



AD HOC QUERY ON 2019.42 LT AHQ on issuing Blue Cards

Requested by EMN NCP Lithuania on 21 March 2019

Responses from Austria, Belgium, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Spain, Sweden, United Kingdom (23 in Total)

Disclaimer:

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1. Background information

According to the Republic of Lithuania Law on the Legal Status of Aliens (hereinafter – the Law) a temporary residence permit for highly skilled employees (Blue Card) may be issued to an alien who intends to take up highly-qualified employment under an employment contract, has required high professional qualification and fulfils other conditions specified in the Law (Article 44 (1)).

The Law also stipulates that a temporary residence permit (not a Blue Card) may be issued to an alien who engages, and intends to continue engaging, in lawful activity (Article 45). The alien must be a participant (shareholder), owner or a director of an enterprise and fulfill other conditions set in the Law.

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Currently, some aliens who are admitted on the ground to engage in a lawful activity (business) are willing to apply for a Blue Card while keeping their current position in the company, i.e. remain in the position of a director of an enterprise.

Therefore, Lithuanian Foreign Direct Investment agency "Invest Lithuania" would like to know if other (Member) States, according to their national legislation, would issue a Blue Card to an alien who is admitted into a (Member) State on the ground to engage in a lawful activity (business) and who is a director of an enterprise.

2. Questions

1. 1. Is it possible for a foreigner who is admitted to the (Member) State on the ground of engaging in lawful activity (business) as a director of an enterprise established in the receiving country and working under an employment contract, to apply for a Blue Card while remaining in his/her current status as a director of an enterprise?

YES/NO. Please provide explanation and, if possible, a reference to the national legislation.

We would very much appreciate your responses by **18 April 2019**.

3. Responses

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¹ If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

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| | | Wider Dissemination ² | |
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|  | EMN NCP Austria | Yes | <p>1. No. In Austria, the issuing of an „EU Blue Card“ is not possible in the described case constellation. According to Art. 42 para 1 subpara 2 Settlement and Residence Act, the issuing of an “EU Blue Card” requires, among other conditions, a written confirmation of the regional office of the Austria’s public employment service, stating that the conditions for admission as key worker pursuant to Art. 12c Act Governing the Employment of Foreign Nationals (candidate for EU Blue Card) are met (Art. 20d para 1 subpara 5 Act Governing the Employment of Foreign Nationals), including that the employment has not already commenced, as stipulated in Art. 12c in conjunction with Art. 4 para 1 subpara 4 Act Governing the Employment of Foreign Nationals. Therefore, the issuing of an “EU Blue Card” while retaining employment already commenced is not possible in Austria.</p> |
|  | EMN NCP Belgium | Yes | <p>1. Yes, it is in principle possible to combine a professional card as a foreign self-employed person with a blue card. This is for example possible for someone who is self-employed but only as a secondary activity. He or she can work as an employee and be issued a Blue Card, if all the necessary conditions of the Blue Card legislation are fulfilled (salary requirements, highly skilled, etc).</p> |
|  | EMN NCP Croatia | Yes | <p>1. In our practice, no such application cases were registered.</p> |

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|  | EMN NCP Cyprus | Yes | 1. In Cyprus the quota for the Blue Card is set to 0(zero). So, the question is N/A |
|  | EMN NCP Czech Republic | Yes | 1. Yes, if the person is granted by the long-term residence permit for the purpose of investment or business he/she is in title to apply for a Blue Card (the person has to fulfil all conditions stated in the national legislation).No, if the person stays in the Czech Republic and he/she is granted by a different type of long-term residence permit he/she is not in title to apply for a Blue Card (.Act No. 326/1999 Coll., on the Residence of Foreign Nationals in the Territory of the Czech Republic (§42). |
|  | EMN NCP Estonia | Yes | 1. Yes. It is possible to work on basis of the EU Blue Card also as a top manager/supervisor. However, it is connected to the specific position, which has to be under the scope of the Employment Contracts Act, i.e. the company ´s board member cannot apply for an EU Blue Card. Also the EU Blue Card can only be acquired for job or position that requires higher qualification. At the same time, only one legal basis to reside or stay in Estonia is possible and therefore if someone holds a residence permit for instance for entrepreneurship and is one of the shareholders, he or she cannot hold a second valid residence permit at the same time. It is not precisely written in our legislation and therefore we cannot provide exact wording from our law. According to the Aliens Act, a TCN is foreseen to arrive and stay in Estonia in accordance with the conditions specified in the relevant residence permit. To be eligible for a residence permit, the person has to comply with the main conditions and criteria stipulated in legislation for each relevant residence permit and therefore, if someone changes his or her purpose of stay, he or she has to change the residence permit accordingly. § 1901. European Union Blue Card The European Union Blue Card (hereinafter the EU Blue Card) is a residence permit for employment that is issued to an alien for residence and |

² A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."

