member State may issue, if so required by national law, national temporary residence permits, or equivalent authorisations, allowing the applicant to continue to stay legally on its territory until a decision on the application has been taken by the competent authorities.

10<sup>133</sup> From the second time that an EU Blue Card holder and, where applicable, his family members, make use of the possibility to move to another Member State under the terms of this Chapter, "first Member State" shall be understood as meaning the Member State from where the person concerned moves and "second Member State" as meaning the Member State to which he or she is applying to reside. By way of derogation from Article 20(1), an EU Blue Card holder may move to another Member State a second time after six months of legal residence in the first Member State as an EU Blue Card holder.

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<sup>132</sup> **AT, EL:** scrutiny reservations. **AT, DE:** this paragraph should be replaced with a general reference to Article 6(2) of the Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals to avoid that comparable situations are regulated in different legal instruments. **AT:** opposed to the deletion of "and oblige the applicant and his or her family members, in accordance with the procedures provided for in national law, to leave its territory".

<sup>133</sup> **AT:** a very complex provision questioning whether the additional administrative effort required here is justified and suggesting to delete the last sentence. **LT:** the 2 different time limits for required periods of prior residence (12 months for first mobility and 6 months for the second mobility) make the system complex and hard to check. The time periods should either be the same in both cases or there should be some indication on the Blue Card ("mobility") indicating that from a certain moment the third-country national is eligible for mobility.

## Article 21

### *Residence in the second Member State for family members<sup>134</sup>*

1. Where the EU Blue Card holder moves to a second Member State in accordance with Article 20 and where the family was already constituted in the first Member State, the members of his or her family shall be entitled to accompany or join him or her and to enter and stay in the second Member State based on the valid residence permits obtained as family members of an EU Blue Card holder in the first Member State and a valid travel document under the conditions set out in Article 16 and paragraphs 2 to 8 of this Article.
2. No later than one month after entering the territory of the second Member State, the family members concerned or the EU Blue Card holder, in accordance with national law, shall submit an application for a residence permit as a family member to the competent authorities of that Member State.

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

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<sup>134</sup> **AT, DE:** scrutiny reservations on the Article. **AT:** The Member State must be able to require evidence of sickness insurance for family members. **PRES:** *This is already possible as Article 7(1)(b) of the Family Reunification Directive 2003/86/EC applies.*

- 3.<sup>135</sup> The second Member State may require the family members concerned to present with their application for a residence permit:
- (a) their residence permit in the first Member State and a valid travel document, or certified copies thereof;
  - (b) evidence that they have resided as members of the family of the EU Blue Card holder in the first Member State.
4. *deleted*
- 5.<sup>136</sup> In addition to the derogations listed in Article 16, the second Member State shall not require the evidence referred to in point (a) of Article 7(1) of Directive 2003/86/EC.
6. Where the family was not already constituted in the first Member State, Article 16 shall apply.
- 7.<sup>137</sup> *deleted*.
- 8.<sup>138</sup> This Article shall not apply to family members of those EU Blue Card holders who are beneficiaries of the right to free movement under Union law in the second Member State.

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<sup>135</sup> **EL:** reservation.

<sup>136</sup> **AT, DE:** it should be possible to require proof of accommodation for family members.

<sup>137</sup> **DE, ES:** scrutiny reservations.

<sup>138</sup> **DE, ES:** scrutiny reservations.

*Article 22*

*Safeguards and sanctions in cases of mobility*<sup>139</sup>

1. Where the EU Blue Card is issued by a Member State not applying the Schengen acquis in full and the EU Blue Card holder crosses an external border for the purpose of mobility as referred to in Articles 19 and 20, the second Member State shall be entitled to require as evidence of the mobility of the EU Blue Card holder:
  - (a) the valid EU Blue Card issued by the first Member State;
  - (b) for the purpose of Article 19, evidence of the business purpose of the stay;
  - (c) for the purpose of Article 20, a work contract or a binding job offer for highly qualified employment of at least six months in the second Member State.
  
2. Where the EU Blue Card is issued by a Member State not applying the Schengen acquis in full and the family members of an EU Blue Card holder join him or her when crossing an external border for the purpose of moving to a second Member State as referred to in Article 21(1), the second Member State shall be entitled, in addition to the evidence referred to in paragraph 1 of this Article, to require that family members present their residence permits in the first Member State as family members of the EU Blue Card holder.
  
