

Admission of TCN- Introduction

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Common EU migration policy

- Legal Migration
 - Establishment of a framework for legal migration
 - Admission of immigrants: entry and residence conditions
 - Integration of legal immigrants – legal status
- Fight against Illegal immigration
- External dimension

Article 67 (2) TFEU

The Union “shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals.

Who falls within the scope of Immigration admission rules?

- All Third countries nationals (non EU Citizens)?

NO

- EU definition of TCN
 - Privileged TCN: free movement of EU citizens
 - TCN family members of an EU citizen
 - Nationals of EEA and Suisse
 - Unprivileged TCN



EU Immigration Policy – Admission Rules

Legal Basis - Art. 79 TFEU

- 1. The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.
- 2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures in the following areas:
 - (a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification;
 - (...)
- 5. This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.

Political Context

- Migration flows towards and inside EU have been growing
 - 2003: 16,2 million TCN in the EU-25 (3,6% of the population)
 - 2010: 20,1 million TCN in the EU-27 (4%)
- Until the Treaty of Lisbon (2009): weaknesses
 - Focus on the fight against illegal immigration and strengthening border control
 - Decisions on legal migration taken by unanimity in the Council
 - Limits the ability of the EU to adopt a common policy, which does not summarize the lowest common denominator of national policies.
 - Example: refusal of the 2001 proposal for a directive on economic migration (entry and residence for all TCN exercising paid and self-employed activities)
 - Sectorial approach: procedures of admission for few selected categories of immigrants

Economic and demographic context of the EU

- The need for a coherent regulatory framework and a comprehensive policy, covering also aspects of admission and integration of immigrants.
- Demographic trends: an ageing population
 - 2050: decrease of the working population of around 52 million people (Eurostat).
 - Ratio of persons of working age for 1 person aged 65 or over
 - 2010: 3,5
 - 2060: 1,7
 - Share of people aged 65 years or over in the total population
 - 2008: 17,1% (84 million)
 - 2060: 30% (151 million)
 - Number of people aged 80 years or over
 - 2008: 21,8 million
 - 2060: 61,4 million
- Labour and skills shortages in certain sectors of the economy, despite high levels of unemployment

Policy Guidelines on legal immigration

- Commission's **Policy Plan on Legal Migration** (2005):
 - General framework directive
 - Rights to all TCN workers admitted to a MS but not yet entitled to long term residence status (Directive 2003/109/EC)
 - Single application procedure for a joint work/residence permit
 - 4 directives on entry and residence conditions for
 - Highly skilled workers
 - Seasonal workers
 - Intra-corporate transferees
 - Remunerated trainees

Policy Guidelines on legal immigration

- European Council Conclusions (2007)
 - (...) migration can have a **significant impact on growth potential and employment growth, labour markets, adjustment capacity, productivity, competitiveness and public finances** (...). An effective immigration policy should be considered in the light of skills shortages and labour market requirements. Labour migration shall fully respect the Community acquis, Member States' competences in this field and the principle of Community preference for EU citizens.

European Pact on Immigration and Asylum (2008)

- Organise legal immigration to **take account of the priorities, needs and reception capacities determined by each MS**, and to encourage integration
 - Each MS decides on the conditions of admission of legal migrants to its territory and set their number
 - Implementation of policies for labour migration with due regard to the *acquis* and Community preference
 - Increase the attractiveness of the EU for highly qualified workers
 - New measures to facilitate the reception of students and researchers and their movement within the EU
 - In the field of family reunification, invites MS to take into consideration its own reception capacities and families' capacity to integrate (recourses, accommodation, knowledge of MS language)

Stockholm Programme

- strategic guidelines for the area of freedom, security and justice – 2010-2014:
 - Development of a forward-looking and comprehensive EU migration policy based on **solidarity and responsibility**
 - In the context of demographic challenges and increased demand for labour, European Council recognizes the important contribution of **flexible migration policies** to the economic development of the EU
 - EU should encourage the **creation of flexible admission systems of labour migrants** that are responsive to the needs and volumes determined by each MS.
 - Measures proposed
 - Consolidation of existing legislation in the field of immigration
 - Evaluation and, where necessary, review of the Family Reunification Directive

EU Legal Measures on legal immigration

- Directive 2003/86/CE: Family Reunification
- Directive 2003/109/EC concerning the status of TCN who are long-term residents (amended by Directive 2011/51/EU to extend its scope to beneficiaries of international protection)
- Directive 2004/114/CE: admission of TCN for the purposes of studies, pupil exchange, unremunerated training or voluntary service (Students Directive)
- Directive 2005/71/CE: Admission of TCN for the purposes of scientific research (Researchers Directive)
- Directive 2009/50/CE: Conditions of entry and residence of TCN for the purposes of highly qualified employment (Blue Card Directive)
- Directive 2011/98/EU: on a single application procedure for a single permit for TCN to reside and work in the territory of a MS and on a common set of rights for third-country workers legally residing in a Member State (Single Permit Directive)
- Under negotiation
 - Directive on the conditions of entry and residence of TCN for the purposes of seasonal employment (COM(2010) 379 final)
 - Directive on entry and residence TCN in the framework of an intra-corporate transfer (ICT) (COM(2010) 378 final)

COUNCIL DIRECTIVE 2004/114/ Students Directive EC

Objectives

- Harmonisation of national legislation relating to the conditions of entry and residence of TCN for the purposes of studies, pupil exchange, unremunerated training or voluntary service
- Promotion of the mobility of TCN to the EU for the purpose of studies
 - Key factor to promote Europe as as a world centre of excellence for studies.
 - Migration of students constitutes a form of mutual enrichment for the migrants concerned, their country of origin and the host MS

Who is covered by the Directive?