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| | | | <p>employment in Estonia in a job or position that requires higher qualification. § 1902. Employment that requires higher qualification For the purposes of this Act employment that requires higher qualification is employment the knowledge and skills for performance of which are attested by a higher professional qualification. § 1905. Specifications of requirements regarding aliens An EU Blue Card can be issued to an alien only for employment in such a position which requires a higher professional qualification.</p> |
|  | EMN NCP Finland | Yes | <p>1. NO. The person receives a residence permit based on self-employment.</p> |
|  | EMN NCP France | Yes | <p>1. In France, the multi-annual residence permit « Talent Passport European Blue Card » is issued to employees with a work contract of at least a year, 3 years of higher studies or 5 years of equivalent professional experiences, and a salary at least 1.5 times higher than the annual average wage (fixed by the decree of 20 June of 2016 at 35,891 euros gross per year), i.e. 53,836.50 euros gross per year. However, in order for a TCN to exercise the functions of director of an enterprise, they will have to apply either for a multiannual residence permit “Talent Passport - Creation of an enterprise” or a multiannual residence permit “Talent Passport - Corporate Officer” depending on the project and type of company. To be issued a multiannual residence permit “Talent Passport - Creation of an enterprise”, the TCN must hold a Master degree diploma (or equivalent), or have ten years of equivalent professional experience, and have a serious and real project of creation. Furthermore, they will have to show proof of sufficient resources of at least equal to the French full-time minimum wage (1,521.22 euros gross per month as of 1 January 2019), and an investment of at least 30,000 euros in the business project. In order to obtain a multiannual residence permit “Talent Passport - corporate officer”, the TCN must be a legal representative of a business established in France, have already worked for at least 3 years as an employee or a corporate officer in a company of the same group, and have an annual salary at least 3 times higher than the French full-time minimum wage (1,521.22 euros gross per month as of 1 January 2019) (so at least 54,765 euros gross per year).</p> |

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|  | <p>EMN NCP Germany</p> | <p>Yes</p> | <p>1. Yes. According to Section 19a Residence Act a Blue Card is issued to any applicant who holds a degree of tertiary education comparable with or equivalent to a German tertiary education degree and who is in the possession of a labor contract or a binding job offer with a minimum annual gross salary of 53.600€ in regular professions respectively 41.808€ in shortage occupations. The economic activity specified in the labor contract must be commensurate with the tertiary education of the applicant. As long as these conditions are met there is no basis in German law to block an application for a Blue card from a director of an enterprise. Thus the answer to the question is YES.</p> |
|  | <p>EMN NCP Greece</p> | <p>Yes</p> | <p>1. Third-country nationals may enter and reside in Greece according to provisions of the national legislation as board members, shareholders, managers, legal representatives and senior executives (general managers, directors) of domestic companies and of subsidiaries and branches of foreign companies that legally pursue commercial activity in Greece and when certain preconditions of the law are met. However, holders of the above category of residence permits are not allowed to a change of the purpose of their residence permit. Moreover, third-country nationals may apply for an EU Blue Card on renewal of their residence permit, if the conditions of admission for an EU Blue Card are met and only if they are holders of a residence permit in Greece that allows to change their purpose of residence.</p> |
|  | <p>EMN NCP Hungary</p> | <p>Yes</p> | <p>1. NO. According to Article 20/A. of Act No. II of 2007 on the Admission and Right of Residence of Third-Country Nationals, an EU Blue Card may be given to a third-country national if his/her employment is justified in line with specific guidelines laid down by the relevant legislation, or on grounds of domestic employment policy considerations. According to Article 20. Section (1) of Act No. II of 2007 on the Admission and Right of Residence of Third-Country Nationals, a residence permit may be issued for the pursuit of gainful activity to third-country nationals whose purpose of residence is: to lawfully perform work in a self-employed capacity for remuneration; or to engage in any activity in the capacity of being the owner or manager of a for-profit business association, cooperative or some other legal entity, or as a member of the executive, representative or supervisory board of such entity. In regard to the above listed legislation, the EU Blue Card can be</p> |

