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Subject : Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment

1. At its meeting on 3-4 July the Working Party completed a new reading of the above proposal on the basis of compromise suggestions submitted by the Presidency (10398/08 MIGR 42 SOC 349).
2. The results of the discussions are set out in the Annex to this Note, with delegations' comments in the footnotes.

Proposal for a

COUNCIL DIRECTIVE

on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment¹

Chapter I

GENERAL PROVISIONS

Article 1

Subject matter

The purpose of this Directive is to determine:

- (a) the conditions of entry and residence for more than three months in the territory of the Member States of third-country nationals for the purpose of highly qualified employment as holders of an EU Blue Card, and of their family members,
- (b) the conditions for entry and residence of third-country nationals and of their family members under point (a) in Member States other than the first Member State.

¹ **BE, FI, HU** and **AT** maintained scrutiny reservations, while **LT** and **MT** maintained Parliamentary reservations on the entire proposal.
In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, and without prejudice to Article 4 of the said Protocol, the **United Kingdom** and **Ireland** are not taking part in the adoption of this Decision and are not bound by it or subject to its application.
Denmark, in accordance with Articles 1 and 2 of the Protocol annexed to the Treaty on the European Union and the Treaty establishing the European Community, will not participate in the adoption of this Decision and will not be bound by or subject to its application.

Article 2
Definitions

For the purposes of this Directive:

- (a) "third-country national" means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty;
- (b) "highly qualified employment" means the exercise of genuine and effective work under the direction of someone else for which a person is paid and for which adequate and specific competence, proven by higher professional qualifications, is required²;
- (c) "EU Blue Card" means the authorisation bearing the term "EU Blue Card" entitling its holder to reside and work in the territory of a Member State under the terms of this Directive;
- (d) "first Member State" means the Member State which first granted a third country national the "EU Blue Card";
- (e) "second Member State" means any Member State other than the first Member State.
- (f) "family members" means third-country nationals as defined in Article 4(1) of Directive 2003/86/EC.

² **BE, CY, DE, EE, ES, FI, IT, LT, MT, PL** and **SE** maintained reservations on point b), in particular due to its link with point g).
According to **IT**, this definition should cover not only employed work, as it is currently drafted, but also other kinds of contractual relationships.
ES reiterated its point that this provision should also refer to the employer: the job should be considered as a highly qualified one by the firm for which the person concerned will work.
SE repeated its suggestion of the following wording for point b):
"highly qualified employment" means the employment of any person who, in the Member State concerned, is protected as an employee under national employment law and/or in accordance with the national practice, for which either higher education qualifications or qualified professional experience is required.

- (g) "higher professional qualifications" means qualifications attested by evidence of higher education qualifications or, by way of derogation, by at least five years of professional experience that demonstrates knowledge of an equivalent level to higher education qualifications which are relevant in the profession or sector specified in the work contract or binding job offer³.
- (h) ⁴"higher education qualification" stands for any degree, diploma or other certificate issued by a competent authority attesting the successful completion of a higher education programme, namely a set of courses provided by an educational establishment recognised as a higher education institution by the State in which it is situated. These qualifications are taken into account, for the purposes of this Directive, on condition that the studies needed to acquire them lasted at least three years⁵.
- (i) "professional experience" means the actual and lawful pursuit of the profession concerned⁶.

³ **BE, CY, DE, EE, ES, FI, LT, LV, MT, AT, PL** and **SK** maintained reservations on point g). **Several delegations** felt that the wording *by way of derogation* needs to be clarified. **LV** reiterated that priority should be given to higher education qualifications. It also considered that, either in this point or in a separate provision, a mechanism should be put in place which would allow the comparison of higher education qualifications with professional experience. According to **SK**, in order to qualify for the EU Blue Card, the person concerned should hold higher education qualifications plus three years of professional experience. **BE** suggested taking into account a period of ten years of professional experience. According to **PL**, attention should be paid, not to the applicant, but to the fact that the person concerned fulfils the requirements for the relevant post. **ES** felt that a reference to the needs of the labour market should be inserted in this point.

Recalling the special needs, particularly of the area of the information technology, the **Cion** stressed the importance of maintaining, even if only as a subsidiary possibility, the criterion of the professional experience. The **Pres.** also felt that it would be important not to exclude such a possibility, in order to make the proposal more attractive for highly qualified third-country nationals

⁴ In relation to point h), it was agreed to include the following clause in the Preamble as a recital:

For the purpose of this Directive, in order to evaluate if the third-country national concerned possesses higher education qualifications, reference could be made to ISCED 1997 levels 5a and 6.

⁵ **BE, DE, ES** and **PL** maintained reservations on point h).

⁶ **PL** maintained a reservation on point i).

- (j) "regulated profession" means a regulated profession as defined in Article 3(1) (a) of Directive 2005/36/EC

Article 3

Scope

1. This Directive shall apply to third-country nationals who apply to be admitted to the territory of a Member State for the purpose of highly qualified employment under the terms of this Directive.
2. This Directive shall not apply to third-country nationals⁷:
 - (a) who are authorized to reside in a Member State on the basis of temporary protection or have applied for authorization to reside on that basis and are awaiting a decision on their status⁸;
 - (b) who have applied for international protection under Directive 2004/83/EC and whose application has not yet given rise to a final decision⁹;
 - (c) who have applied for protection in accordance with national legislation or practice of the Member State and whose application has not given rise to a final decision

⁷ **HU** pointed out that nationals of Iceland, Norway and Switzerland should be excluded from the scope of the proposal. The **Cion** felt that this suggestion needs to be further considered.

⁸ **NL** supported the inclusion of refugees in the scope of this proposal. Drawing attention to the fact that in the original **Cion** proposal they did not fall under its scope, **EL**, supported by **CY** and **AT**, felt that this proposal should not apply to beneficiaries of international protection. As an alternative, it suggested addressing them in a series of specific provision. According to **DE** the question of the double status needs to be further considered.

