



**AD HOC QUERY ON 2019.42 LT AHQ on issuing Blue Cards**

**Requested by Vytautas EŽERSKIS on 21 March 2019**

**Compilation produced on 25 September 2019**

**Responses from Austria, Belgium, Estonia, Finland, Germany, Greece, Lithuania, Luxembourg, Netherlands, Slovakia, Sweden (11 in Total)**

**Disclaimer:**

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

**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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		Wider Dissemination <sup>2</sup>	
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<sup>1</sup> 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.

<sup>2</sup> 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>EMN NCP Austria</p>	<p>Yes</p>	<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>
	<p>EMN NCP Belgium</p>	<p>Yes</p>	<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>
	<p>EMN NCP Estonia</p>	<p>Yes</p>	<p>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</p>




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			<p>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 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	1. NO. The person receives a residence permit based on self-employment.
	EMN NCP Germany	Yes	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 re-spectively 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.




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	<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 Lithuania</p>	<p>Yes</p>	<p>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, 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.</p>
	<p>EMN NCP Luxembourg</p>	<p>Yes</p>	<p>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</p>

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			of the change of status.
	EMN NCP Netherlands	Yes	1. No, this is not possible.
	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 Sweden	Yes	1. Yes, if he has an employment contract and fulfills the other requirements to be eligible for a blue card.

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