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| | | | issued only for an employer. If a third country national is a self-employed, or the owner or the manager of a legal entity (company/enterprise), (s)he has to apply for a “simple” temporary residence permit for the purpose for pursuit of gainful activity. |
|  | EMN NCP Italy | Yes | 1. Yes, it is possible as long as the applicant fulfills the requirements provided by law (art. 27 quarter , law 286/1998) to apply for Blue Card.In Italy, Blue Card has been introduced with the objective to increase the numbers of third-country highly skilled workers immigrating to the EU and simplify admission procedures for third-country highly skilled workers.So, to obtain a Blue Card, the foreigner has to demonstrate the following requirements:• The foreigner must hold a higher education qualification attesting the passing of a higher education path lasting at least three years, and the related professional qualification, as falling within levels 1, 2 and 3 of the ISTAT classification of the professions CP 2011.• The foreigner must be in possession of the declaration of value issued by the competent Italian diplomatic representation on his / her school degree.• The degree and its declaration of value must be related to the job to be held in Italy, which must fall within one of the levels mentioned above.• The contract offered by the Italian company must have a duration of at least one year (12 months).•The worker must receive a minimum salary equal to 3 times the health expenditure, therefore not less than € 24.789,00 gross per years. |
|  | EMN NCP Latvia | Yes | 1. According to the Latvian Immigration Law (Section 23 (l) 6) it is possible for a foreigner to apply for a Blue Card only if s/he is not registered in the Commercial Register as a member of a partnership with rights to represent the enterprise and to sign on behalf of the enterprise. If a person is a board member of the enterprise, s/he has to apply for a residence permit related to commercial activities. |
|  | EMN NCP Lithuania | Yes | 1. Currently, this is not possible. The interpretation of the Law is that there is a special ground for applicants arriving to engage in a lawful activity (business) as a director of an enterprise. Therefore, |

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| | | | a director of an enterprise wishing to extend the temporary residence in Lithuania should apply for the same permit (on the ground to engage in lawful activity/business) and he/she cannot apply for a Blue Card without changing his/her status as a director of an enterprise. |
|  | EMN NCP Luxembourg | Yes | 1. 1. In principle, a TCN has to apply from his/her country of origin for any authorisation of stay and any application in the territory will be considered inadmissible in accordance with article 39 (1) of the amended law of 29 August 2008 on free movement of persons and immigration. However, once the third country national is already residing in the territory, s/he can apply for an authorisation of stay as a highly qualified worker (article 45) if s/he fulfils the educational and or professional qualifications, has a labour contract, which fulfils the salaried threshold required..A director of an enterprise legally residing and working in Luxembourg under an employment contract and a salaried worker residence permit can apply for a blue card authorisation of stay in the territory if s/he can fulfil the requirements while still having the status as a salaried worker. However, if the blue card is granted, s/he will lose the previous salaried residence permit because of the change of status. |
|  | EMN NCP Malta | No | This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further. |
|  | EMN NCP Netherlands | Yes | 1. No, this is not possible. |
|  | EMN NCP Poland | Yes | 1. YES. According to Polish law, a foreigner who came to Poland to work as a director of an enterprise (head of an enterprise) based in our territory country and working under a contract of employment, may apply for a Blue EU Card in Poland. A temporary residence permit in a highly |

