

Conditions of entry and residence of third-country nationals for the purposes of highly qualified employment

2007/0228(CNS) - 23/10/2007 - Legislative proposal

PURPOSE: to establish the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment.

PROPOSED ACT: Council Directive

BACKGROUND: This proposal forms part of the EU efforts to develop a comprehensive immigration policy, particularly in terms of economic immigration. It is a response to the demands of the December 2006 European Council, which agreed on a series of steps to be taken “[...] in order to assist Member States to meet labour needs [...], while contributing to the sustainable development of all countries”. It also responds to the Policy Plan on Legal Migration (see [INI/2006/2251](#)) which aims, on the one hand, at laying down admission conditions for specific categories of migrants (highly qualified workers, seasonal workers, remunerated trainees and intra-corporate transferees), within the framework of 4 specific legislative proposals and, on the other, at establishing the general framework based on the respect of migrant workers’ rights.

The proposal also aims to improve the attractiveness of the EU as a destination for highly qualified workers from third countries (given that the EU currently welcomes 87% of the unskilled and medium-skilled workers from the Maghreb, while 54% of the highly qualified immigrants from these same countries reside in the USA and Canada).

With this in mind, the proposal establishes a flexible **fast-track procedure** for the admission of highly qualified third-country workers, including **favourable residency conditions for them and their families**.

CONTENT: The proposal for a Directive has two main purposes:

1. To introduce a **special procedure** for the **entry of third-country nationals** applying to reside in the EU for the purpose of highly qualified employment, for more than three months, based on common criteria;
2. To provide those who have been admitted with a specific residency permit allowing them to work (the “**EU Blue Card**”) as well as a certain number of rights for them and their family and the possibility to move for work to a second Member State under certain conditions after two years of legal residence in the first Member State.

Chapter I – Scope:

This Directive **shall apply** to third-country nationals who apply to be admitted to the territory of a Member State for the purpose of highly qualified employment (not including independent workers). Professionals who do not necessarily need a post-secondary diploma to exercise their activity (experienced managers, certain IT professionals, etc) could also be included in the scope of the Directive, provided they can prove at least years experience in their given profession.

This Directive **shall not apply** to third country nationals:

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- staying in a Member State as applicants for international protection or under temporary protection schemes;
- who are refugees or have applied for recognition as refugees and whose application has not yet given rise to a final decision;
- applying to reside in a Member State as researchers within the meaning of Directive 2005/71/EC;
- who are family members of Union citizens who have exercised, or are exercising, their right to free movement within the Community;
- who enjoy long-term resident status in a Member State in accordance with Directive 2003/109/EC;
- entering a Member State under commitments contained in an international agreement facilitating the entry and temporary stay of certain categories of people;
- whose expulsion has been suspended for reasons of fact or law.

Note that this Directive should be without prejudice to any future agreement between the Community (or between the Community and its Member States) and one or more third countries, that would list the professions which should not fall under this directive in order to assure ethical recruitment, in sectors suffering from a lack of personnel in third countries.

Chapter II – Criteria for admission: To be admitted, a third country national shall:

- present a valid work contract or a binding job offer of at least one year in the Member State concerned;
- fulfil the conditions set out under national legislation for the exercise by EU citizens of the regulated profession specified in the work contract;
- for unregulated professions, present the documents attesting the relevant higher professional qualifications in the occupation or sector specified in the work contract or in the binding offer of work;
- present a valid travel document (Member States may require the period of the validity of the travel document to cover at least the initial duration of the residence permit);
- present evidence of having a sickness insurance for the applicant and his/her family members for the period of the work contract;
- not be considered to pose a threat to public order, security or health.

In addition to the stipulated conditions, the proposal sets out “**salary**” **criteria:** the gross monthly salary specified in the work contract must not be inferior to a national salary threshold defined by the Member States (Member States where minimum wages are not defined shall set the national salary threshold to be at least three times the minimum income under which citizens of the Member State concerned are entitled to social assistance).

Specific derogation for “young professionals” (under 30): these “young professionals”, who are likely to have inadequate experience to obtain high salaries, shall be required to meet an additional condition in order to be admitted as a highly qualified worker: completed higher education in an area related to the activity for which the work contract is to be granted. There is also more flexibility for young professionals who have studied in the EU in terms of the remuneration criterion (two thirds of the national salary threshold).

Volumes of admission: the Directive shall be without prejudice to the competence of the Member States to determine volumes of admission of third-country nationals for highly qualified employment (in other words, Member States can set entry quotas to limit the potential number of highly qualified workers to be admitted).