The **Cion** took the view that in the first Member State beneficiaries on international protection are entitled to the same series of rights granted to third-country nationals under this proposal. However, the issue of the mobility of refugees to other Member States requires a more in-depth examination.

The **Pres.** said that the introduction of a specific Chapter for refugees needs to be further considered.

⁹ **DE** preferred using, in the framework of point c), the wording of Article 3 2) (c) of the long term residents Directive (*are authorised to reside in a Member States on the basis of a subsidiary form of protection in accordance with international obligations, national legislation or the practice of the Member States or have applied for authorisation to reside on that basis and are awaiting a decision on their status, with the exception of persons who are authorised to reside in a Member State on the basis of international protection under Article 2 a of Directive 2004/83/EC*).

- (d) applying to reside in a Member State as researchers within the meaning of Directive 2005/71/EC in order to carry out a research project;
 - (e) who are family members of Union citizens who have exercised, or are exercising, their right to free movement within the Community;
 - (f) who enjoy long-term resident status in a Member State in accordance with Directive 2003/109/EC and exercise their right to reside in another Member State in order to carry out an economic activity in an employed or self-employed capacity¹⁰;
 - (g) entering a Member State under commitments contained in an international agreement facilitating the entry and temporary stay of certain categories of trade and investment-related natural persons;
 - (h) who have been admitted to the territory of a Member State as seasonal workers.
 - (i) whose expulsion has been suspended for reasons of fact or law.
3. This Directive shall be without prejudice to any agreement between the Community and/or its Member States on the one hand and one or more third countries on the other, that would list the professions which should not fall under this directive in order to assure ethical recruitment, in sectors suffering from a lack of personnel, by protecting human resources in the developing countries, signatories to these agreements¹¹.

¹⁰ According to **NL**, points e) and f) should be deleted. **LV** supported **NL** with respect to the deletion of point f).

The **Pres.** suggested provisionally deleting point f), while maintaining the possibility of further consideration of this provision at a later stage in the course of the negotiations.

¹¹ The **Cion** expressed some concerns on the current draft of this provision, in particular with respect to the clause *any agreement between the Community and/or its Member States*.

4. ¹²Member States may issue residence permits other than an EU Blue Card for any kind of employment on terms that are different than those laid down by this Directive. Such residence permits shall not confer the right of residence in the other Member States as provided for in this Directive¹³

Article 4

More favourable provisions

1. This Directive shall be without prejudice to more favourable provisions of:
 - (a) Community legislation, including bilateral or multilateral agreements concluded between the Community or between the Community and its Member States on the one hand and one or more third countries on the other;
 - (b) bilateral or multilateral agreements concluded between one or more Member States and one or more third countries.
2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for persons to whom it applies in respect of the following provisions of this Directive:
 - (a) Articles 5(2) in application of Article 19,
 - (b) Articles 12, 13 (2), 14, 15, 16, 17 (4) and 20.

¹² **BG, CZ, DE, EL, FI, NL, AT, PT** and **SE** expressed support for the fact that national schemes should co-exist with this proposal. **NL**, supported by **BG**, felt that the current draft of this provision does not ensure enough discretion to the Member States, and suggested replacing it with the following wording:

The provisions of this Directive shall be without prejudice to the right of the Member States to issue residence permits other than an EU Blue Card for any kind of employment.

The **Cion**, which expressed concerns over paragraph 4, underlined that in its view the Blue Card should have a level of exclusivity.

Taking note of the position expressed by several delegations in favour of this provision, the **Pres.**, with respect to the **NL** suggestion, underlined the need to find the right balance in this area, in order not to jeopardise harmonisation.

¹³ **DE** and **AT** suggested deleting the second sentence of paragraph 4. The **Pres.** preferred maintaining it, even if redundant.

Chapter II

CONDITIONS OF ADMISSION

Article 5

*Criteria for admission*¹⁴

1. A third-country national who applies to be admitted under the terms of this Directive shall¹⁵:
 - (a) present a valid work contract or a binding job offer for highly qualified employment as foreseen in national legislation of at least one year in the Member State concerned;
 - (b) fulfil the conditions set out under national legislation for the exercise by EU citizens of the regulated profession specified in the work contract or binding job offer as foreseen in national legislation;
 - (c) for unregulated professions, present the documents attesting the relevant higher professional qualifications in the occupation or sector specified in the work contract or in the binding job offer as foreseen in national legislation¹⁶;
 - (d) present a valid travel document, as determined by national law and a visa, if required, as well as, if appropriate, evidence of a valid residence permit or of a national long-term visa. Member States may require the period of the validity of the travel document to cover at least the initial duration of the residence permit;

¹⁴ **EL** and **AT** maintained reservations on Article 5.

¹⁵ **AT**, supported by **BG**, suggested also including the requirement of an appropriate accommodation. In this context, **SK**, supported by **HU**, suggested providing for the requirement of a document attesting where the person concerned is staying.

The **Cion** did not favour the introduction of such a requirement and suggested considering the obligation of communicating his/her place of stay. The **Pres.** supported the **Cion** suggestion.

¹⁶ According to **NL** and supported by **PL**, the requirement under point c) should become optional.

- (e) present evidence of having or, if foreseen by national legislation, having applied for a sickness insurance for the applicant for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or resulting from, the work contract;
 - (f) not be considered to pose a threat to public policy, public security or public health.
2. In addition to the conditions stipulated in paragraph 1, the gross monthly salary specified in the work contract or binding job offer must not be inferior to a national salary threshold defined and published for the purpose by the Member States which shall be at least 1,5 times the average gross monthly wage¹⁷.
 3. If the application is submitted by a third-country national within five years of obtaining his/her higher education qualifications¹⁸, Member States shall consider fulfilled the condition set out in paragraph 2 if the gross monthly salary offered corresponds to at least two-thirds of the national salary threshold defined in accordance with paragraph 2¹⁹.