- Students (compulsory)
- Optional categories of TCN
 - School pupil
 - Only through a recognized exchange scheme managed by specialised organisations
 - MS may confine the admission to school pupils of third countries which offer the same possibility for their own nationals (art. 9 (2))
 - Unremunerated trainee
 - Volunteers
 - Only through a recognized voluntary service scheme

Personal scope

- **Student:** TCN accepted by an establishment of higher education to pursue a full-time course leading to a higher education qualification recognised by the MS concerned - diploma, certificate, PhD) – (may cover a preparatory course prior to such education)
- **School pupil:** TCN admitted to follow a recognised programme of secondary education I
- **Unpaid trainee:** TCN admitted for a training period without remuneration
- **Volunteer:** TCN admitted to follow a MS or EU voluntary service scheme (programme if activities of practical solidarity)

Categories of TCN excluded from the scope of the Directive - art 3 (2)

- Asylum seekers and beneficiaries of subsidiary or temporary protection;
- TCN under suspension of the expulsion procedure;
- Family members of the EU citizens who have exercised their right to free movement within the EU
- TCN with long-term residence status
- TCN considered as workers or self-employed persons

Conditions of admission

- The admission of TCN under the Directive shall be subject to the **verification of documentary evidence** showing that she/he meets the admission conditions:
 - General
 - Specific for each category
- MS shall facilitate the admission procedure for students/pupils/trainees/volunteers participating in EU programmes enhancing mobility towards or within the EU (art. 6 (2))
 - Ex. Erasmus World; Socrates, Leonardo da Vinci

General conditions (art. 6)

- Valid travel document
 - Flexible additional requirement: validity at least for the duration of the planned stay
- Parental authorisation for the planned stay – if the TCN is minor
- Sickness insurance
 - MS don't require a separate sickness insurance if the enrolment at an establishment automatically qualify the student for sickness insurance
- Not be regarded as a threat to public policy, public security or public health
- Payment of the fee for processing the admission's application (flexible – left to the discretion of the MS)

Specific conditions for students (art 7)

- Accepted by an establishment of higher education
- Sufficient resources to cover his/her subsistence, study and return costs
- Sufficient knowledge of the language of the course to be followed (optional)
- Payment of the fees charged by the establishment (optional)

Specific conditions for secondary school pupils (art. 9)

- Age limits (set by the MS concerned)
- Admission by a secondary education establishment
- Admission in a pupil exchange scheme organised by a recognised exchange organisation
- The exchange organisation must take responsibility for subsistence, study, healthcare and return travel costs of the pupil

Specific conditions for unpaid trainees (art. 10)

- Training agreement for an unremunerated placement with a enterprise or a recognised vocational training establishment
- Sufficient resources to cover his/her subsistence, training and return travel costs
 - MS shall make public the required minimum monthly resources (without prejudice to individual examination of each case)
- Basic language training (optional)

Specific conditions for volunteers (art. 11)

- Age limits (set by the MS)
- Agreement with the organisation responsible for the voluntary service scheme
 - Agreement has to describe the tasks, supervision conditions, working hours, resources available to cover volunteers' travel, subsistence, accommodation costs, pocket money, eventually training needed.
- Organisation has to subscribe a third-party insurance policy and accepts full responsibility for the volunteers' subsistence, healthcare and return travel costs
- Basic introduction to the language, history and political and social structures of the MS concerned (optional)

Residence permit

- If the TCN meet all the conditions



MS has to issue a residence permit

- Period of Validity – varies according to the category
 - Students: at least 1 year (renewable), or less according the duration of the course
 - School pupils: no more than 1 year
 - Unpaid trainees: maximum of 1 year or according the duration of the placement
 - Volunteers: no more than 1 year or, exceptionally longer, if the duration of the program is longer

Can the residence permit be renewed?

- Students: yes, if the admission conditions are met
- School pupils: No
- Unpaid trainees: Exceptionally yes but only once and
 - For such time as is needed to acquire a vocational qualification recognised by the MS
 - If the holder still meets the admission conditions
- Volunteers: No

Has the student the right to work ? Art. 17 (and recital 8)

- Yes, students have the right to be employed outside their study time, but
 - MS may restrict access to economic activities for the 1st year
 - MS may take into account the labour market situation
 - Case C-15/11 (judgment of the Court, 21.06.12): the issue of a work permit cannot be subject to systematic examination of the labour market; the issuing of a work permit only if neither an Austrian national nor another worker already available on the labour market is willing and able to carry out that job is not compatible with the Directive.
 - MS shall determine the maximum number of hours (but not less than 10 hours per week)
- Self-employment activities: subject to MS authorization.
- MS may require a reporting obligation, that the student is engaged in an economic activity

Mobility of students (art 8)

- Can a student admitted in a MS reside in another MS to follow or complement his/her studies?
- **Yes**, but under conditions:
 - Has to meet the general and specific admission conditions
 - Has to sent, with the application for admission in the 2d MS full documentary academic record and evidence that the course he/she wishes to follow genuinely complements the one he/she has completed; and
 - Has to participate in a EU or bilateral exchange programme or has been admitted as a student for no less than 2 years (requirement not applicable if the student is obliged to attend part of the courses in an establishment of another MS).

