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From:	Presidency
To:	Permanent Representatives Committee
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Subject:	Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment (First reading) - State of play and guidance for further work

1. On 7 June 2016, the Commission adopted a proposal for a Directive on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment[1]. This proposal, which replaces the existing EU Blue Card Directive (2009/50/EC), aims to improve the EU's ability to attract and retain highly skilled third-country nationals, as well as to enhance their mobility and circulation between jobs in different Member States.

2. Detailed examination of the proposal by Member States started at the meeting of the Working Party on Integration, Migration and Expulsion on 24 June 2016. From 24 April 2017 onwards, the examination of the proposal continued at the level of JHA Counsellors. A number of outstanding issues in the proposal were discussed at the informal meeting of SCIFA on 17 February.

[1] ST 10012/16.

3. COREPER had a discussion on some of the most divisive issues at its meeting of 12 June. On 26 July, it managed to agree on a mandate[2] for the Presidency to start negotiations with the European Parliament. The plenary had endorsed the LIBE Committee report on the proposal on 28 June 2017.

4. The first trilogue took place on the 12 September, followed by trilogues on 18 October, 27 November and 13 December. In addition, a number of technical meetings with the European Parliament have taken place. In these technical meetings a detailed examination of the entire text of the proposal has been carried out and a number of provisions have been agreed upon.

5. As a result of the negotiations, it is clear that both the Council and the Parliament agree that the EU needs to attract highly qualified workers. However, the positions of the co-legislators on the key elements of the file diverge considerably. Whilst provisional agreement has been found on a number of technical questions, the negotiations have now reached a point where political guidance is needed on more fundamental issues. It is clear that neither the European Parliament nor the Council is ready to compromise on the key issues if taken separately. Thus, a package approach is needed to unblock the situation.

6. In order to move forward with the negotiations, the Presidency suggested a compromise package to JHA Counsellors which aimed to strike a balance between the Council's and the Parliament's positions on the most critical provisions of the EU Blue Card (Option 1 in the Annex).

7. The Presidency discussed this compromise package also with the Parliament. While the Parliament felt that the Council compromise suggestions for items 1 and 2 mirror, to a large extent, the Council's initial position, in the spirit of compromise and taking into account the mandatory recognition of skills (item 3) which it saw as the main concession from the Council, it indicated its willingness to consider the package. The main objective of the European Parliament is that the revised Blue Card Directive provides real added value in terms of making the EU more attractive for highly qualified workers.

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[2] ST 10552/17.

8. The compromise package was discussed at the JHA Counsellors' meetings on 22 and 30 November. Whilst some openness could be noted for the compromise suggestions regarding items 1, 2 and 4, it appeared that the majority of Member States would not be able to support the idea of a mandatory inclusion of skills.

9. During the trilogue on 13 December, the Presidency informed the Parliament that the Council would probably not be in a position to support the initial compromise package as suggested by the Presidency. The Parliament expressed its deep disappointment with the fact that the Council could not accept the mandatory recognition of skills as part of the compromise package. This was particularly regrettable considering that on items 1 and 2 of the package the Council would to a large extent maintain its position.

10. When discussing a possible way forward, the Parliament indicated that should skills not be included as a mandatory element but as a mere option, then the Council should compromise on several other essential elements of the file. Taking into account the Parliament's position on some of the provisions of the file, the Presidency suggests an alternative compromise package as set out in Option 2 in the Annex to this Note.

11. In view of the above, COREPER is invited to give guidance on how to proceed with the negotiations on this proposal. For this purpose, delegations are asked to indicate whether they prefer that the Presidency pursues negotiations on the basis of the compromise package as outlined in Option 1 or on the basis of the package outlined in Option 2 (see Annex). In case agreement is reached on the above-mentioned options, work will continue at a technical level on further details of the package.

ANNEX

Option 1

The compromise package builds upon the following four key elements:

1) Complementary national schemes - where the applicant meets the admission conditions of the EU Blue Card Directive, an EU Blue Card should be issued. If the applicant does not meet the conditions of the Directive, Member States are free to issue a national permit. Related to this issue, long-term mobility should be facilitated (a Blue Card holder could start working in the second Member State on the basis of a valid permit issued by the first Member State before a decision on long-term mobility is taken);

2) Applicants for international protection would not be included in the scope; beneficiaries of international protection are, however, allowed to apply for an EU Blue Card in a Member State other than the one which granted them international protection. In addition, the first Member State may decide whether to give this possibility to the beneficiaries to whom it has granted international protection. The requirement of a prior residence of 12 months, as it appears in the Council's position, would be waived in the case of the first Member State;

3) Obligatory recognition of professional skills with an extended transposition period. In return for this issue, Member States would maintain the right to carry out labour market tests. However, a labour market test would not be possible in the case of a change of employers in the same field of work in the same Member State;

4) The salary threshold as it appears in the Council's position (1.1-1.7) would be kept with a possibility of derogations in certain occupational sectors. Member States may decide, in consultation with social partners, not to apply the general salary threshold in some occupational sectors. However, in such a case the prevailing salary of the occupational sector should apply.

Option 2

This compromise package consists of the following elements (new elements compared to option 1 are marked in **bold**):

1) Complementary national schemes: where the applicant meets the admission conditions of the EU Blue Card Directive, an EU Blue Card should be issued. If the applicant does not meet the conditions of the Directive, Member States are free to issue a national permit. Related to this issue, long-term mobility should be facilitated: a possibility to start working in the second Member State after submitting the application, **shorter processing time in the second Member State**, **waiving the requirement to submit documents regarding qualifications and/or sickness insurance;**

2) Applicants for international protection would not be included in the scope; beneficiaries of international protection are, however, allowed to apply for an EU Blue Card in a Member State other than the one which granted them international protection. In addition, the first Member State may decide whether to give this possibility to the beneficiaries to whom it has granted international protection. The requirement of a prior residence of 12 months, as it appears in the Council's position, would be waived in the case of the first Member State;

3) The recognition of professional skills would be **voluntary;**

4) Further compromises on the following provisions:

   - Member States would maintain the right to carry out labour market tests as a general principle. However, a labour market test would not be possible upon changing employers in the same field of work in the same Member State. Also, no labour market test would be applied **for family members of Blue Card holders**;

   - **Salary threshold**: lowering the fork (currently 1.1-1.7 times the average salary in the Council text, 1.0-1.4 in the EP text). One possible compromise could be 1.0-1.5 of the average salary;

- **Waiving the restriction on equal treatment** as regards family benefits to be provided to family members residing in third countries;

- **Facilitations on access to long-term resident status:** a compromise could be, for example, to accept stays under other regimes than the Blue Card scheme for the calculation of the required five years of residence or mandatory accelerated access after 3 years of residence as an EU Blue Card holder;

- **Inclusion of seasonal workers** in the scope of the Directive.