¹⁷ **EL, ES, NL, PL** and **SK** maintained reservations and **BE, CZ, DE, HU, IT, MT, PL** and **SI** maintained scrutiny reservations on paragraph 2. **CZ** and **EE** (suggested reducing it to 1,24), **NL** and **SI** felt that the multiplication factor is too high, while **DE** preferred increasing it to 2. **PL** and **SK** preferred to consider the minimum wage instead of the average gross monthly wage. According to **SE**, other criteria should be considered along with the average gross monthly wage. **HU** pointed out that it should be left to the Member States to determine the level of salary which entitles a third-country national to acquire a Blue Card. According to **LV**, it should be sufficient that the person concerned receives a salary which is above the level of the average gross monthly wage. **IT** underlined the need for a reference to the collective agreements.

With respect to a remark from **PL**, supported by **SK**, which drew attention to the need to take into account regional differences in salaries, the **Cion** and the Pres. felt that this would make the system very complex.

In the context of the consideration of this provision **EL** and **AT** drew attention to the necessity of including a reference to the source of the data concerning the gross monthly salary in the different Member States.

¹⁸ **EL** suggested clarifying, in paragraph 3, that the higher education qualifications mentioned in this provision refer to the first diploma/certificate acquired by the person concerned.

¹⁹ **CZ, EE, ES, FI, MT, NL, SE** and **SK** maintained reservations on this provision. **FI, AT** and **SE** felt that this provision is discriminatory and preferred deleting it. **EE** and **MT** suggested converting it into an optional provision. According to **NL** and **PL**, the text of this provision needs to be clarified.

4. This Article shall be without prejudice to applicable collective agreements or practices in the relevant occupational branches.

Article 6

Derogation

[deleted]

Article 7

*Volumes of admission*²⁰

This Directive shall not affect the right of Member States to determine volumes of admission of third-country nationals coming for highly qualified employment.

Chapter III

EU BLUE CARD, PROCEDURE AND TRANSPARENCY

Article 8

EU Blue Card

1. A person who has applied and fulfils the requirements set out in Article 5 and for whom the competent authorities have taken a positive decision in accordance with Article 9²¹ shall be issued an EU Blue Card.

The Member State concerned shall grant the third-country national every facility to obtain the requisite visas.

²⁰ In relation to Article 7, it was agreed to insert the following clause in the Preamble as a recital:

Regarding volumes of admission, Member States retain the possibility not to grant residence permits for employment in general for certain professions or economic sectors.

²¹ SE suggested replacing the words *in accordance with Article 9* with *where there are not grounds for refusal*.

2. The initial validity of an EU Blue Card shall be of two years and shall be renewed for the same duration. If the work contract covers a period less than two years, the EU Blue Card shall be issued or renewed for the duration of the work contract plus three months²².
3. The EU Blue Card shall be issued by the competent authorities of the Member State using the uniform format as laid down in Regulation (EC) No 1030/2002. In accordance with its Annex a, 7.5-9, Member States shall indicate on the EU Blue Card the conditions for access to the labour market as set out in Article 13(1) or (2) of this Directive, whichever is applicable. Under the heading "type of permit", Member States shall enter "EU Blue Card".
4. During the period of its validity, the EU Blue Card shall entitle its holder to:
 - (a) enter, re-enter and stay in the territory of the Member State issuing the EU Blue Card;
 - (b) passage through other Member States in order to exercise the rights under point (a);
 - (c) the rights recognised to them in this Directive.

²² **EE, HU, PL** and **SK** maintained reservations on paragraph 2. **HU** pointed out that the deadline to be taken into account is 2 years and three months. **ES** suggested replacing the deadline of two years with a time-period of one year. **PL** pointed out that, in case of renewal, the second Blue Card should be issued for a period longer than two years. Underlining that the period of validity of the Blue Card should be linked with the duration of the contract, **BE, EE** and **SK** expressed concerns on the additional period of three months granted under this provision. **FI** suggested adding *at least* before *two years*. In order to ensure more flexibility **NL**, supported by **EL, PL** and **SE**, suggested replacing the text of paragraph 2 with the following wording:
The EU Blue Card shall have the same validity as the validity of the labour contract plus three months. Member States may limit the validity of the first Blue Card to a period of two years. The maximum validity of the Blue Card will be five years.
The **Cion** expressed concerns on the **NL** suggestion, insofar as it links the validity of the Blue Card with the duration of the work contract.

Article 9

*Grounds for refusal*²³

1. Member States shall reject an application for a EU Blue Card whenever the applicant does not meet the conditions set out in Article 5 or whenever the documents presented have been fraudulently acquired, or falsified or tampered with.
2. Before taking the decision on an application for an EU Blue Card, and when considering renewals or authorisations pursuant to Article 13(1) during the first two years of legal employment as holder of an EU Blue Card, Member States may examine the situation of their labour market and apply their national procedures regarding the requirements for filling a vacancy. An application for an EU Blue Card may also be rejected on the grounds of Article 7²⁴.

Member States may verify whether the concerned vacancy could not be filled by national or Community manpower, or by third-country nationals lawfully resident in that Member State and already forming part of its labour market by virtue of Community or national legislation, as well as by EC long-term residents wishing to move to that Member State for highly qualified employment in accordance with Chapter III of Council Directive 2003/109/EC or with Article 20 of this Directive.

²³ **DE** suggested considering the possibility of inserting a new clause in Article 9 along the following lines:
Member States commit to protect human resources in developing countries. Therefore they may also reject an application for an EU Blue Card in order to ensure ethical recruitment in sectors suffering from a lack of qualified personnel.

