

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

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament⁽¹⁾,

After consulting the European Economic and Social Committee⁽²⁾,

After consulting the Committee of the Regions⁽³⁾,

Whereas:

- (1) For the gradual establishment of an area of freedom, security and justice, the Treaty provides for measures to be adopted in the fields of asylum, immigration and protection of the rights of third-country nationals.
- (2) The Treaty provides that the Council is to adopt measures on immigration policy relating to conditions of entry and residence, standards on procedures for the issue by Member States of long-term visas and residence permits, and measures defining the rights and conditions under which nationals of third-countries who are legally resident in a Member State may reside in other Member States.
- (3) The Lisbon European Council in March 2000 set the Community the objective of becoming the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion by 2010. Measures to attract and retain highly qualified third-country workers as part of an approach based on the needs of Member States should be seen in the broader context established by the Lisbon Strategy and by the Commission Communication of 11 December 2007 on the integrated guidelines for growth and jobs.
- (4) The Hague Programme, adopted by the European Council on 4 and 5 November 2004, recognised that legal migration will play an important role in enhancing the knowledge-based economy in Europe, advancing economic development, and thus contributing to the implementation of the Lisbon Strategy. The European Council invited the Commission to present a policy plan on legal migration, including admission procedures, capable of responding promptly to fluctuating demands for migrant labour in the labour market.

- (5) The European Council of 14 and 15 December 2006 agreed on a series of steps for 2007, among which to develop well-managed legal immigration policies, fully respecting national competences, to assist Member States in meeting existing and future labour needs.
- (6) To achieve the objectives of the Lisbon Strategy it is also important to foster the mobility within the Union of highly qualified workers who are Union citizens, in particular those from the Member States which acceded in 2004 and 2007. In implementing this Directive, Member States are bound to respect the principle of Community preference as expressed, in particular, in the relevant provisions of the Acts of Accession of 2003 and 2005.
- (7) This Directive is intended to contribute to achieving these goals and addressing labour shortages by fostering the admission and mobility — for the purposes of highly qualified employment — of third-country nationals for stays of more than three months, in order to make the Community more attractive to such workers from around the world and sustain its competitiveness and economic growth. To reach these goals, it is necessary to facilitate the admission of highly qualified workers and their families by establishing a fast-track admission procedure and by granting them equal social and economic rights as nationals of the host Member State in a number of areas. It is also necessary to take into account the priorities, labour market needs and reception capacities of the Member States. This Directive should be without prejudice to the competence of the Member States to maintain or to introduce new national residence permits for any purpose of employment. The third-country nationals concerned should have the possibility to apply for an EU Blue Card or for a national residence permit. Moreover, 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.
- (8) This Directive should be without prejudice to the right of the Member States to determine the volumes of admission of third-country nationals entering their territory for the purposes of highly qualified employment. This should include also third-country nationals who seek to remain on the territory of a Member State in order to exercise a paid economic activity and who are legally resident in that Member State under other schemes, such as students having just completed their studies or researchers having been admitted pursuant to Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service⁽⁴⁾ and Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research⁽⁵⁾ respectively, and who do not enjoy consolidated access to the labour market of the Member State under Community or national law. Moreover, regarding volumes of admission, Member States retain the possibility not to grant residence permits for employment in general or for certain professions, economic sectors or regions.

- (9) For the purpose of this Directive, in order to evaluate if the third-country national concerned possesses higher education qualifications, reference may be made to ISCED (International Standard Classification of Education) 1997 levels 5a and 6.
- (10) This Directive should provide for a flexible demand-driven entry system, based on objective criteria, such as a minimum salary threshold comparable with the salary levels in the Member States, and on professional qualifications. The definition of a common minimum denominator for the salary threshold is necessary to ensure a minimum level of harmonisation in the admission conditions throughout the Community. The salary threshold determines a minimum level while Member States may define a higher salary threshold. Member States should fix their threshold in accordance with the situation and organisation of their respective labour markets and their general immigration policies. Derogation from the main scheme in terms of the salary threshold may be laid down 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 are part of the major group 1 and 2 of the ISCO (International Standard Classification of Occupation) classification.
- (11) This Directive aims only at defining the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment within the EU Blue Card system, including the eligibility criteria related to a salary threshold. The sole purpose of this salary threshold is to help to determine, taking into account a statistical observation published by the Commission (Eurostat) or by the Member States concerned, the scope of the EU Blue Card established by each Member State on the basis of common rules. It does not aim to determine salaries and therefore does not derogate from the rules or practices at Member State level or from collective agreements, and cannot be used to constitute any harmonisation in this field. This Directive fully respects the competences of Member States, particularly on employment, labour and social matters.
- (12) Once a Member State has decided to admit a third-country national fulfilling the relevant criteria, the third-country national who applied for an EU Blue Card should receive the specific residence permit provided for by this Directive, which should grant progressive access to the labour market and residence and mobility rights to him and his family. The deadline for examining the application for an EU Blue Card should not include the time required for the recognition of professional qualifications or the time required for issuing a visa, if required. This Directive is without prejudice to national procedures on the recognition of diplomas. The designation of the competent authorities under this Directive is without prejudice to the role and responsibilities of other national authorities and, where applicable, the social partners, with regard to the examination of, and the decision on, the application.
- (13) The format of the EU Blue Card should be in accordance with Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals⁽⁶⁾, thus enabling the Member States to refer to the information, in particular, under which conditions the person is permitted to work.