Chapter III – “EU Blue Card”:

A person fulfilling the requirements set out in the Directive and for whom a positive decision has been issued shall be issued an **EU Blue Card with an initial validity of two years**. It can be renewed for 2 additional years. If the work contract covers a period less than two years, the EU Blue Card shall be issued for the duration of the work contract plus three months. **A 3 month period of unemployment will be acceptable.**

Labour market access: for the first two years of legal residence in the Member State concerned as holder of an EU Blue Card, access to the labour market shall be restricted to the exercise of paid employment activities as specified in the initial work contract. Modifications of the terms of the work contract that affect the conditions for admission or changes in the work relationship shall be subject to the prior authorisation in writing of the competent authorities of the Member State of residence.

Format of the “Blue Card”: Member States shall issue the EU Blue Card using the uniform format as laid down in Regulation (EC) No 1030/2002 (see [CNS/2001/0082](#)). They shall, in particular, enter "EU Blue Card" under the heading “type of permit”.

Entitlements of the “Blue Card”: the Directive indicates the entitlements of the EU Blue Card. During the period of its validity, the EU Blue Card shall entitle its holder (and their family) to:

- enter, re-enter and stay in the territory of the Member State issuing the EU Blue Card;
- travel through other Member States.

Procedural safeguards: the competent authorities of the Member States shall notify the applicant at the latest within 30 days of the date on which the application was lodged. In exceptional cases involving complex applications, the deadline may be extended for a maximum of 60 additional days.

Any decision rejecting an application for an EU Blue Card must have due reason, so that a clear explanation for the rejection by national authorities is provided. The rejection, non-renewal or withdrawal of an EU Blue Card shall be open to challenge before the courts of the Member State concerned.

Rejection: procedures will be in place for the rejection of a “Blue Card”: in essence, whenever the applicant does not meet the conditions or whenever the documents presented have been fraudulently acquired, or falsified. Before taking the decision on an application for an EU Blue Card, Member States may examine the situation of their labour market and apply their national procedures regarding the requirements for filling a vacancy or may give preference to Union citizens.

Chapter IV – Entitlements of the proposal in terms of equal treatment: the Directive gives a certain number of basic rights to holders of the Blue Card. Holders shall enjoy equal treatment with nationals at least as regards:

- (a) working conditions, including pay and dismissal, as well as health and safety at work;
- (b) freedom of association and affiliation and membership of an organisation representing workers or employers or of any professional organisation;
- (c) education and vocational training, including study grants (however, Member States can restrict access to study grants);
- (d) recognition of diplomas, certificates and other professional qualifications;
- (e) branches of social security as defined in Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self employed persons and to members of their

families moving within the Community and in Council Regulation (EC) No 859/2003 which extends the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by these provisions solely on the ground of their nationality;

- (f) social assistance as defined by national law;
- (g) payment of acquired pensions when moving to a third country;
- (h) tax benefits;
- (i) access to goods and services and the supply of goods and services made available to the public, including procedures for obtaining housing and the assistance afforded by employment offices (e.g. EURES data bank);
- (j) free access to the entire territory of the Member State concerned, within the limits provided for reasons of security.

Restriction of rights: Member States may restrict equal treatment with national workers in terms of: i) social housing (provided that employees have lived in the country for at least three years); ii) social assistance.

Family members of workers: family members will not be entitled to a “Blue Card” in the same way as the worker. However, to promote the attractiveness of the EU to qualified workers, the Directive allows for **immediate family reunification**, including for cases of temporary residency, as well as the access of spouses to the labour market. The proposal also specifies that potential national integration measures shall only apply once family members have arrived in the EU.

“Blue Card” links with the EC long term resident status: the aim of the proposal is to encourage the geographical mobility of highly qualified workers. Derogations to the Directive 2003/109/EC (on long term residents – see [CNS/2001/0074](#)) are foreseen so that mobile workers are not penalised, enabling them to build up periods of residency in 2 (or a maximum of 3) Member States. Derogations on periods of absence from the EU are planned but under strict conditions, to support the policy on circular migration and to limit a possible brain drain. A new residency permit is also planned to define the specific status of this type of holder: **the residence permit "long-term resident – EC / EU Blue Card holder"**.

Chapter V – Residence in other Member States: after 2 years of legal residence in the Member State that issued the EU Blue Card, the worker and their family members will be allowed to move to another Member State to potentially carry out another highly qualified job. However, this possibility is subject to a series of specific conditions outlined in the proposal.

Chapter VI – Final provisions: the proposal requires Member States to share, through the network established by Decision 2006/688/EC, information on possible quotas and annual statistics concerning its application. This information will enable a follow-up of the recruitment in developing countries that suffer from a shortage of qualified labour.

In accordance with the provisions of the relevant treaties, the proposal shall not apply to the UK, Ireland or Denmark.