EE suggested inserting a new clause in Article 9 along the following lines:

Member States may reject an application for an EU Blue Card if the employer with whom the third-country worker has signed an employment contract or received a binding employment offer has a valid penalty for providing illegal employment or has been reported to have tax arrears.

²⁴ **BE**, which maintained a reservation on Article 9, drew attention to the fact that in the case of Article 7, the application should not be rejected, but considered as not admissible (*question d'irrecevabilité*). As an alternative, it suggested amending Article 12 (3) as follows: *...shall be open to a legal challenge in the Member State **except when the application has been rejected on the basis of Article 7.***

Article 10

Withdrawal or non-renewal of the EU Blue Card

1. Member States shall withdraw or refuse to renew an EU Blue Card issued on the basis of this Directive in the following cases:
 - (a) when it has been fraudulently acquired, or has been falsified or tampered with, or
 - (b) wherever it appears that the holder did not meet or no longer meets the conditions for entry and residence laid down in this Directive or is residing for purposes other than that for which he/she was authorised to reside²⁵.
 - (c) when the holder has not respected the limitations set out in Articles 13(1) and (2) and 14.
2. The lack of communication pursuant to Article 13(2) second paragraph and 14(4) shall not be considered to be a sufficient reason for withdrawing or not renewing the EU Blue Card if the holder can prove that the communication did not reach the competent authorities for a reason independent from his/her will²⁶.
3. Member States may withdraw or refuse to renew an EU Blue Card issued on the basis of this Directive in the following cases:
 - (a) for reasons of public policy, public security or public health;

²⁵ PL maintained a scrutiny reservation on paragraph 1(b).

²⁶ SK suggested deleting the final part of paragraph 2 (*if the holder can prove that the communication did not reach the competent authorities for a reason independent of his/her will*).

- (b) wherever the holder of an EU Blue Card does not have sufficient resources to maintain himself/herself and, where applicable, the members of his/her family, without having recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members. Such evaluation shall not take place during the period of unemployment referred to in Article 14²⁷.

Article 11

Applications for admission

1. Member States shall determine whether applications for an EU Blue Card are to be made by the third-country national or²⁸ by his/her employer.
2. The application shall be considered and examined either when the third-country national concerned is residing outside the territory of the Member State to which he/she wishes to be admitted or when he/she is already residing in that Member State as holder of a valid residence permit or national long-stay visa²⁹.

²⁷ **PL** and **SK** maintained scrutiny reservations on paragraph 3(b). **NL** suggested deleting the last sentence of this provision (*Such evaluation shall not take place during the period of unemployment referred to in Article 14*). Moreover, **NL** suggested inserting a provision allowing Member State to withdraw the Blue Card in case the holder applies for social assistance.

²⁸ **HU** and **NL** suggested replacing *or* with *and/or*.

²⁹ **EE**, **EL**, **ES**, **IT**, **LV** and **AT** maintained reservations on paragraph 2. **EL** and **IT** in particular pointed out that the person who is already residing on the territory of the Member State should not be able to submit an application and change his/her status.

SE suggested inserting at the end of paragraph 2 the following words: *... as holder of a valid residence permit or national long-stay visa or, where applicable, when the third-country national concerned is legally present in the Member State but not holder of a residence permit.*

IT opposed the **SE** suggestion.

BE, **HU** and **PT** regretted the fact that the Presidency compromise suggestion no longer contains the text of former paragraph 3 (see 9666/08 MIGR 37 SOC 296) (*By way of derogation from paragraph 2, Member States may accept, in accordance with their national legislation, an application submitted when the third-country national concerned is not in possession of a residence permit but is legally present in its territory*).

3. Member States shall not accept applications concerning third-country nationals covered by Directive 96/71/EC as long as they are posted on their territory³⁰.

Article 12

Procedural safeguards

1. ³¹The competent authorities of the Member States shall adopt a decision on the complete application for an EU Blue Card and notify the applicant in writing, in accordance with the notification procedures laid down in the national legislation of the concerned Member State, as soon as possible and at the latest within sixty days after the date on which the application was lodged³².

Any consequence of no decision being taken by the end of the period provided for in this provision shall be determined by national legislation of the relevant Member State.

2. If the information or documents supplied in support of the application are inadequate, the competent authorities shall notify the applicant of the additional information that is required and set a reasonable deadline for providing it. The period referred to in paragraph 1 shall be suspended until the authorities have received the additional information or documents required. If additional information or documents have not been provided within the deadline, the application may be rejected.

³⁰ **PL** wondered whether paragraph 3 is necessary and **NL** queried why this category is excluded. According to **EL** and **HU**, this provision should more appropriately be moved to Article 3, which defines the scope of the proposal.

³¹ In relation with this provision it was agreed to insert the following clause in the Preamble as a recital:

Whereas the deadline for examining the application should not include neither the time required for the recognition of professional qualifications nor the time required for issuing a visa.

³² **CY**, **DE**, **HU** and **LT** maintained reservations on paragraph 1, linked in particular with the issue of the deadline. **CY** felt that the deadline is too short. **LT** and **LV** suggested replacing 60 days with 90 days. **DE** and **SE** preferred deleting the words *and at the latest within sixty days after the date on which the application was lodged* after *as soon as possible*.

3. Any decision rejecting an application for an EU Blue Card, or non-renewing or withdrawing an EU Blue Card, shall be notified in writing to the third-country national concerned and, where relevant, to his/her employer in accordance with the notification procedures under the relevant national legislation and shall be open to a legal challenge in the Member State concerned, in accordance with national law³³. The notification shall specify the reasons for the decision, the possible redress procedures available and the time limit for taking action³⁴.