- 3<sup>140</sup>. Where the second Member State rejects the application for an EU Blue Card in accordance with point (b) of Article 20(8), the first Member State shall, upon the request of the second Member State, allow re-entry of the EU Blue Card holder and, where applicable, his family members, without formalities and without delay. This shall also apply if the EU Blue Card issued by the first Member State has expired or has been withdrawn during the examination of the application.

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<sup>139</sup> DE: scrutiny reservation on the Article.

<sup>140</sup> DE, ES: scrutiny reservations.

4. The EU Blue Card holder or his or her employer in the second Member State may be held responsible for the costs related to the re-entry of the EU Blue Card holder and his or her family members referred to in paragraph 3.
  5. Member States may provide for the imposition of sanctions in accordance with Article 7a on the employer of the EU Blue Card holder who is responsible for the failure to comply with the conditions of mobility laid down in this Chapter or for making use of the mobility provisions of this Chapter in an abusive manner.
- 6<sup>141</sup>. Where a Member State withdraws or does not renew an EU Blue Card which contains the remark referred to in Article 8(4) and decides to expel the third-country national, it shall request the Member State mentioned in that remark to confirm whether the person concerned is still a beneficiary of international protection in that Member State. The Member State mentioned in the remark shall reply within one month after receiving the request for information.

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

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

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<sup>141</sup> **ES, FR:** scrutiny reservations. **CZ:** reservation on enlarging the scope of the Directive.

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

## **Chapter VI**

### **FINAL PROVISIONS**

#### *Article 23*

#### *Access to information and monitoring<sup>142</sup>*

1. Member States shall make easily accessible to applicants the information on all the documentary evidence needed for an application and information on entry and residence conditions, including the rights, obligations and procedural safeguards, of the third-country nationals falling under the scope of this Directive and of their family members. This information shall include information on the salary thresholds set in the Member State concerned in accordance with Article 5(2), (4) and (5), and on the applicable fees.

This information shall also include information:

- (a) on business activities allowed in the territory of the Member State concerned to an EU Blue Card holder from another Member State as referred to in Article 19;
- (b) on the procedures applicable to obtaining an EU Blue Card as well as residence permits for family members, in a second Member State, as referred to in Article 20 and 21.

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<sup>142</sup> **CZ, DE, FR:** reservations on the Article, which creates additional administrative burden for MS.

In the case where Member States decide to introduce legislative or regulatory measures in accordance with Article 5a or make use of the possibility provided for by Article 6(2), this information shall be communicated in the same way specifying where appropriate the sectors, occupations and regions concerned.

2<sup>143</sup>. Member States shall communicate to the Commission each year the factor they have decided to set for determining the annual salary thresholds, and the resulting nominal amounts, in accordance with paragraph 2 or, where applicable, paragraphs 2a, 4 or 5 of Article 5.

Member States shall communicate each year to the Commission the list of the professions for which a derogation in accordance with Article 5(4) applies and, where applicable, the justification for a derogation in accordance with Article 5(2a).

Where Member States refuse applications for an EU Blue Card based on ethical recruitment considerations in accordance with Article 6(4), they shall communicate to the Commission and to the other Member States a duly justified decision indicating the countries and sectors concerned.

Member States shall communicate to the Commission each year the list of allowed business activities, as meant in Article 2(1), for the application of Article 19.

2a<sup>144</sup>. Where Member States decide to introduce legislative or regulatory measures in accordance with Article 5a, they shall communicate the measures to the Commission each year.

Where Member States have made use of the possibility under Article 6(2), they shall communicate it each year to the Commission.

3. *deleted*

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<sup>143</sup> **EE, BE, RO:** why should MS report on annual basis even if the required information has not changed? **AT:** reservation on the paragraph linked to the reference to the definition of 'business activity' in Article 2(1) (the effort is not proportionate to the result to be achieved) and the reference to Article 5(2a).

<sup>144</sup> **AT, DE, EE:** scrutiny reservations. **AT, BE, CZ, DE, PL, RO:** there is no need to report on annual basis, only changes should be notified.

