

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

CHAPTER III

**EU BLUE CARD, PROCEDURE AND TRANSPARENCY**

*Article 7*

**EU Blue Card**

1 A third-country national who has applied and fulfils the requirements set out in Article 5 and for whom the competent authorities have taken a positive decision in accordance with Article 8 shall be issued with an EU Blue Card.

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

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

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 12(1) of this Directive. Under the heading 'type of permit' in the residence permit, Member States shall enter 'EU Blue Card'.

4 During the period of its validity, the EU Blue Card shall entitle its holder to:

- a enter, re-enter and stay in the territory of the Member State issuing the EU Blue Card;
- b the rights recognised in this Directive.

*Article 8*

**Grounds for refusal**

1 Member States shall reject an application for a EU Blue Card whenever the applicant does not meet the conditions set out in Article 5 or whenever the documents presented have been fraudulently acquired, or falsified or tampered with.

2 Before taking the decision on an application for an EU Blue Card, and when considering renewals or authorisations pursuant to Article 12(1) and (2) during the first two years of legal employment as an EU Blue Card holder, Member States may examine the situation of their labour market and apply their national procedures regarding the requirements for filling a vacancy.

Member States may verify whether the concerned vacancy could not be filled by national or Community workforce, by third-country nationals lawfully resident in that Member State and already forming part of its labour market by virtue of Community or

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national law, or by EC 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 An application for an EU Blue Card may also be considered as inadmissible on the grounds of Article 6.

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 Member States may reject an application for an EU Blue Card if the employer has been sanctioned in conformity with national law for undeclared work and/or illegal employment.

#### *Article 9*

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

1 Member States shall withdraw or refuse to renew an EU Blue Card issued on the basis of this Directive in the following cases:

- a when it has been fraudulently acquired, or has been falsified or tampered with;
- b wherever it appears that the holder did not meet or no longer meets the conditions for entry and residence laid down in this Directive or is residing for purposes other than that for which the holder was authorised to reside;
- c when the holder has not respected the limitations set out in Articles 12(1) and (2) and 13.

2 The lack of communication pursuant to Article 12(2) second subparagraph and 13(4) shall not be considered to be a sufficient reason for withdrawing or not renewing the EU Blue Card if the holder can prove that the communication did not reach the competent authorities for a reason independent of the holder's will.

3 Member States may withdraw or refuse to renew an EU Blue Card issued on the basis of this Directive in the following cases:

- a for reasons of public policy, public security or public health;
- b wherever the EU Blue Card holder does not have sufficient resources to maintain himself and, where applicable, the members of his family, without having recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members of the person concerned. Such evaluation shall not take place during the period of unemployment referred to in Article 13;
- c if the person concerned has not communicated his address;
- d when the EU Blue Card holder applies for social assistance, provided that the appropriate written information has been provided to him in advance by the Member State concerned.

#### *Article 10*

### **Applications for admission**

1 Member States shall determine whether applications for an EU Blue Card are to be made by the third-country national and/or by his employer.

2 The application shall be considered and examined either when the third-country national concerned is residing outside the territory of the Member State to which he wishes to

be admitted or when he is already residing in that Member State as holder of a valid residence permit or national long-stay visa.

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

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

### *Article 11*

#### **Procedural safeguards**

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

National law of the relevant Member State shall determine any consequence of a decision not having been taken by the end of the period provided for in the first subparagraph.

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

3 Any decision rejecting an application for an EU Blue Card, 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 under the relevant national law and shall be open to legal challenge in the Member State concerned, in accordance with national law. The notification shall specify the reasons for the decision, the possible redress procedures available and the time limit for taking action.