Chapter IV

RIGHTS

Article 13

*Labour market access*³⁵

1. For the first two years of legal employment in the Member State concerned as holder of an EU Blue Card, access to the labour market for the person concerned shall be restricted to the exercise of paid employment activities which meet the conditions for admission set out in Article 5. Modifications that affect the conditions for admission or changes in employer³⁶ shall be subject to the prior authorisation in writing of the competent authorities of the Member State of residence, according to national procedures and within the time limits set out in Article 12(1). Member States may determine under which conditions such modifications only require prior communication³⁷.

³³ **BE** suggested adding, at the end of this sentence, the words *except when the application has been rejected on the basis of Article 7* (see footnote 24 on page 12).

³⁴ **HU** and **SE** maintained scrutiny reservations on paragraph 3.

NL suggested inserting in this provision the following clause:

Member States may test the reliability of the employer before an application is processed.

³⁵ **BE**, **FI** and **SE** maintained reservations on Article 13.

³⁶ **HU** suggested replacing the words *or changes in employer* with the words *or the terms of the work contract*.

³⁷ **EE**, **IT** and **MT** maintained reservations on paragraph 1. **IT** pointed out that not allowing the person concerned to change job for a period of two years infringes the principle of free choice of the job.

2. After the first two years of legal employment in the Member State concerned as holder of an EU Blue Card, the person concerned shall enjoy equal treatment with nationals as regards access to highly qualified employment. Member States may require the holder of an EU Blue Card to attest that the conditions under Article 5 (1) are fulfilled³⁸.

The holder of the EU Blue Card shall communicate³⁹, according to national procedures, changes in his/her work relationship to the competent authorities of the Member State of residence. If so required, he/she shall include the proof of the relevant higher professional qualifications⁴⁰.

3. Member States may retain restrictions on access to employment, provided such activities entail even occasional involvement in the exercise of public authority and responsibility for safeguarding the general interest of the State in cases where, in accordance with existing national or Community legislation, these activities are reserved to nationals.
4. Member States may retain restrictions to access to employment in cases where, in accordance with existing national or Community legislation, these activities are reserved to nationals, EU or EEA citizens.
5. The provisions set out in this Article shall be applied without prejudice to the principle of Community preference as expressed in the relevant provisions of the Acts of Accession of 16 April 2003 and 25 April 2005, in particular in respect to the rights of nationals of these Member States in terms of access to the labour market.

³⁸ **CY, EE, HU, LV, MT, NL** and **AT** maintained reservations on paragraph 2. **BE, EL, LV, NL** and **AT** insisted on the need for Member States to maintain the possibility of checking that the person concerned continues to fulfil the salary criterion also beyond the first two years.

EE suggested deleting the second sub-paragraph and inserting, in paragraph 1, a reference to the fact that, until the person concerned has not reached long-term resident status, he/she needs to be authorised in case of any change of work.

³⁹ **HU** suggested replacing the word *communicate* with *notify*.

⁴⁰ **PL** felt that this provision does not clearly state what kind of proof needs to be provided by the person concerned.

Article 14

*Temporary unemployment*⁴¹

1. Unemployment in itself shall not constitute a reason for withdrawing an EU Blue Card, unless the period of unemployment exceeds three consecutive months, or it occurs more than once during the period of validity of an EU Blue Card⁴².
2. During the period referred to in paragraph one, the holder of the EU Blue Card shall be allowed to seek and take up highly qualified employment under the conditions set out in Article 13(1) or (2) whichever is applicable⁴³.
3. Member States shall allow the holder of the EU Blue Card to remain on their territory until the necessary authorisation pursuant to Article 13(1) has been granted or denied. The communication under Article 13(2) shall automatically end the period of unemployment.
4. The holder of the EU Blue Card shall communicate the beginning of the period of unemployment to the competent authorities of the Member State of residence, according to national procedures.

⁴¹ **BE, CY, DE, EE** and **HU** maintained scrutiny reservations on Article 14.

⁴² **CZ, LT** and **LV** maintained scrutiny reservations on paragraph 1. **EL** raised the question of repeated periods of unemployment. **SE**, which preferred not to set restrictions to periods of unemployment, suggested reverting to the previous text of paragraph 1 (*Unemployment in itself shall not constitute a reason for withdrawing an EU Blue Card, unless the period of unemployment exceeds three consecutive months*).

ES suggested replacing *shall* with *may*.

NL suggested including, at the end of paragraph 1, a clause such as *and/or during the period of unemployment an appeal is made to the social assistance system of the host Member State or unless the holder of an EU Blue Card applies for social assistance*. **HU** opposed the **NL** suggestion. **IT** preferred not to make any reference to the social assistance system of the Member States.

The **Cion** drew attention to the fact that Member States which wish to do so may grant more favourable treatment under Article 4.

⁴³ **IT** maintained a scrutiny reservation on paragraph 2.

Article 15

*Equal treatment*⁴⁴

1. Holders of an EU Blue Card shall enjoy equal treatment with nationals of the Member State that issued the Blue Card at least as regards⁴⁵:
 - (a) working conditions, including pay and dismissal, as well as health and safety at the workplace⁴⁶;
 - (b) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;
 - (c) education and vocational training⁴⁷;
 - (d) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;
 - (e) provisions in national legislations regarding the branches of social security as defined in Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community⁴⁸;

⁴⁴ **BE** maintained a scrutiny reservation on Article 15.

⁴⁵ **DE** maintained a reservation on the introductory sentence of Article 15. **PL** queried whether a reference to family members should be inserted in the introductory sentence.

⁴⁶ In relation to point a) **PL** suggested introducing, in paragraph 2 or in a new paragraph, the following clause: *Article 12 (1) shall be without prejudice to national provisions concerning termination of contracts with third-country nationals, entitled to stay and work on a limited basis*

⁴⁷ **DE** maintained a reservation and **LT** a scrutiny reservation on this provision. **EL** and **DE** preferred re-inserting, in the framework of this provision, a reference to study grants, as contained in the previous text of this provision (*including study grants in accordance with national law*). **IT** and **SE** supported the current draft of point c).