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| | | | <p>qualified job can be granted to an aforementioned foreigner if he / she fulfills all the conditions required to grant it. According to art. 127 of the Act of 12 December 2013 on foreigners, a temporary residence permit for the purposes of highly qualified employment shall be granted where the foreigner's stay in the territory of the Republic of Poland is due to highly qualified employment and each of the following conditions is met: (1) the foreigner: (a) has concluded, for a period of minimum one year, an employment agreement, a tolling agreement or a civil law agreement under which he/she performs work, renders services or is in an employment relation, (b) meets the qualification requirements and other conditions to be met where the he/she is to perform work in a regulated profession within the meaning of Article 2(1) of the Act of 18 March 2008 on principles of recognition of professional qualifications acquired in EU Member States, (c) has higher professional qualifications, (d) has health insurance within the meaning of the Act of 27 August 2004 on health care services financed from public funds, or a document certifying that the costs of treatment in the territory of the Republic of Poland will be covered by the insurer, (e) has an authorisation of the competent authority to hold a given position, pursue a given profession or other activity, where the obligation to obtain it prior to entering into an agreement stems from separate regulations; (2) the entity entrusting the performance of work to the foreigner is unable to satisfy its staffing needs within the local labour market; (3) annual gross remuneration resulting from the monthly or annual salary, specified in the agreement, shall not be lower than the minimum wage specified in regulations issued pursuant to Article 139 of the Act of 12 December 2013 on foreigners. Due to the above, in accordance with the law in Poland, a temporary residence permit for the purpose of work in a highly qualified profession may be granted to a foreigner who is employed not only on the basis of an employment contract, but also on the basis of an employment contract or a civil law contract. Similarly, in accordance with the applicable provisions of law, there are also no restrictions as to the position on which the foreigner applying for the aforementioned permit is to be employed. According to art. 3 point 23 of the Act on foreigners, work is performed by a foreigner within the meaning of art. 2 para. 1 point 40 of the Act of 20 April 2004 on the promotion of employment and labor market institutions. Pursuant to this provision, the performing work by a foreigner is understood as employment, other gainful employment, holding functions in the management of legal persons who have been entered in the Register of Entrepreneurs under the provisions of the National Court Register or are organized as limited partnership in the organization; or running the company's affairs at the limited partnership or joint-stock limited company by the general partner, or acting as a proxy.</p> |
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| | | | <p>The term "work performance", with which the purpose of the stay is related to the provisions of Chapter 3 of Section V of the Act on Foreigners, is therefore a capacious concept covering various types of gainful activity of a natural person.</p> |
|  | <p>EMN NCP Portugal</p> | <p>Yes</p> | <p>1. Yes. According to article Article 121-BConditions for granting "EU Blue Card"1 — "EU Blue Cards" shall be granted for the purposes of carrying out highly qualified activities to third-country nationals who, in addition to the conditions of article 77, with the exception of article 77 (1)(e), meet all of the following requirements:a) Submit an employment agreement compatible with carrying out a highly qualified activity with a duration of at least one year, corresponding to annual remuneration of at least 1.5 times the nation's average gross annual salary or, under the circumstances of article 61-A (2), at least 1.2 times the nation's average gross annual salary;b) Possession of health insurance or proof of coverage under the National Health Service;c) Enrolment in Social Security;d) In the case of unregulated professions, documentary proof of higher professional qualifications for the activity or sector specified in the employment agreement or promissory employment agreement;e) In the case of a regulated profession indicated in the employment agreement or promissory employment agreement, documentary proof of professional certification, if applicable.And article 77 - establishes the General terms for granting temporary residence authorization:1 — Notwithstanding applicable special conditions, applicants must meet all of the following requirements to receive residence authorization:a) Possession of a valid residence visa, issued for one of the purposes provided for in this law for the granting of residence authorization;b) Non-existence of any facts, which, if known by the competent authorities, would preclude the granting of a visa;c) Presence in Portuguese territory;d) Possession of means of subsistence, as defined in the order referred to in article 52 (1)(d);e) Accommodation;f) Enrolment in social security, whenever applicable;g) Absence of any conviction for a crime, which in Portugal would be punishable with the deprivation of liberty for more than one year;h) Not being subject to prohibition from entering Portuguese territory, following a removal measure from the country;i) Absence of inclusion in the Schengen Information System;j) Absence of inclusion in the Integrated SEF Information System for the purpose of non-admission, pursuant to article 33.</p> |

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|  | EMN NCP Slovakia | Yes | 1. No. Act no. 404/2011 Coll. on Residence of Aliens does not allow third-country nationals to be granted two or more types of residence or simultaneous purposes of stays. Act on Stay of Aliens states that temporary residence is bound for one purpose. If a third-country national wishes to engage in an activity other than that for which s/he has been granted temporary residence, s/he must submit a new application for temporary residence, unless otherwise provided by this Act. This means that a third-country national with residence granted for business purposes cannot have a Blue Card at the same time. |
|  | EMN NCP Spain | Yes | 1. No. In Spain, the blue card has been established for highly qualified professionals residing abroad who fulfil different requirements (ie. take up highly-qualified employment under an employment contract with a specific remuneration). It is not foreseen specifically for the director of an enterprise (although if he/she fulfils the legal requirements, a blue card could be issued). However, the Spanish national scheme for highly qualified professionals refers specifically to the possibility of granting with this residence permit to the director of an enterprise (article 71 Law 14/2013). |
|  | EMN NCP Sweden | Yes | 1. Yes, if he has an employment contract and fulfills the other requirements to be eligible for a blue card. |
|  | EMN NCP United Kingdom | Yes | 1. The UK does not participate in the Blue Card Directive. We operate Start-up and Innovator visa routes for those coming to the UK to establish a business as a director (or member of a partnership). |