May the MS withdraw or refuse to renew the student resident permit? **YES** (art. 16 and 12 (2))

- It has been fraudulently acquired
- The holder did not meet or no longer meets the general and/or specific admission conditions
- On grounds of public policy, public security or public health
- The student doesn't respect the limits imposed on access to economic activities under art 17
- The student doesn't make acceptable progress in his/her studies

Procedure and transparency

- MS shall adopt the decisions on issuing or renewing the residence permits within a period that does not hamper the pursuit of the studies
 - MS may conclude with an establishment of higher education or an pupil exchange organization an agreement ruling a fast-track admission procedure
 - MS may require the payment of fees for the processing of applications
- Negative decisions
 - shall be notified to the TCN with specification of the possible redress procedures
 - TCN has the right to mount a legal challenge before the authorities of the MS

Researchers Directive – Admission of Researchers in the EU

Directive 2005/71/CE

Objectives

- Special admission procedure and harmonization of the conditions of entry and residence of TCN for research purposes (without prejudice of more favourable international or national provisions – art. 4)
- Attractive conditions of admission of Researchers and mobility of Researchers from third countries as a tool to boost the EU position as an international centre for research
 - Barcelona EC (2002), confirmed in 2010 in the framework of the 2020 Agenda: 3% EU GDP invested in research (700.000 researchers needed).
 - Importance of R&D for Europe economic growth

Personal scope

- TCN who apply to be admitted to the territory of a MS for more than 3 months for the purpose of carrying out a research project under a hosting agreement with one research organization (art 1 and 3).
 - Has to hold a higher education qualification, which gives access to doctoral programmes (art. 2 (d))
- Stays for less than 3 months – uniform short-stay visa
 - Recommendation of the EP and the Council (28.09.2005) to facilitate the issue by MS of a uniform short-stay visa for researchers from third countries: ex. Fast-track procedures, multi-entry visas, etc.
 - Art. 16 Visa Code (Regulation 810/2009): visa fee is waived for researchers

Personal scope

- TCN excluded
 - Asylum seekers and beneficiaries of temporary protection
 - Doctoral students carrying out research leading to the PhD
 - Under suspended expulsion procedure
 - Researchers seconded by a research organisation in another MS

Admission conditions (art. 7)

- Valid travel document (MS may require to cover at least the duration of the residence permit).
- Hosting agreement (art. 6) with a research organisation
 - MS may check the terms upon which the hosting agreement has been based and concluded
- Statement of financial responsibility issued by the research organisation (optional)
- Not be considered a threat to public policy, public security or public health.

Research organisation

- Can the TCN sign a hosting agreement with any public or private organisation? NO
- The public or private research organisation has to be approved by the MS for the purpose of hosting a TCN under the Directive procedure (art. 5)
 - Approval for a minimum period of 5 years (or exceptionally shorter)
 - Research organisation may be required to make a written undertaking that reimburse the costs related to the stay and return, if the TCN remains illegally in the territory of the MS
 - MS may require that the Research organisation confirm by the competent authorities that the research work has been carried out
 - MS shall publish an updated list of approved research organisations.
- The research organisation and the TCN shall sign a hosting agreement in accordance with art. 6.

requirements for the signature of the hosting agreement(art. 6)

- Accepted research project by the organisation after examination of
 - Purpose and duration of the research
 - Availability of financial resources
 - Researcher qualifications
- Researcher has to have sufficient monthly resources to meet his/her expenses and return travel costs, without having recourse to MS social assistance system (MS has to publish a minimum amount)
- Sickness insurance
- Legal relationship and working conditions have to be specified in the agreement

Entry and residence

- Once the admission conditions have been checked by the MS and positively verified has the TCN right to enter and reside in the MS?
 - **YES** – MS are obliged to admit the TCN (art. 7 (3))
 - MS shall issue a residence permit (art. 8)
 - If the TCN is outside its territory, MS shall grant every facility to obtain required visas
- Validity of the residence permit:
 - at least 1 year and shall be renewed if the admission conditions are still met
 - Less than 1 year if the research project is schedule to last less time.

Application procedure (art.14 and 15)

- Who has to make the application?
 - The researcher or the researcher organisation
- When has the application to be made?
 - Rule: when the TCN is residing outside the territory of the concerned MS
 - MS shall grant every facility to obtain required visas
 - MS may accept applications to be submitted when the TCN is already in its territory
- MS have to facilitate the admission
 - MS shall adopt a decision as soon as possible and, where appropriate, provide for accelerated procedures
- Notification of the rejection – shall specify the available redress procedures and time limits for taking action

May the MS withdraw or refuse to renew the residence permit?