⁴⁸ **DE**, **ES**, **FI** and **AT** maintained scrutiny reservations on this provision.

- (f) payment of income related acquired pensions or annuities in respect of old age, at the rate applied by virtue of the law of the debtor Member State or States when moving to a third country⁴⁹;
- (g) tax benefits⁵⁰;
- (h) access to goods and services and the supply of goods and services made available to the public, including procedures for obtaining housing, as well as information and counselling services afforded by employment offices⁵¹;
- (i) free access to the entire territory of the Member State concerned, within the limits provided for by national legislation.

⁴⁹ **BE, EL, ES, LV** and **PT** maintained scrutiny reservations on this provision. According to **SE**, it should be clarified that the pensions referred to under point f) are public or state pensions. **BE** made reference to the principle of reciprocity and **LV** to the existence of bilateral agreements with the third-countries concerned.

In this respect, the **Cion** clarified that point f) does not cover the issue of acquiring a pension, which is determined by national law. It also felt that it would not be appropriate to quote bilateral agreements, since point f) is stricter than provisions contained in bilateral agreements.

⁵⁰ **CZ, DE, EE, EL** and **NL** maintained reservations on point g). **DE**, supported by **EE** and **SK**, suggested deleting this provision.

⁵¹ **DE, HU, LV** and **SI** maintained reservations on point h). **HU, LV** and **SI** referred in particular to the part *procedures for obtaining housing*. **HU** suggested making a reference to the services Directive.

2. With respect to the provisions of paragraph 1, points (c) and (h) Member States may restrict equal treatment as regards study grants⁵² and procedures for obtaining housing to cases where the holder of the EU Blue Card has been granted EC long-term resident status in accordance with Article 17⁵³. Access to university may be subject to specific prerequisites according to national law⁵⁴.
3. The right to equal treatment as laid down in paragraph 1 is without prejudice to the right of the Member State to withdraw or to refuse to renew the EU Blue Card in accordance with Article 10.

Article 16

*Family members*⁵⁵

1. Council Directive 2003/86/EC shall apply with the derogations laid down in this Article.
2. By way of derogation from Articles 3(1) and 8 of Directive 2003/86/EC, family reunification shall not be made dependent on the requirement of the holder of the EU Blue Card having reasonable prospects of obtaining the right of permanent residence and of he/she having a minimum period of residence.

⁵² **PL** suggested inserting, after *study grants*, the words *and other forms of individual financing of education from public resources*.

DE supported the **PL** suggestion and felt that it should be complemented with the words *and training* after *education*.

In relation with this provision, the **Pres.** suggested inserting the following clause in the Preamble as a recital:

The notion of study grants in the field of vocational training does not cover measures which are financed under social assistance schemes. Member States may take into account the fact that Union citizens may benefit from this same advantage in the country of origin.

⁵³ **DE** suggested replacing the clause... *to cases where the holder of the EU Blue Card has been granted EC long-term resident status in accordance with Article 17* with the words *to cases where the holder of the EU Blue Card has been lawfully employed or has had a residence permit according to this Directive or has the right to stay in its territory for at least four years*.

⁵⁴ **SE** suggested introducing the following new sub-paragraph in paragraph 2:
With respect to the provisions in paragraph 1, point c) the Member State concerned may restrict equal treatment to cases where the registered or usual place of business of the EU Blue Card holder, or that of family member for whom he/she claims benefits, lies within the territory of the Member State concerned.

⁵⁵ **BE**, **DE**, **AT** and **SE** maintained reservations on Article 16.

FI pointed out that the Blue Card holder and his/her family members should be admitted at the same time.

BE queried the added value of this provision.

3. By way of derogation from Article 5(4) first subparagraph of Directive 2003/86/EC, residence permits for family members shall be granted, if the conditions for family reunifications are fulfilled, at the latest within six months from the date on which the application was lodged.
4. By way of derogation from Articles 4(1) last subparagraph and 7(2) of Directive 2003/86/EC, the integration conditions and measures referred to therein may only be applied after the persons concerned have been granted family reunification⁵⁶.
5. By way of derogation from Article 14(2) second sentence of Directive 2003/86/EC and in respect of access to the labour market, Member States shall not apply any time limit⁵⁷.
6. By way of derogation to Article 15(1) of Directive 2003/86/EC, for the purposes of calculation of the five years of residence required for the acquisition of an autonomous residence permit, residence in different Member States may be cumulated⁵⁸.
7. If Member States have recourse to the option provided for in paragraph 6, the provisions set out in Article 17 in respect of accumulation of periods of residence in different Member States by the holder of an EU Blue Card shall apply mutatis mutandis.
8. By way of derogation from Article 13(2) and (3) of Directive 2003/86/EC, the duration of validity of the residence permits of family members shall be the same as that of the residence permits issued to the holder of the EU Blue Card insofar as the period of validity of their travel documents allows it.

⁵⁶ **AT** suggested deleting paragraph 4.

⁵⁷ **CY** and **EE** maintained reservations on paragraph 5.

⁵⁸ **EE** maintained a reservation on paragraph 6. The **Cion** drew attention to the fact that paragraph 6 is an optional provision.

