



Council of the European Union
General Secretariat

**Interinstitutional files:
2016/0176(COD)**

Brussels, 24 March 2021

WK 4092/2021 INIT

LIMITE

MIGR

SOC

EMPL

EDUC

CODEC

WORKING PAPER

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

WORKING DOCUMENT

From:	Presidency
To:	JHA Counsellors (Migration, Integration, Expulsion)
Subject:	Proposal for a Directive of the European Parliament and the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment - Draft discussion paper "Questions and Answers on double status of beneficiaries"

Delegations will find attached a Draft discussion paper "Questions and Answers on double status of beneficiaries" from the Presidency in view of the informal VTC of the members of the JHA Counsellors (Migration, Integration, Expulsion - Legal Migration) on 29 - 30 March 2021.

WK 4092/2021 INIT

LIMITE

EN

Draft discussion paper
on the scope of the Blue Card Directive –
the issue of the double status of beneficiaries of international protection:
Questions & Answers

At the meeting of JHA Counsellors of 11 March 2021 several delegations requested various clarifications on the issue of the inclusion of beneficiaries of international protection (BIP) in the scope of the revised Blue Card Directive.

Delegations will find below the requested clarifications provided by the Presidency in the form of a Q&A.

Preliminary remark:

By way of an introduction, it must be noted that for beneficiaries of international protection, the system devised under the revised Blue Card Directive relies on a decoupling of the refugee status and the Blue Card status of those persons. The responsibility for the management of the international protection of the person concerned always remains with the Member State which granted the international protection. The Blue Card status is superimposed on that status.

In case of mobility, in the second Member State, the status of the concerned person will be the same as any Blue Card holder, with the exception of the rules on return/expulsion. Regarding the latter, as soon as the Blue Card status is not renewed or is withdrawn by the second Member State, the person falls back under the responsibility of the (first) Member State which granted the international protection. In principle, the second Member State will expel the person to the first Member State, who will have to allow re-entry.

In order to streamline the administrative management of the system and combat fraud, the Directive provides that, in case of mobility, the first Member State will be requested to confirm the international protection status of the person both upon entry (Art. 8(5) BCD) or prior to expulsion (Art. 22(6) BCD). That being said, the information thus provided is only a confirmation, and is not constitutive of the international protection status.

Question 1: What happens if the Member State that has granted the protection doesn't reply within 1 month to the Member State where the mobility is foreseen regarding the reality of the protection? What type of EUBC will this Member State be able to deliver: a « normal » one considering that it has no information on the status of beneficiary? Or a Blue Card mentioning the protection on the sole trust of the person and the documents he produces?

Answer: The Directive does not regulate what happens if the first Member State does not respond to a request for confirmation at the stage of the application. It thus remains within the discretion of the second Member State to decide how to approach this.

Nothing prevents the second Member State from relying on the proof of status provided by the beneficiary of international protection in order to introduce the 'international protection' remark on the Blue Card of the beneficiary. This approach could be chosen in order to facilitate expulsion to the first Member State should the Blue Card not be renewed or be withdrawn. The second Member State can also decide not to enter the remark at this stage. Moreover, the second Member State may decide to extend the deadline for decision-making for an additional 30 days on the basis of that ground.

Question 2: How should the 2nd Member State treat the beneficiary holding an EUBC that intends or has managed to travel back to his country of origin or to a country where he is not supposed to travel ? Does the 2nd Member State have the obligation to inform the Member State that granted the protection ? If yes, what modalities apply ? Considering that it is a ground for withdrawal of the protection, which Member State would be responsible to proceed in that case?

Answer: As indicated above, it must be recalled that the management of the international protection status of the concerned person remains with the Member State that granted this international protection, not with the second Member State.

Moreover, there is no obligation in the Directive imposing upon the second Member State to inform the first Member State. Should the second Member State inform the first Member State of such a situation, for example on the basis of the principle of loyal cooperation, it would be for the first Member State to make an appraisal on the basis of its national legislation and decide whether the information provided justifies a cessation decision. Should a cessation decision, and consequent withdrawal of status, be adopted by the first Member State, this will, as such, not have a direct impact on the Blue Card status of the person concerned in the second Member State, save for the modification of the remark on his Blue Card and the modalities of his return, which will then fall under ordinary Blue Card rules.