- **YES**, under 3 conditions (art 10)
 - It has been fraudulently acquired
 - The holder did not meet or no longer meets the admission conditions
 - For reasons of public policy, public security or public health
- The researcher has the right to mount a legal challenge before the national authorities (art. 15 (4))

Mobility between MS

- Has the TCN admitted as researcher in one MS the right to carry out part of his/her research in another MS?
 - **YES**, but under conditions (art. 13)
- Stays in another MS for less than 3 months
 - Research may be carried out on the basis of the hosting agreement concluded in the 1st MS, if the TCN has sufficient resources and is not considered as a threat to public policy, public security or public health
- Stays in another MS for more than 3 months
 - MS may require a new hosting agreement – all conditions set out in art. 6 and 7 shall be met
- Researcher has the right to submit the application of the necessary visas or residences permits in the territory of the 2nd MS.

Researchers rights

- Right to work (no need for a work permit)
- Right to immediate family reunification (no waiting period allowed (derogation to the 2003 Family Reunification Directive))
- Right to teach – MS may set a maximum number of hours/days for teaching activities (art. 11)
- Right to the same treatment as MS nationals regarding recognition of diplomas, working conditions, social security, tax benefits and access to goods and services made available to the public

EU Blue Card Directive

- admission of highly qualified workers

Directive 2009/50/EC

Objectives

- Attract highly qualified TCN as part of the strategy to
 - Enhance the knowledge economy in Europe
 - Addressing labour shortages due to the aging of population
 - Sustain competitiveness and economic growth
- How?
 - Fast-track admission procedure
 - Harmonization of entry and residence conditions based on objective criteria
 - Issuing of a special residence and work permit – “EU Blue Card”
 - Granting the holders of an “EU Blue Card” equal social and economic rights, more favourable conditions for family reunification, geographic and occupational mobility

Who falls under the Directive?

- TCN who apply to be admitted to the territory of a MS for more than 3 months for the purpose of highly qualified employment as EU Blue Card holder + members of their family
 - Employment that requires adequate and specific competence, as proven by **higher professional qualifications** attested by
 - a higher education qualification (diploma, certificate attesting the completion of a post-secondary higher education program)
 - 5 years professional experience of a level comparable to a higher education qualification and which is relevant in the profession/sector concerned

Who is excluded?

- Asylum seekers and beneficiaries of international and temporary protection or beneficiaries of humanitarian protection under national law
- Researchers under the Directive 2005/71/EC
- Family members of EU citizens exercising their right of free movement
- Long-term residents exercising their right to reside in another MS in accordance with Directive 2003/109
- TCN who enter a MS under more favourable international agreements
- Seasonal workers
- TCN under suspended expulsion procedure
- TCN posted in the MS the framework of the provisions of services
- TCN enjoying rights of free movement equivalent to those of EU citizens

Is the EU Blue an exclusive system of admission of HQW ?



NO

- MS have the right to maintain their own systems (art 3 (4)) but
 - HQW holder of a national residence permit cannot reside in another MS

Entry and residence conditions (art. 5)

- Valid work contract/binding job offer for highly qualified employment of at least 1 year
- Document attesting fulfilment of national conditions for the exercising by a EU citizen of a regulated profession or, if it isn't a regulated profession, document attesting the relevant higher professional qualification
- Gross annual salary shall not be inferior to a relevant salary threshold defined by the MS (at least 1,5 the average gross annual salary; For IT jobs: at least 1,2)
- Valid travel document, visas (if required)
- Sickness insurance
- Not be considered to pose a threat to public policy, public security and public health
- Address in the territory of the MS (optional)

EU Blue Card (art. 7)

- Residence permit issued to the TCN who has applied and fulfils the entry and residence conditions + subject of a positive decision of the MS
- Validity: between 1-4 years (less if the work contract has a shorter duration)
- The holder of the Blue Card has the right to enter (MS shall grant necessary visa), re-enter, reside and work on the territory of the MS

Application procedure (art. 10)

- Who has to apply?
 - The TCN and/or the employer (optional for the MS)
- Where/When?
 - Either when the TCN is residing outside the territory of the MS or when he is already holder of a residence permit or national long-stay visa in the MS concerned
 - MS may accept that the TCN is only legally present in its territory (without a valid residence permit)
 - MS may require that the application has to be submitted from outside of its territory – but only if such limitation is already set in its legislation at the time of the adoption of the Directive ((25.05.2009).

Decision procedure – safeguards (art. 11)

- Decision on the complete application for the EU Blue Card shall be adopted as soon as possible, but no later than 90 days.
 - Period is suspended if the information and documents are inadequate or insufficient – MS shall notify the applicant to provide this information within a reasonable deadline.
- What is the consequence if the MS does not decide within the imposed deadline? Is determined by the law of the MS
- The applicant is notified in writing of the positive decision

Refusal of the EU Blue Card (art. 8)

- Compulsory grounds for refusal
 - Applicant does not meet the admission conditions
 - Documents presented are falsified, have been fraudulently obtained.
- May the MS reject an application for a EU Blue Card, even if the TCN fulfils the admission criteria? YES
 - If MS takes into account the situation of its labour market and applies the principle of Community preference or gives priority to HQW (TCN) already residing in its territory or residing in another MS with LTRS and wishing to move.
 - If the admission quota for HQW of third countries is already fulfilled (art. 6)
 - If MS wants to ensure ethical recruitment – the TCN applies for a job in a sector suffering from a lack of qualified workers in its country of origin
 - EU or MS may sign agreements with third countries to list the professions which should not be covered by the EU Blue Card Directive, in order to assure ethical recruitment (art. 3 (3)).
 - If the employer has been sanctioned for undeclared work and/or illegal employment.
 - If information or documents supplied in support of the application are inadequate or insufficient and the applicant did not provided the additional information or documents within the deadline set out by the authorities.

