

# INTERNATIONAL LAW AND INTERNATIONAL RELATIONS

**Victoriia Demchyshyna**

*Taras Shevchenko National University of Kyiv, Ukraine*

## LEGAL ASPECTS FOR REGULAR MIGRATION IN THE EUROPEAN UNION

The article is devoted to the analysis of a set of sectoral legal acts of the EU in the field of legal migration. The study notes that in order to boost the economy, ensure employment in the EU and meet the many needs of the European economy, the European Union has already developed a number of legislative instruments by establishing common standards and approaches for receiving and granting rights to certain categories of migrant workers from third countries.

Today they include: highly skilled workers; family members of migrants; persons residing in the EU on a long-term basis; students; scholars and researchers; trainees; volunteers; students at Au pairs exchange program; seasonal workers and intra-corporate migrants.

The article emphasizes that directives and regulations in the field of legal migration aim to emphasize the importance of developing an integration policy aimed at empowering third-country nationals with rights and obligations that can be equated with the rights of EU citizens.

**Keywords:** Legal Migration, EU Citizens Rights, Third Countries Citizens, Legal Mechanism, Labor Migrants.

The processes related to large-scale migration and mobility to the EU remain an integral part of the 21st century. In this context, the EU is taking all necessary measures to achieve a coordinated and balanced EU migration policy based on common values, while effectively regulating legal and illegal migration. In its Conclusions of June 2018, the European Council reaffirmed that the preconditions for the functioning of the EU migration policy are an integrated approach where the EU's internal and external measures are being taken to ensure effective control at the EU borders, return policies and well-regulated policies on legal migration.

The growing competition for attracting skilled labor force encourages the leadership of the states, including EU member states, to constantly develop new approaches to regulating labor migration from third countries.

Since 1999, with the adoption of the migration policy program in Tampere, the European Union has been developing its external and internal dimensions. Such policy is directed to effective management of migration, since the EU attracts many migrants from Syria, Afghanistan, Iran, Ethiopia and other countries from an economic point of view, while ensuring proper treatment.

Legal migration, for example, of highly skilled workers, students and researchers, boosts the economic growth of the European Union, especially in the context of a labor shortage in selected sectors of the economy and the aging of the population in most EU member states.

In order to attract legal migrants and meet the economic and social needs of the majority of EU Member States, as well as all the issues that arise in this regard, the European Union has already developed a number of legislative instruments by establishing common standards and approaches for the conditions for admission and granting rights to certain categories of migrant workers from third countries. Today they include: highly skilled workers; family members of migrants; persons residing in the EU on a long-term basis; students; scholars and researchers; trainees; volunteers; students at Au pairs exchange program; seasonal workers and intra-corporate migrants.

One of the main documents defining the conditions for entry and stay, as well as the standards of procedures for issuing long-term visas and residence permits by the Member States of the EU, as well as measures defining the rights of third-country nationals legally staying in the same Member State, staying in other Member States, where they can do so, is Directive 2009/50/EC on the conditions of entry and

residence of third-country nationals for the purposes of highly qualified employment (hereinafter referred to as "the Blue Card Directive") adopted by the EU Council May 25, 2009<sup>1</sup>.

The document defines the conditions of entry and stay for more than three months on the territory of the Member States of third-country nationals who arrive for highly skilled work and holders of the Blue Card of the EU and their family members. In addition, the conditions for the entry and stay of the aforementioned citizens and their family members in the Member States are determined, than those who issue a blue card. In its turn, the blue card means a permission containing the "Blue Card" of the EU and allows its holder to live and work in the territory of a Member State in accordance with the provisions of this Directive.

In Art. 2 the definition of highly skilled work of the person is determined. In particular, highly skilled work means the work of a person who, regardless of the type of legal connection, enjoys the protection in the Member State concerned of the EU as an employee under the national labor legislation and / or in accordance with national practice for the purpose of real and effective work on behalf of, or under the direction of another person; receives wages and possesses the necessary competence of proper and special character, confirmed by a higher professional qualification.

Moreover, the directive does not preclude any agreement between the EU and / or its Member States and one or more third countries which establishes a list of professions to be excluded from the scope of this directive in order to ensure ethical recruitment in sectors suffering from a shortage protecting the human resources of developing countries that have signed such agreements. Moreover, the directive does not preclude the right to issue work permits other than a blue card for work purposes in the Member States of the EU. Such residence permits do not grant access to the right of residence in other EU Member States as provided for in this Directive.