*Article 24*

*Statistics*

1.<sup>145</sup> Annually, and for the first time by ...<sup>146</sup> at the latest, Member States shall, in accordance with Regulation (EC) No 862/2007<sup>147</sup>, communicate to the Commission statistics on the numbers of third-country nationals who have been granted an EU Blue Card and on those whose applications have been rejected, specifying those rejected in application of Article 5a or 6(2), on applications considered inadmissible on grounds of Article 5a, as well as on the numbers of third-country nationals whose EU Blue Card has been renewed or withdrawn, during the previous calendar year. Those statistics shall be disaggregated by the citizenship and, insofar as possible, by occupation, length of validity of the permits, sex and age of the applicants, and the economic sector. Those statistics for third-country nationals who have been granted an EU Blue Card shall be further disaggregated into beneficiaries of international protection, beneficiaries of the right to free movement and those who have acquired EU long-term resident status in accordance with Article 17.

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

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<sup>145</sup> **PL, RO, SI** (scrutiny reservations): need to check whether all the requested data can be provided. **HU**: the disaggregation of refusals based on the labour market test is not possible. **AT**: the statistics required are excessive (the numbers of third-country nationals whose application have been rejected, specifying the reasons of rejection, are not stored in the AT databases and would require an expansion/adaptation of the relevant systems). **FR**: scrutiny reservation because of the administrative burden this Article will create (not disaggregating statistics by the economic sector). **DE**: agree to the provision of existing data but opposed to provide new data on an aggregate basis.

<sup>146</sup> Four years after the date of entry into force of this Directive.

<sup>147</sup> Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers (OJ L 199, 31.7.2007, p. 23).



For EU Blue Card holders, and members of their families, who have been granted residence permits in a second Member State in accordance with Articles 20 and 21, the information provided shall, in addition, specify the Member State of previous residence.<sup>148</sup>

- 2.<sup>149</sup> For the purpose of the implementation of paragraphs Article 5(2), (4) and (5), reference shall be made to data provided by Member States to Eurostat in accordance with Regulation (EU) No 549/2013<sup>150</sup> and, where appropriate, national data.

#### *Article 25*

#### *Reporting*

Every three years, and for the first time by [*five years after the date of entry into force of this Directive*], the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States, in particular the assessment of the impact of Articles 5, 12 and Chapter V, and the impact of this Directive on the national labour market situations. The Commission shall propose any amendments that are necessary.

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

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<sup>148</sup> **DE:** scrutiny reservation on this sentence.

<sup>149</sup> **BE, BG, EE, FR:** scrutiny reservations. **DE:** the specific Articles of Regulation No 549/2013 should be referred to here. **AT:** needs to study the possible implications of a reference to Article 5(2) and would like the last sentence of Recital 15 to be included in Art 24.2. **Cion:** reservation on the use of national data.

<sup>150</sup> Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union (OJ L 174, 26.6.2013, p. 1).

## Article 26

### *Cooperation between contact points*

1. Member States shall appoint contact points which shall be responsible for receiving and transmitting the information needed to implement Articles 17, 19, 20 and 23 and shall cooperate effectively with each other.
- 2.<sup>151</sup> The Member States' contact points shall in particular cooperate effectively regarding validation arrangements with stakeholders in the education, training, employment and youth sectors, as well as other relevant policy areas, needed to implement Articles 5(1)(c).
3. Member States shall provide appropriate cooperation in the exchange of the information and documentation referred to in paragraph 1. Member States shall give preference to exchanging information via electronic means.

## Article 27

### *Repeal of Directive 2009/50/EC*

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

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

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<sup>151</sup> **CZ, DE, FR:** this constitutes additional administrative burden on the contact points requesting to clarify the link with Article 5(6).

*Article 28*  
*Transposition*

- 1.<sup>152</sup> Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [~~Two~~ **2.5** years after the date of entry into force of this Directive]. They shall forthwith inform the Commission thereof.

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

Member States shall determine how such reference is to be made.

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

*Article 29*  
*Entry into force*

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

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<sup>152</sup> **BE, CZ, DE, FR, PT**: reservations on the 2 years. Due to the complexity of the Directive, the period is too short. **CY**: 3 year transposition period.

*Article 30*  
*Addressees*

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

Done at Strasbourg,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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