Rejection decision – procedural safe guards (art. 11 (3))

- Shall be notified in writing
- Shall be reasoned
- Shall be open to legal challenge according national law
- Shall specify available redress procedures and time limit for taking action

Access to labour market (art. 12)

- For the first 2 years – Occupational mobility is restricted
 - The TCN is only allowed to exercise the employment activities which meet the admission conditions
 - Changes in employer shall be subject to the prior authorisation in writing of the MS (at latest within 90 days) – (MS have the right to have more favourable provisions – art. 4)
 - Modifications that affect the admission conditions shall be subject to prior communication (or authorisation – optional)
- After 2 years: MS may grant equal treatment with nationals regarding access to any highly qualified employment
- What happen if the TCN doesn't respect these limitations ?
 - MS shall withdraw or refuse to renew the EU Blue Card (art. 9 (1) (c))
 - The lack of communication of the changes that affect the admission conditions is not a sufficient reason for withdrawal or non-renewal if the TCN proves that the communication didn't reach the competent authority for a reason independent of his/her will. (art. 9 (2))

Access to labour market

- MS may restrict access to employment activities
 - entailing occasional involvement in the exercise of public authority and the responsibility for safeguarding the general interest of the MS and reserved to nationals in accordance with EU law
 - Reserved to nationals, EU citizens and EEA citizens
 - In observance of the principle of Community preference

Temporary unemployment (art. 13)

- EU Blue Card holder shall communicate the beginning of the period of unemployment.
 - Otherwise MS shall withdraw or refuse to renew the EU Blue Card (art. 9 (1) (c))
- During 3 months the EU Blue Card holder is allowed to seek a employment activity witch meet the admission conditions. But the employer change has to be authorised by the MS.
- But if the period of unemployment exceeds 3 months?
 - The EU Blue Card has to be withdraw (the same if the unemployment occurs more than once during the period of validity of an EU Blue Card)

Rights of the EU-Card holder

- Equal treatment with nationals as regards working conditions, recognition of diplomas, social security, vocational training, etc. (art. 14)
- More favourable conditions for family reunification: application of the Directive 2003/86/EC with the derogations lay down in art. 15
 - No waiting period, no integration measures applied before the grant of family reunification, no time limit of access to the labour market for family members, shorter decision periods etc.
- More favourable conditions to obtain and maintain long-term residence status (art. 16)

Mobility within the EU (art. 18)

- May the holder of a EU Blue Card and his/her family move to another MS.
- YES, but under conditions:
 - Only after 18 months of residence in the 1st MS as EU Blue Card holder;
 - Only for the purpose of highly qualified employment
 - He as to fulfil the same admission conditions (regarding the gross annual salary threshold the 2nd MS can have more favourable provisions – art. 4)

Admission procedure in the 2nd MS

- EU Blue Card holder and/or his/her employer shall present an application to the competent authority
- When?
 - As soon as possible and no later than 1 month after entering the territory of the 2nd MS
 - The 2nd MS may require that the application is presented while the EU Blue Card holder is in the territory of the 1st MS
 - The 2nd MS may decide not to allow the TCN to work until the final positive decision
- Procedure rules are the same
 - During the procedure the 2nd MS may issue a national temporary residence permit, if the EU Blue Card issued by the 1st MS expires.
- By a refusal decision
 - The applicant has to leave the territory of the 2nd MS and the 1st MS shall immediately readmit the TCN and his/her family, even if the EU Blue Card issued by the 1st MS has expired or has been withdrawn

Family reunification in the 2nd MS (art. 19)

- The members of the family shall be authorised to accompany or join the EU Blue Card holder admitted in the 2nd MS when the family was already constituted in the 1st MS
 - Submission of an application (no later than 1 month after entering the 2nd MS's territory).
 - 2nd MS may require following conditions
 - Residence permit in the 1st MS, valid travel document, visa (if required)
 - Evidence that they resided as family members of the EU Blue Card holder in the 1st MS
 - Sickness insurance
 - Adequate accommodation (regarded as normal for a comparable family and which meets the general health and safety standards)
 - Sufficient and stable/regular resources (without recourse to social assistance)
- If the family was not constituted in the 1st MS – Application of the Family Reunification Directive (2003/86/EC) with derogations lay down in art. 15)

The right to family reunification – Admission

Directive 2003/86/CE

Family reunification of legal immigrants

- most common form of legal immigration.
- need to protect the family as the natural fundamental unit of society
- right to respect for family life secured by international law
- Notion of family in the framework of immigration law
 - nuclear family: spouse + minor unmarried children