The common competence of the European Union and its Member States in the field of immigration is also laid down in this directive. For example, the document states that the directive does not affect the right of any Member State to determine the extent of admission of third-country nationals entering its territory for the purpose of highly-qualified work.

The EU Member States set a blue card for a standard period of validity of one year to four years. If the period of time for which the employment contract is concluded is less than this period, the blue card is issued or extended for the duration of the concluded employment contract plus three months. During its validity, the Blue Card gives its holder the right to enter, re-enter the territory of the Member State that issued the Blue Card, and also stay on its territory; enjoy rights recognized in accordance with this Directive.

Levels of attitude are foreseen for blue card holders and citizens of the Member States that issue such documents. Levels of rights include: working conditions, including wage and salary conditions, as well as health and safety at the workplace; freedom of association, admission or entry into the organization of workers or employers or any professional organization, including the benefits that such organizations may provide, without prejudice to national provisions in the field of public order and public safety; education and vocational training; recognition of diplomas, certificates and other professional qualifications in accordance with appropriate national procedures; access to goods and services and the purchase of goods and services offered to the public, including housing procedures, as well as information and advisory services offered by employment services; free access to the entire territory of the Member State concerned within the limits provided for by national law. Moreover, without prejudice to existing bilateral agreements, in the event of a move to a third country, the Member State of the EU pays accumulation in the field of statutory retirement benefits at an old rate at the rate applicable under the legislation of the debtor Member State or of the debtor Member States.

During the first two years of its legal work in the EU Member State concerned, the access of blue card holders to the labor market is limited to the implementation of hired labor as provided for in the employment contract. In the event of a two-year period ending, such persons have the right to equal treatment with EU citizens for access to any skilled work.

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<sup>1</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, Official Journal of the European Union, L 155/17. *The official site of the European Union*. <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009L0050>> (2019, July, 14).

In order to receive the blue card, third-country nationals apply to the Consulates of the EU Member States with relevant petitions, while providing the usual set of documents for obtaining a national long-stay visa D and a number of other documents. Among them: a valid labor contract or a proposal for highly qualified work for at least 1 year in the relevant EU Member State; a valid document certifying a person on the basis of which a citizen can travel abroad; availability of a visa and a health insurance contract. An important condition for obtaining a blue card is also the indication in the employment contract of the annual nominal wage, which corresponds to 1.2-1.5 of the average annual salary in that Member State. After submission of documents, the period for reviewing such a request can not exceed 90 days.

On June 28, 2017, the Committee on Civil Liberties, Justice and Home Affairs issued a Report on the implementation of the Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purpose of highly-qualified employment<sup>1</sup>. In particular, the document noted that in order to attract highly skilled workers and promote their economic prospects, embassies and delegations of the Union and member states in third countries should intensify advertising and information campaigns on the EU blue card. They must have sufficient human and financial resources to provide information about the Blue Card of the EU to third-country nationals on the ground.

Particular emphasis is given to taking into account the needs of the EU labor market. To this end, EU Member States and the EU Commission should collect data and identify the employment sectors or geographic areas of the EU Member States where there are job shortages or vacancies and to publicly announce it.

At the same time, the provisions of the directive do not affect the right of Member States to determine the admission of third-country nationals coming from the third crane to their territory for the purpose of seeking employment in accordance with Article 79 (5) of the Treaty on the Functioning of the European Union. Since Article 79 (5) of the ETF does not affect the right of Member States to determine the admission of third-country nationals coming to their territory from third countries in search of self-employment or employment.

So, after analyzing the blue card directive, we can draw some conclusions. In particular, for the purpose of highly qualified work, the document addresses the issue of labor shortages in the EU by facilitating the admission and mobility of third-country nationals for more than three months. This, in turn, makes the European Union more attractive to such workers from all over the world and supports its competitiveness and economic growth. In addition, the document identified an accelerated procedure to facilitate the admission of highly skilled workers and their families to work, recognizing them a number of socio-economic rights equivalent to the rights of citizens of the host Member State.

The Directive does not preclude the exercise of the competence of the Member States to retain and introduce new national residence permits for employment. All citizens of third countries have the opportunity to apply for a blue card or a national residence permit. However, the directive does not preclude the owner of the blue card from enjoying additional rights and privileges provided for by national law and which do not contravene this directive.