Article 17

*EC long-term resident status for EU Blue Card holders*⁵⁹

1. Directive 2003/109/EC shall apply with the derogations laid down in this Article.
2. By way of derogation from Article 4(1) of Directive 2003/109/EC, the holder of an EU Blue Card having made use of the possibility provided for in Article 19 is allowed to cumulate periods of residence in different Member States in order to fulfil the requirement concerning the duration of residence, if the following conditions are met⁶⁰:
 - (a) five years of legal and continuous residence within the territory of the Community as holder of an EU Blue Card;
 - (b) legal and continuous residence as holder of an EU Blue Card within the territory of the Member State where the application for the long-term resident's EC residence permit is lodged for two years⁶¹ immediately prior to the submission of the relevant application.
3. For the purpose of calculating the period of legal and continuous residence in the Community and by way of derogation from Article 4(3) first subparagraph of Directive 2003/109/EC, periods of absence from the territory of the Community shall not interrupt the period referred to in paragraph 2(a) and shall be taken into account for its calculation if they are shorter than twelve consecutive months and do not exceed in total sixteen months within the period referred to in paragraph 2(a). This paragraph shall apply also in cases where the holder of an EU Blue Card has not made use of the possibility provided for in Article 19⁶².

⁵⁹ **BE, DE, HU, AT and PL** maintained reservations on Article 17. **BE** and **HU** opposed creating two statuses. According to **LV**, all derogations under this provision should be granted to all the third-country nationals who have acquired long-term resident status. **DE** pointed out that it could support allowing longer periods of absence to Blue Card holders, but it would not favour granting this possibility to all third-country nationals who have acquired long-term residence status.

⁶⁰ **EE** maintained a reservation on paragraph 2.

⁶¹ According to **DE** and **LV**, the deadline for acquiring long-term resident status should be increased from two to three years.

⁶² **EE** maintained a reservation on paragraph 3. It suggested inserting a reference to this provision in Article 24 on contact points.

4. By way of derogation from Article 9(1)(c) of Directive 2003/109/EC, Member States shall extend the period of absence allowed to an EU Blue Card holder and of his/her family members having been granted the EC long-term residence status from the territory of the Community to twenty four consecutive months⁶³.
5. The derogations to Directive 2003/109/EC set out in paragraphs 3 and 4 may be restricted to cases where the third-country national concerned can present evidence that he/she has been absent from the territory of the Community to exercise an economic activity in an employed or self-employed capacity, or to perform a voluntary service, or to study in his/her own country of origin⁶⁴.
6. Article 15(f) and 16 shall continue to apply, where applicable, after the holder of the EU Blue Card has been issued a residence permit pursuant to Article 18.

Article 18

*Residence permit "Long-term resident – EU Blue Card"*⁶⁵

1. Holders of the EU Blue Card who fulfil the conditions set out in Article 17 for the acquisition of the EC long term resident status shall be issued a residence permit in accordance with Article 1(2)(a) of Council Regulation (EC) No 1030/2002.
2. Under the heading "type of permit", Member States shall enter "long-term resident – EU Blue Card"⁶⁶.
3. Holders of the residence permit "long-term resident – EU Blue Card" shall be subject to the provisions relating to them and their family members set out in this Directive and in Directive 2003/109/EC.

⁶³ **ES** suggested deleting paragraph 4.

⁶⁴ Underlining the difficulties of providing the required evidence, **PL** maintained a reservation on paragraph 5.

⁶⁵ **BE, CZ, EE, HU** and **AT** maintained reservations on Article 18. **DE** and **AT** felt that in relation to the technical aspects the Article 6 Committee of the Commission should be consulted. **BE**, which expressed doubts about the added value of this provision, as well as **EE**, preferred deleting it.

⁶⁶ **DE** and **LT** maintained reservations on paragraph 2.

Chapter V

RESIDENCE IN OTHER MEMBER STATES⁶⁷

Article 19

*Conditions*⁶⁸

1. After two years of legal residence in the first Member State as holder of an EU Blue Card, the person concerned and his/her family members shall be allowed to move to a Member State other than the first Member State for the purpose of highly qualified employment under the conditions set out in this Article⁶⁹.
2. As soon as possible and no later than one month after entering the territory of the second Member State, the holder of the EU Blue Card or his/her employer shall present an application for an EU Blue Card to the competent authorities of that Member State and present all the documents proving the fulfilment of the conditions set out in Articles 5 and 6 for the second Member State. Member States may decide, according to national law, not to allow the applicant to work until the positive decision on the application has been taken by the competent authority.
 - 2a. The application may also be presented to the competent authorities of the second Member State while the holder of the EU Blue Card is still residing in the territory of the first Member State.

⁶⁷ In relation with a remark from **NL**, which queried the use of the words *first Member State* and *second Member State* in the framework of this Chapter, the **Cion** said that this issue needs to be further considered.

⁶⁸ **BE**, **NL** and **PL** maintained a reservation on Article 19. **PL** found this provision quite unattractive, particularly in relation to its paragraphs 3 a) and b). **BE** queried the added value of this provision. **HU** and **NL** underlined the need for further clarifying the relationship between Article 19 and 21, in order to avoid overlapping between the two provisions.

⁶⁹ **AT** maintained a reservation on paragraph 1. **ES** preferred a deadline of one year instead of two years. **HU** and **FI** also drew attention to the issue of the deadline. **BE** and **NL** were in favour of not setting a deadline of two years, in order to favour and promote intra-Community mobility.

The **Pres.** said that this issue needs to be further considered.

3. In accordance with the procedures set out in Article 12, the second Member State shall process the application and inform in writing the applicant and the first Member State of its decision to:
- (a) either issue an EU Blue Card and allow the applicant to reside on its territory for highly qualified employment if the conditions set in this Article are fulfilled and under the conditions set out in Articles 8-15, or
 - (b) refuse to issue an EU Blue Card and oblige the applicant and his/her family members, in accordance with the procedures provided for by national law, including removal procedures, to leave its territory if the conditions set out in this Article are not fulfilled. The first Member State shall immediately readmit without formalities the holder of the EU Blue Card and his/her family members. This shall also apply if the Blue Card issued by the first Member State has expired or has been withdrawn during the examination of the application. The provisions of Article 14 shall apply after readmission⁷⁰.
4. If the EU Blue Card issued by the first Member State expires during the procedure, Member States may issue, if required by national law, national temporary residence permits, or equivalent authorisations, allowing the applicant to continue to stay legally on its territory until a decision on the application has been taken by the competent authorities.
5. The applicant and/or his/her employer may be held responsible for the costs related to the return and readmission of the holder of the EU Blue Card and his/her family members, including by reimbursing costs incurred by public funds where applicable, pursuant to paragraph 3(b).
6. In application of this Article, Member States may continue to apply volumes of admission as specified in Article 7.