Fundamental human right to protection of family life

- **Universal Declaration on Human Rights (1948)**
 - Art.12: No one shall be subjected to arbitrary interference with his privacy, family, (...).
 - Art. 16: “right to marry and to found a family” (1)/ “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State” (3).
- **International Covenant on Civil and Political Rights (1966)**
 - Art. 23 “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State” (1) / The right of men and women of marriageable age to marry and to found a family shall be recognized (2).
- **European Convention on Human Rights (1950)**
 - Art. 8: Right to respect for private and family life
- **EU Charter of Fundamental Rights**
 - Art. 7: Everyone has the right to respect for his or her private and family life, home and communications.
 - Article 9: Right to marry and right to found a family
 - Art. 24 (rights of the child): child's best interests must be a primary consideration (2) + Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Right of immigrants to family reunification – international legal framework

- ILO Convention no. 143: *Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers* (Entry into force: 09 Dec 1978)
 - **Article 13 (1)** A Member may take all necessary measures which fall within its competence and collaborate with other Members to facilitate the reunification of the families of all migrant workers legally residing in its territory. (2) The members of the family of the migrant worker to which this Article applies are the spouse and dependent children, father and mother.
- European Convention on the Legal Status of Migrant Workers (1977)
 - **Article 12 – Right of the legal immigrant to family reunion** with the spouse and unmarried minor children under following conditions:
 - available housing for the family (considered as normal for national workers in the region where the migrant worker is employed)
 - waiting period which shall not exceed twelve months (optional).
 - Sufficient resources to meet the needs of his family (optional).

Right of immigrants to family reunification – international framework

- European Social Charter
 - Article 19 : “the Parties undertake to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory”
- Convention on the Rights of the Child (1989)
 - Art. 9: (...) a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child (1)
 - Art. 10: (...) applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner” (1)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 (in force since 2003)
 - Article 44: State Parties shall facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship that, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children.”

Family reunification directive

- European Council Tampere Conclusions (1999): the EU must offer fair treatment to TCN residing lawfully in the territory of its MS.
- 1st COM proposal (COM (99) 638 final): Objective:
 - establishing a right to family reunification for TCN residing lawfully in a MS + EU citizens not exercising their right of free movement with following members of the family if they are TCN:
 - Spouse, or his/her unmarried partner (who may be of the same sex) children (included those who are full aged but dependent); dependent relatives in the ascending line.
- COM (2000)624 final (amended proposal)

Notion of family reunification

- Art. 2 (d) of the Directive: “the entry into and residence in a MS by family members of a TCN residing lawfully in that MS (the sponsor) in order to preserve the family unit, whether the family relationship arose before or after the resident's entry;
 - family reunification *stricto sensu*:
 - the immigrant has had to leave his family members to settle in a MS and wishes to have them join him.
 - family formation
 - after entering a MS, the immigrant decides to form a family with a TCN who does not reside in the MS and wishes to have this person join him.
- Chakroun case (C-478/08): art. 2(2) of the Directive 2003/86 precludes a national legislation which, in applying the income requirement draws a distinction according whether the family relationship arose before or after the sponsor entered the territory of the host MS.

Directive 2003/86/EC – Family reunification Directive

- Purpose (art.1): determine the conditions for the exercise of the right to family reunification by TCN residing lawfully in the territory of the MS
- Who can be a sponsor? (art. 3)
 - **TCN** with
 - valid residence permit issued by a MS (according national or EU law; irrespective of the reasons for their residence there) for a period of validity of more than 1 year +
 - reasonable prospects of obtaining the right of permanent residence, if the members of the family are TCN (doesn't apply to EU Blue Card holders – art. 15 Directive 2009/50).
 - Refugees (more favorable rules: chapter V art. 9-12)
- Who is excluded?
 - EU citizens
 - TCN members of family of an EU citizen
 - Asylum seekers and beneficiaries of temporary or subsidiary protection

Eligible TCN family members (art. 4)

- Following nuclear family members have the right to join the sponsor if they are met (art. 4 (1)).
 - Spouse
 - MS may require the sponsor and his/her spouse to be of a minimum age (maximum 21 years) before the spouse is able to join him/her. (art. 4 (4)).
 - By polygamous marriage: MS shall not authorize the family reunification of a further spouse, if the sponsor has already one living with him / MS may limit the family reunification of minor children of the further spouse and the sponsor.
 - Minor unmarried children (of both/adopted, or of the sponsor / spouse where they have the custody), but:
 - MS may require integration conditions before authorising entry and residence of children aged over 12 years, when they arrive independently from the rest of their family + such a provision exists on the date of implementation of the Directive (art. 4 (1) last subparagraph) - Doesn't apply to Blue Card Holders
 - MS may request that the application have to be submitted before the children have reached 15 years of age (if this requirement is provided by the national legislation on the date of implementation of the Directive (art. 4 (6)).

Other family members (art. 4 (2) and (3): optional

- MS may authorize the family reunification with following family members:
 - 1st-degree relatives in the direct ascending line of the sponsor and/or spouse if
 - They are dependent on them and
 - Do not enjoy proper family support in the country of origin
 - Adult unmarried children of the sponsor and/or spouse if
 - They are objectively unable to provide for their own need due to their state of health
 - Unmarried partner (duly attested stable long-term relationship or registered partnership) and his/her unmarried minor children or adult unmarried children who are are objectively unable to provide for their own need due to their state of health.

