

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 IV

RIGHTS

Article 12

Labour market access

1 For the first two years of legal employment in the Member State concerned as an EU Blue Card holder, access to the labour market for the person concerned shall be restricted to the exercise of paid employment activities which meet the conditions for admission set out in Article 5. After these first two years, Member States may grant the persons concerned equal treatment with nationals as regards access to highly qualified employment.

2 For the first two years of legal employment in the Member State concerned as an EU Blue Card holder, changes in employer shall be subject to the prior authorisation in writing of the competent authorities of the Member State of residence, in accordance with national procedures and within the time limits set out in Article 11(1). Modifications that affect the conditions for admission shall be subject to prior communication or, if provided for by national law, prior authorisation.

After these first two years, where the Member State concerned does not make use of the possibility provided for in paragraph 1 regarding equal treatment, the person concerned shall, in accordance with national procedures, communicate changes that affect the conditions of Article 5 to the competent authorities of the Member State of residence.

3 Member States may retain restrictions on access to employment, provided such 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 Community law, these activities are reserved to nationals.

4 Member States may retain restrictions on access to employment activities, in cases where, in accordance with existing national or Community law, these activities are reserved to nationals, Union citizens or EEA citizens.

5 This Article shall be applied without prejudice to the principle of Community preference as expressed in the relevant provisions of the Acts of Accession of 2003 and 2005, in particular with respect to the rights of nationals of the Member States concerned to access the labour market.

Article 13

Temporary unemployment

1 Unemployment in itself shall not constitute a reason for withdrawing an EU Blue Card, unless the period of unemployment exceeds three consecutive months, or it occurs more than once during the period of validity of an EU Blue Card.

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2 During the period referred to in paragraph 1, the EU Blue Card holder shall be allowed to seek and take up employment under the conditions set out in Article 12.

3 Member States shall allow the EU Blue Card holder to remain on their territory until the necessary authorisation pursuant to Article 12(2) has been granted or denied. The communication under Article 12(2) shall automatically end the period of unemployment.

4 The EU Blue Card holder shall communicate the beginning of the period of unemployment to the competent authorities of the Member State of residence, in accordance with the relevant national procedures.

Article 14

Equal treatment

1 EU Blue Card holders shall enjoy equal treatment with nationals of the Member State issuing the Blue Card, as regards:

- a working conditions, including pay and dismissal, as well as health and safety requirements at the workplace;
- b freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the 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 provisions in national law regarding the branches of social security as defined in Regulation (EEC) No 1408/71. The special provisions in the Annex to Regulation (EC) No 859/2003 shall apply accordingly;
- f without prejudice to existing bilateral agreements, payment of income-related acquired statutory pensions in respect of old age, at the rate applied by virtue of the law of the debtor Member State(s) when moving to a third country;
- g 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;
- h free access to the entire territory of the Member State concerned, within the limits provided for by national law.

2 With respect to paragraph 1(c) and (g) 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, and procedures for obtaining housing.

With respect to paragraph 1(c):

- a access to university and post-secondary education may be subject to specific prerequisites in accordance with national law;
- b the Member State concerned may restrict equal treatment to cases where the registered or usual place of residence of the EU Blue Card holder, or that of the family member for whom benefits are claimed, lies within its territory.

Paragraph 1(g) shall be without prejudice to the freedom of contract in accordance with Community and national law.

3 The right to equal treatment as 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 9.

4 When the EU Blue Card holder moves to a second Member State in accordance with Article 18 and a positive decision on the issuing of an EU Blue Card has not yet been taken, Member States may limit equal treatment in the areas listed in paragraph 1, with the exception of 1(b) and (d). If, during this period, Member States allow the applicant to work, equal treatment with nationals of the second Member State in all areas of paragraph 1 shall be granted.

Article 15

Family members

1 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 and having a minimum period of residence.

3 By way of derogation from the last subparagraph of Article 4(1) and Article 7(2) of Directive 2003/86/EC, the integration conditions and measures referred to therein may only be applied after the persons concerned have been granted family reunification.

4 By way of derogation from the first subparagraph of Article 5(4) of Directive 2003/86/EC, residence permits for family members shall be granted, where the conditions for family reunification are fulfilled, at the latest within six months from the date on which the application was lodged.

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 residence permits issued to the EU Blue Card holder insofar as the period of validity of their travel documents allows it.

6 By way of derogation from the second sentence of Article 14(2) of Directive 2003/86/EC, Member States shall not apply any time limit in respect of access to the labour market.

This paragraph is applicable from 19 December 2011.

7 By way of derogation to Article 15(1) of Directive 2003/86/EC, for the purposes of calculation of the five years of residence required for the acquisition of an autonomous residence permit, residence in different Member States may be cumulated.

8 If Member States have recourse to the option provided for in paragraph 7, the provisions set out in Article 16 of this Directive in respect of accumulation of periods of residence in different Member States by the EU Blue Card holder shall apply *mutatis mutandis*.

Article 16

EC long-term resident status for EU Blue Card holders

1 Directive 2003/109/EC shall apply with the derogations laid down in this Article.

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2 By way of derogation from Article 4(1) of Directive 2003/109/EC, the EU Blue Card holder having made use of the possibility provided for in Article 18 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 the following conditions are met:

- a five years of legal and continuous residence within the territory of the Community as an EU Blue Card holder; and
- b legal and continuous residence for two years immediately prior to the submission of the relevant application as an EU Blue Card holder within the territory of the Member State where the application for the long-term resident's EC residence permit is lodged.

3 For the purpose of calculating the period of legal and continuous residence in the Community 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 Community shall not interrupt the period referred to in paragraph 2(a) of this Article if they are shorter than 12 consecutive months and do not exceed in total 18 months within the period referred to in paragraph 2(a) of this Article. This paragraph shall apply also in cases where the EU Blue Card holder has not made use of the possibility provided for in Article 18.

4 By way of derogation from Article 9(1)(c) of Directive 2003/109/EC, Member States shall extend to 24 consecutive months the period of absence from the territory of the Community which is allowed to an EC long-term resident holder of a long-term residence permit with the remark referred to in Article 17(2) of this Directive and of his family members having been granted the EC long-term resident status.

5 The derogations to Directive 2003/109/EC set out in paragraphs 3 and 4 of this Article may be restricted to cases where the third-country national concerned can present evidence that he has been absent from the territory of the Community to exercise an economic activity in an employed or self-employed capacity, or to perform a voluntary service, or to study in his own country of origin.

6 Article 14(1)(f) and 15 shall continue to apply for holders of a long-term residence permit with the remark referred to in Article 17(2), where applicable, after the EU Blue Card holder has become an EC long-term resident.

Article 17

Long-term residence permit

1 EU Blue Card holders who fulfil the conditions set out in Article 16 of this Directive for the acquisition of the EC 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 In the residence permit referred to in paragraph 1 of this Article under the heading 'remarks', Member States shall enter 'Former EU Blue Card holder'.