- (14) Third-country nationals who are in possession of a valid travel document and an EU Blue Card issued by a Member State applying the Schengen *acquis* in full, should be allowed to enter into and move freely within the territory of another Member State applying the Schengen *acquis* in full, for a period of up to three months, in accordance with Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)⁽⁷⁾ and Article 21 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.
- (15) The occupational and geographical mobility of third-country highly qualified workers should be recognised as a primary mechanism for improving labour market efficiency, preventing skill shortages and offsetting regional imbalances. In order to respect the principle of Community preference and to avoid possible abuses of the system, the occupational mobility of a third-country highly qualified worker should be limited for the first two years of legal employment in a Member State.
- (16) This Directive fully respects equal treatment between nationals of the Member States and EU Blue Card holders in relation to pay, when they are in comparable situations.
- (17) Equal treatment of EU Blue Card holders does not cover measures in the field of vocational training which are covered under social assistance schemes.
- (18) EU Blue Card holders should enjoy equal treatment as regards social security. Branches of social security are defined in Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community⁽⁸⁾. Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third-countries who are not already covered by those provisions solely on the ground of their nationality⁽⁹⁾ extends the provisions of Regulation (EEC) No 1408/71 to third-country nationals who are legally residing in the Community and who are in a cross-border situation. The provisions on equal treatment as regards social security in this Directive also apply directly to persons entering into the territory of a Member State directly from a third-country, provided that the person concerned is legally residing as holder of a valid EU Blue Card, including during the period of temporary unemployment, and he fulfils the conditions, set out under national law, for being eligible for the social security benefits concerned.
- Nevertheless, this Directive should not confer to the EU Blue Card holder more rights than those already provided in existing Community law in the field of social security for third-country nationals who have cross-border elements between Member States. This Directive, furthermore, should not grant rights in relation to situations which lie outside the scope of Community law such as, for example, the situation of family members residing in a third country.
- (19) 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 conformity with Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications⁽¹⁰⁾.

- (20) The geographical mobility within the Community should be controlled and demand-driven during the first period of legal stay of the highly qualified third-country worker. Derogations from Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents⁽¹¹⁾ should be provided for in order not to penalise geographically mobile highly qualified third-country workers who have not yet acquired the EC long-term resident status referred to in that Directive, and in order to encourage geographical and circular migration.
- (21) The mobility of highly qualified third-country workers between the Community and their countries of origin should be fostered and sustained. Derogations from Directive 2003/109/EC should be provided for in order to extend the period of absence from the territory of the Community without interrupting the period of legal and continuous residence necessary to be eligible for EC long-term resident status. Longer periods of absence than those provided for in Directive 2003/109/EC should also be allowed after highly qualified third-country workers have acquired EC long-term resident status to encourage their circular migration.
- (22) 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, as underlined in the Council and Member States' conclusions of 14 May 2007 on the European Programme for Action to tackle the critical shortage of health workers in developing countries (2007 to 2013) and the education sector, as appropriate. These 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 skilled immigration on developing countries in order to turn 'brain drain' into 'brain gain'.
- (23) Favourable conditions for family reunification and for access to work for spouses should be a fundamental element of this Directive which aims to attract highly qualified third-country workers. Specific derogations to Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification⁽¹²⁾ should be provided for in order to reach this aim. The derogation included in Article 15(3) of this Directive does not preclude Member States from maintaining or introducing integration conditions and measures, including language learning, for the members of the family of an EU Blue Card holder.
- (24) 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'. The relevant data should be transmitted annually by the Member States to the Commission in accordance with 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⁽¹³⁾.

- (25) Since the objectives of this Directive, namely the introduction of a special admission procedure and the adoption of conditions of entry and residence for more than three months applicable to third-country nationals in the Member States for the purposes of highly qualified employment and their family members, cannot be sufficiently achieved by the Member States, especially as regards ensuring their mobility between Member States, and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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.
- (26) This Directive respects the fundamental rights and observes the principles recognised in particular in Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union.
- (27) In accordance with paragraph 34 of the Interinstitutional agreement of the European Parliament, the Council and the Commission on better law-making⁽¹⁴⁾, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables, which will, as far as possible, illustrate the correlation between the Directive and the transposition measures, and make them public.
- (28) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community and without prejudice to Article 4 of the said Protocol these Member States are not taking part in the adoption of this Directive and are not bound by or subject to its application.
- (29) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not participating in the adoption of this Directive, and is not bound by it or subject to its application,

HAS ADOPTED THIS DIRECTIVE:

- (1) Opinion of 20 November 2008 (not yet published in the Official Journal).
- (2) Opinion of 9 July 2008 (not yet published in the Official Journal).
- (3) Opinion of 18 June 2008 (not yet published in the Official Journal).
- (4) [OJ L 375, 23.12.2004, p. 12.](#)
- (5) [OJ L 289, 3.11.2005, p. 15.](#)
- (6) [OJ L 157, 15.6.2002, p. 1.](#)
- (7) [OJ L 105, 13.4.2006, p. 1.](#)
- (8) [OJ L 149, 5.7.1971, p. 2.](#)
- (9) [OJ L 124, 20.5.2003, p. 1.](#)
- (10) [OJ L 255, 30.9.2005, p. 22.](#)
- (11) [OJ L 16, 23.1.2004, p. 44.](#)
- (12) [OJ L 251, 3.10.2003, p. 12.](#)
- (13) [OJ L 199, 31.7.2007, p. 23.](#)
- (14) [OJ C 321, 31.12.2003, p. 1.](#)