Requirements for exercising the right to family reunification (optional: MS may require those conditions)

- Accommodation (art. 7 (1) (a)): normal for a comparable family + meets health and safety standards
- Sickness insurance (art. 7 (1) (b))
- Stable and regular resources which are sufficient to maintain the family without recourse to the social assistance system of the MS (art. 7 (1) (c))
 - Chakroun case (C-578/08/ ECJ judgment 4/3/2010)
 - Mr O and Mr M case (C356/11 and C- 357/11; ECJ judgment of 6 December
- Integration measures (art. 7 (2))
 - By refugees and Blue Card Holders only once the family members have been granted family reunification
- Waiting period: not more than 2 years (or 3 if foreseen in national legislation on the date of adoption of the Directive, to take into account the reception capacity) (art. 8)
 - Doesn't apply to researchers and holders of an EU Blue Card

May a MS reject an application for family reunification?

- YES (art. 16),
 - The requirements for exercising the right to family reunification are not met
 - Marriage, partnership or adoption of convenience
 - False or falsified information/documents
 - On grounds of public order, public security and public health (art. 6)
 - Recital 11 gives some indication of what might constitute a threat to public order or security: conviction for a serious crime, belonging to a terrorism association
- But discretion of MS is limited
 - Art. 5 (5): MS shall have due regard to the best interests of minor children;
 - Art. 17 (horizontal provision): MS are obliged to take account of the nature and solidity of the relationship and duration of residence
 - ECJ Case law: requirements are to be interpreted strictly and in the light of Fundamental Rights

ECJ Case law on requirements

- Cases C-356/11 and C-375/11/ judgment of 6 December 2012) + Case C-578/08 (Chakroun)(judgment of 4 March 2010.
- Authorisation of family reunification is the general rule – article 7 of the Directive (requirements) must be interpreted strictly and applied in the light of art. 7 and 24 (2) and (3) of the Charter, which require the MS to examine the applications for reunification in the interest of the children and with a view to promoting family life.
- The margin of manoeuvre of the MS must not be used by them in a manner which would undermine the objective of the Directive: promote family reunification

Procedural rules (art. 5)

- Who is the applicant?
 - The sponsor or the member of the family (MS decides)
- When?
 - When the family member is residing outside of the territory of the MS
 - Exceptionally MS may accept an application when the family member is in its territory
- Documentary evidence
 - Application shall be accompanied by documentary evidence of the family relationship and of compliance with the family reunification requirements
 - MS may carry out interviews
 - MS may conduct specific checks and inspections where there is a reason to suspect there is a fraud or a marriage, partnership or adoption of convenience (art. 16 (4))

Procedural rules (art. 5)

- Length of procedure
 - Maximum 9 months
 - For Blue Card Holders maximum 6 months (art. 15 Directive 2009/50)
 - Exceptionally by complex cases the time limit may be extended
 - MS determine the consequences of no decision
 - Ex. Implicit authorisation or implicit rejection
- Written and motivated decision
 - Decision has to be notified in writing
 - Rejection decisions
 - have to be motivated
 - sponsor and/or family member has a right of redress (art. 18)

Which rights for reunited family members ?

- Entry and residence (art. 13)
 - MS shall grant visa facilitation
 - MS shall grant the family member a 1st residence permit of at least 1 year
 - Doesn't apply to EU Blue Card holders – the duration of the residence permit of the family members is the same (art. 15 D 2009/15)
- Right, in the same way as the sponsor to: (art. 14)
 - Education / vocational guidance / training
 - Employment or self-employment activity
 - MS may limit access to labour market during the 1st year by examining their labour market situation.
 - Doesn't apply to family members of an EU Blue Card holder
- Autonomous residence permit (art. 15)
 - At latest after 5 years of residence MS shall grant an autonomous residence permit to spouse / child who reached majority.
 - MS may limit the granting of the autonomous residence permit for the spouse if the relationship breaks down.
 - MS may grant an autonomous residence permit in case of widowhood, divorce, separation, in the event of particularly difficult circumstances ...

May the MS withdraw a family member's residence permit? YES (art. 16)

- The conditions are no longer satisfied.
 - Ex. Lack of sufficient resources (MS shall take into account the contributions of the family members to the household income)
- The sponsor and his/her family member do not or no longer live in a real marital or family relationship
- The sponsor is in a stable long-term relationship with another person / the partner is married with another person
- By fraud or by marriage/partnership/adoption of convenience
- The sponsor's residence permit comes to an end and the family member doesn't yet enjoy an autonomous right of residence

Compatibility of some dispositions with the fundamental right to family life

- **The possibility for MS to restrict the family reunification with children over**
 - 12 years arriving independently of the rest of the family: may have to prove they meet integration conditions required under national legislation (existing on the date of implementation of the Directive): art. 4 (1) last subparagraph
 - 15 years, who may be required to enter a MS on grounds other than family reunification (art. 4 (6))
- **Waiting period of 2 (or 3 years)**
- (Case C-540/03): annulment action by the **EP**, that took the view that
 - these provisions are contrary to the right to respect for family life and the right to non-discrimination (art. 8 and 14 ECHR) and the obligation to have regard to the best interest of the child (art. 9 and 10 Convention on the rights of the child)
 - Waiting period restricts the right to family reunification and a criterion founded on MS reception capacity is equivalent to a quota system, which is incompatible with art. 8 ECHR