For your background, upon enquiry, the Commission has recalled that travelling back to the country of origin or to a country where the person is not supposed to travel is a ground for cessation of status where it can be considered as an indicator of a 'voluntary re-availment of the protection' or of 'voluntary re-establishment' in the country of origin as defined by Article 11(1)(a) and (d) of the recast Qualification Directive respectively. Following a cessation decision, Member States must revoke, end or refuse to renew the refugee status (Article 14 of the recast Qualification Directive) or the subsidiary protection status (Article 19 of the recast Qualification Directive).

However, the Commission indicates that not all instances of travelling back will be considered as an indicator of voluntary re-availment of protection (e.g. situations where contact with the authorities of the country of origin are occasional or accidental). While in some Member States, the withdrawal of protection status is automatically followed by a decision to end their right of residence, most Member States examine the individual circumstances of the person concerned (see in this regard the EMN study: https://ec.europa.eu/home-affairs/content/emn-study-beneficiaries-international-protection-travelling-their-country-origin_en).

The study points out that it is extremely difficult for Member States to collect sufficient proof of the travels that would amount to a re-availment, so the Commission notes that it would only work in Member States where there is an automatic cessation decision once a travel back is proven.

Question 3: If the beneficiary is deprived of his status in the 1st Member State, but after the issuance of the EUBC, could he still prevail himself of having a protection in the Member State of mobility ?

Answer: If the status is withdrawn from the beneficiary in the first Member State, then his international protection status ends. This will not have a direct impact on the Blue Card status of the person in the second Member State, save for return/expulsion. As concerns the latter, if the first Member State withdraws the international protection status, should the second Member State withdraw or refuse to renew the Blue Card, the person concerned will not have to be expelled to the first Member State, but will simply be treated as any Blue Card holder who has been withdrawn the Blue Card or has been refused renewal.

Question 4: How would the Member State of mobility be informed (by the 1st Member State) that the person does no longer enjoy a protection in order to adapt the remarks mentioned on the residence permit that has been delivered ?

Answer: This is not specifically regulated by the Directive, but would be done through an exchange of information pursuant to Article 26 BCD. In any event, the second Member State will be informed of the change of international protection status in the first Member State at the latest when this status will have a direct impact on the rights of the person concerned, namely if the person concerned needs to be returned. Indeed, in that situation, Article 22(6) BCD foresees that the second Member State will ask the first Member State for a confirmation of the international protection status. The first Member State will then have to re-allow the person on its territory. Should the status have changed in the meantime, the first Member State will inevitably inform the second Member State.

Question 5: It looks like all these provisions would lead to a sort of a mutual recognition of decisions on international protection. Is the Blue Card Directive the accurate legal basis for doing so?

Answer: In case of mobility of a beneficiary, the protection status is not transferred to the second Member State, but remains with the first Member State. For the second Member State, the international protection status is, to a large extent, irrelevant, save for the return of the person. Instead of returning the persons concerned to a third country, they will be returned to the first Member State.

These provisions are similar to those included in Directive 2011/51/EU, by which access to EU long-term resident status, along with the relevant mobility rights, was extended to beneficiaries of international protection. Therefore, these provisions have been already implemented by Member States with regard to the mobility of long-term residents who are also beneficiaries of international protection.

Question 6: According to Art. 24 of the Qualification Directive, a residence permit for beneficiaries of refugee status can be limited to 3 years. What would be the consequences for the Blue Card status in case of non-renewal?

Answer: There would be no consequences. The revised Blue Card Directive does not regulate the validity of the beneficiaries' permits.

If a Member State has granted a Blue Card to a beneficiary, that Member State may decide to withdraw or not renew the residence permit as a beneficiary. This would be an administrative withdrawal of the permit, not a decision on the status. The protection status would remain and included in the Blue Card as a remark, as long as this status is maintained.

Question 7: Regarding the revocation or ending of a protection status, what are the consequences for the EU Blue Card procedure/status?

Answer: Decisions on the protection status have no consequences on the Blue Card permit, besides the obligation to remove the remark 'beneficiary of international protection'. The person would then become an ordinary Blue Card holder, without the extra layer of protection afforded by the international protection status.

Question 8: Different access to benefits is associated with the EU Blue Card status and the protection status. Which rights (and obligations) are applicable?

Answer: Beneficiaries will continue to enjoy their specific equal treatment and family reunification rights, as long as they are Blue Card holders in the Member State of protection (see Recitals 8 and 35). In the second Member State, they will have the same rights as other Blue Card holders, save for return/expulsion.