⁷⁰ AT, which did not support the obligation for the first Member State to readmit the person concerned in the cases referred to in paragraph 3 b), maintained a reservation on this provision.

Article 20

Access to the labour market of the second Member State for holders of the residence permit "long-term resident – EU Blue Card"⁷¹

1. Article 14(4) of Directive 2003/109/EC shall not apply to holders of the residence permit "long-term resident – EU Blue Card".
2. In cases where a Member State decides to apply the restrictions on access to the labour market provided for in Article 14(3) of Directive 2003/109/EC, it shall give preference to holders of the residence permit "long-term resident – EC / EU Blue Card" over other third-country nationals not yet residing in the Member State concerned and applying to reside there for the same purposes, if comparable qualifications are presented.

Article 21

Residence in the second Member State for family members⁷²

1. When the holder of the EU Blue Card moves⁷³ to a second Member State in accordance with the provisions of Article 19 and when the family was already constituted in the first Member State, the members of his/her family shall be authorised to accompany or join him/her.

⁷¹ **BE, CZ, EE** and **HU** maintained reservations on Article 20, linked in particular with the comments already expressed in relation with Article 19. **EE** suggested deleting this provision.

⁷² **AT** maintained a reservation on Article 21. In particular, it suggested including the following additional requirement in paragraph 3 of this provision:
accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in force in the Member State concerned.
The **Pres.** supported this suggestion.

⁷³ **PL** suggested replacing the word *moves* with the words *receives a Blue Card in the second Member State*.

2. No later than one month after entering the territory of the second Member State, the family members concerned or their sponsor, in accordance with national legislation, shall submit an application for a residence permit for a family member to the competent authorities of that Member State.

In cases where the residence permit of the family members issued by the first Member State expires during the procedure or no longer entitles the holder to reside legally on the territory of the second Member State, Member States shall allow the person to stay in its territory, if necessary by issuing national temporary residence permits, or equivalent authorisations, allowing the applicant to continue to stay legally on their territory with the holder of the EU Blue Card until a decision on the application has been taken by the competent authorities

3. The second Member State may require the family members concerned to present with their application for a residence permit:
 - (a) their residence permit in the first Member State and a valid travel document or their certified copies, as well as a visa, if required;
 - (b) evidence that they have resided as members of the family of the holder of the EU Blue Card in the first Member State;
 - (c) evidence that they have a sickness insurance covering all risks in the second Member State, or that the holder of the Blue Card has such insurance for them;
4. The second Member State may require the Blue Card holder to provide evidence that he/she has stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members.
5. Derogations contained in Article 16 shall continue to apply *mutatis mutandis*.

6. Where the family was not already constituted in the first Member State, Article 16 shall apply.

Chapter VI

FINAL PROVISIONS

Article 22

*Implementing measures*⁷⁴

1. Member States shall communicate to the Commission and the other Member States if legislative or regulatory measures are enacted in respect of Articles 7, 9(2), 19(5) and 20.
2. Annually, and for the first time no later than 1 April of [one year after the date of transposition of this Directive], Member States shall communicate to the Commission and the other Member States statistics on the volumes of third-country nationals who have been granted,⁷⁵ renewed or withdrawn an EU Blue Card during the previous calendar year, indicating their nationality and, as far as possible, their occupation. Statistics on admitted family members shall be communicated likewise, except for information about their occupation. For holders of the EU Blue Card and members of their families admitted in accordance with the provisions of Articles 19 to 21, the information provided shall in addition specify the Member State of previous residence.

⁷⁴ **CZ, DE, EL, HU, LT, AT** and **PT** maintained reservations on paragraph 2. In this context, was also raised the issue of clarifying how the information should be transmitted. **PT**, supported by **CZ** and **EL**, felt that EUROSTAT could be used for this purpose. **HU** wondered why the Regulation on statistics has not been taken into account. In its view the deadline for communicating the relevant data should be aligned with that set by the Regulation on statistics.

Drawing attention to the fact that the previous reference to the Mutual Information Mechanism has not be maintained in its compromise suggestion, the **Pres.** said that this issue will need to be further considered

⁷⁵ **DE** suggested inserting, between *granted* and *renewed* the words *and, as far as possible,*.

Article 23

Reports

Every three years, and for the first time no later than [three years after the date of transposition of this Directive], the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary.

Article 24

*Contact points*⁷⁶

1. Member States shall appoint contact points which shall be responsible for receiving and transmitting the information referred to in Article 19.
2. Member States shall provide appropriate cooperation in the exchange of the information and documentation referred to in the first paragraph.

Article 25

*Transposition*⁷⁷

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [two years after the entry into force]⁷⁸ at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

⁷⁶ **BE** maintained a reservation on Article 24.

⁷⁷ In relation with this provision, it was agreed to include the following clause in the Preamble as a recital:

In accordance with paragraph 34 of the Interinstitutional agreement on better law making, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables, which will, as far as possible, illustrate the correlation between the Directive and the transposition measures and make them public.

⁷⁸ **SE** suggested providing for a transposition deadline of three years, rather than two years.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 26

Entry into force

This Directive shall enter into force on the [...] day following that of its publication in the *Official Journal of the European Union*.

Article 27

Addressees

This Directive is addressed to the Member States.

Done at Brussels, [...]

For the Council

The President

[...]