ECJ ruling on case C-540/03

- ECJ has dismissed the action: those provisions don't infringe fundamental rights
 - Those international instruments do not create an individual right to be allowed to enter the territory of a State and cannot be interpreted as denying States a certain margin of appreciation when they examine applications for family reunification
 - MS must respect the best interest of the child when examining the specific situation of the minor.
 - Those Directive provisions preserve an allowed limited margin of discretion of the MS for weighing the competing interests (MS must have due regard to the best interest of the child, to the nature and solidity of the family relationship, to the ties with the country of origin)
 - The choice of the age of 12 years doesn't infringe the principle of non-discrimination, since the criterion corresponds to a stage in the life of the minor when the latter has already leaved for a long period in a non-MS without her/his family, so the integration will be more difficult / the difference of treatment between the spouse and the child over 12 years isn't discriminatory, because the objective of marriage is a long-lasting married life together, whereas children over 12 years will not necessarily remain a long time with the parents.
 - The waiting period doesn't preclude any family reunification – only preserves a limited margin of appreciation of the MS by permitting them to make sure that the family members will have conditions to settle down well. But the MS reception capacity cannot be interpreted as authorising any quota system or a 3 years waiting period imposed without regard to the particular circumstances of specific cases.

Compatibility of other dispositions with the fundamental right to family life ?

- Possibility of extension of the time limit in exceptional circumstances without a deadline (art. 5 (4)).
- Possibility of withdraw the residence permit of the family members on the sole ground of lack of sufficient resources without recourse to the social assistance system (art. 16).

Mobility of long-term residents within the EU

Directive 2003/109/EC amended by Directive 2011/51/EU

Right of residence in other MS (art.14)

- LTR in one MS has the right to reside in another MS for a period exceeding 3 months in order to
 - Exercise an economic activity
 - MS may limit labour market access by making it conditional on a labour market test or by giving preference to EU citizens and TCN who receive unemployment benefits
 - Pursuit studies or vocational training
 - Other purposes
- MS may set a quota, provided that such a limitation is already set out for admission of TCN in the existing legislation at the time of adoption of the Directive.

Conditions for residence in a 2nd MS - optional (art. 15 (2))

- Stable and regular resources to maintain themselves and the family without recourse to the social assistance of the 2nd MS
- Sickness insurance
- Compliance with integration measures
 - Doesn't apply if the TCN has been required to comply with such measures to obtain LTR-status, but 2nd MS may require the attendance of language courses

May the MS reject the application? YES

- Conditions are not meet
- The TCN is a threat to public policy or security (art. 17): but discretion of MS is limited
 - Shall consider the severity or type of offence or the danger that emanates from the TCN
 - Decision shall not be based on economic considerations
- TCN is a threat to public health (art. 18): but discretion of MS is limited
 - Only diseases defined by WHO and other infectious or contagious diseases subject of protective provisions in relation to nationals of the MS concerned.
 - MS may require medical examination, free of charge, but not on a systematic basis
 - Diseases contracted after the issuance of the residence permit cannot justify refusal of renewing or expulsion

Procedural rules

- Place of application for the residence permit: in the 2nd MS no later than 3 months after entry in its territory (art. 15 (1))
 - The 2nd MS may accept an application when the LTR- holder is still residing in the 1st MS.
- Required documents
 - Documentary evidence that the requirements are met
 - The long-term residence permit
 - Valid travel document
- MS may also require following documentary evidence
 - Appropriate accommodation
 - Employment contract or a proposal/statement by the employer/ appropriate funds to exercise an self-employed activity
 - Enrolment in an accredited establishment in order to pursue studies/ vocational training

Procedural rules

- Length of the procedure (art. 19 (1): maximum of 4 months
 - MS may extend for a period not exceeding 3 months if the required documentary evidence is insufficient or in exceptional circumstances linked with the complexity of the examination.
 - Consequences of no decision being taken by the end of the maximum period – defined by national law (art. 20)
- If conditions are met the 2nd MS shall issue the LTR with a renewable permit and inform the 1st MS
- Rejection decisions are to be notified and motivated and specify possible redress procedures and time limits for taking action/ the LTR has the right to mount legal challenge in the 2nd MS (art. 20)

Family reunification in the 2nd MS (art. 16)

- When the family was already constituted in the 1st MS
 - The spouse and minor children have the right to accompany or to join the LTR holder in the 2nd MS Other family members: optional
 - The 2nd MS may require the family members to present following documentary evidence with the application:
 - LTR-permit or residence permit in the 1st MS and a valid travel document
 - Evidence that they have resided as members of the family of the LTR in the 1st MS
 - Sufficient, stable and regular resources and sickness insurance
- When the family was not already constituted in the 1st MS: the 2nd MS applies the Family Reunification Directive

May the 2nd MS withdrawal the residence permit and expel the TCN ?

- Yes (art. 22)
 - but only until the TCN has obtain LTR status in the 2nd MS and on following grounds
 - Public policy or security
 - Residence conditions are no longer met
- The 2nd MS can adopt a decision to remove the TCN if he/she is not lawfully residing in its territory
- The 1st MS is obliged to readmit the TCN without formalities
- The LTR and family can move to a 3th MS