The next directive that regulates the status of third-country nationals residing in the EU on a long-term basis is Directive 2003/109/EC of 25 November 2003, as amended by Directive 2011/51/EC. The documents determine the conditions for the granting of the status of long-term residents to third-country nationals and the conditions for their exercise of the right of residence in the Member States of the European Union.

The EU Member States shall provide long-term residents with a residence permit for long-term residents. The period of validity of this type of residence is not less than five years; upon expiration of the term, it is continued automatically, or, if necessary, by the appropriate submission. In order to obtain the status of a long-term resident, a third-country national must provide evidence that he is in a position to provide himself and his family members with stable and regular financial resources that are necessary and sufficient to meet their needs and needs of their members. family without resorting to the social security system of the country concerned.

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<sup>1</sup> Committee on Civil Liberties, Justice and Home Affairs Report on the 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 28 June 2017. <[http://www.europarl.europa.eu/doceo/document/A-8-2017-0240\\_EN.html?redirect](http://www.europarl.europa.eu/doceo/document/A-8-2017-0240_EN.html?redirect)> [in English]. (2019, July, 14).

Ct. 6 of the document states that EU Member States may refuse to grant long-term resident status, taking into account motives of public order or public security. In the event that any EU Member State makes such a decision, account should also be taken of the severity and nature of the breach of the soap or slaughterhouse safety or the danger represented by the person. The Member State shall also take into account the length of stay and the existence of links with the country of residence. In any case, refusal to grant the status of long-term resident can not be justified by economic considerations.

Directive 2003/109/EC contains two cases in which Member States are allowed to restrict the equality of persons with long-term resident status in relation to nationals of the occupying country in matters of employment. This includes, in particular: (a) when certain activities are reserved to national citizens or EU citizens in accordance with the national legislation of a Member State or in accordance with the law of the Union; (b) Member States may require proof of adequate language proficiency in access to education or training. A person who has the status of long-term resident has the right to reside in any other Member State if it is recognized as an economic activity as an employee or a person of a free profession, vocational training or other purposes in accordance with Art. 14 of this Directive.

The provisions of the document establish the principle of equal treatment of third-country nationals with the citizens of the EU Member State in whose territory they reside. As a rule, this applies to socio-economic rights, in particular, working conditions, membership in trade unions, social security, tax benefits, access to goods and services, vocational training, etc. These issues are covered in Section 3 of the document.

Generally, a petition for the issuance of a single permit must be considered by the competent authority of the Member State within four months. The extension of this term is allowed in exceptional circumstances related to the complexity of the application. Denial of the petition must always be motivated and allowed to appeal to the courts of the Member State concerned in accordance with its national law.

Thus, within the limits of this research, we would like to make the following conclusions.

The EU economy is one of the most competitive and dynamic in the world, accompanied by a quantitative and qualitative increase in the employment and social cohesion of the EU Member States. In order to boost the economy, ensure employment in the EU and meet the many needs of the European economy, EU institutions have adopted a series of legal instruments aimed at attracting and retaining labor resources from third countries.

During 2003-2018, the European Union adopted a wide range of legal instruments for managing legal migration while giving the EU Member States with an opportunity to determine the number of migrant workers to be taken from third countries.

A feature of the directives we outlined above is that they clearly and unambiguously determine the conditions under which nationals of third countries legally resident in the territory of the Member States of the European Union are able to exercise their rights in certain areas of employment. These directives are also intended to emphasize the importance of developing an integration policy aimed at empowering third-country nationals with rights and obligations that can be equated with the rights of EU citizens. In addition, such legal instruments contribute to the creation of social and cultural stability in the European Union, thereby strengthening its economic and social cohesion.

### **References:**

1. 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, Official Journal of the European Union, L 155/17. *The official site of the European Union*. <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009L0050>>. (2019, July, 14). [in English].
2. Committee on Civil Liberties, Justice and Home Affairs Report on the 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 28 June 2017. <[http://www.europarl.europa.eu/doceo/document/A-8-2017-0240\\_EN.html?redirect](http://www.europarl.europa.eu/doceo/document/A-8-2017-0240_EN.html?redirect)> (2019, July, 14). [in English].