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NOTE

From: The incoming Presidency
To: Delegations

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)

With a view to their meeting on 11 January 2019, delegations will find in Annex the incoming Presidency's suggestion for the elements of a possible compromise package on the EU Blue Card Directive. The package mainly results from a round of bilateral meetings organised by the BG and AT Presidencies earlier this year. The intention of the incoming Presidency is to present to the European Parliament a new version of a compromise package in order to be able to continue inter-institutional negotiations on the proposal. The attention of delegations is drawn to the fact that, in the drafting suggestions in the Annex, changes are indicated in reference to 10552/17, except where provisional agreement has already been confirmed in a trilogue. The corresponding recitals would also need to be adapted to the operative part of the text.

Possible compromise package for the EU Blue Card Directive

1. Harmonisation

- Parallel national schemes for highly skilled third-country nationals allowed
- Choice for the applicant:
 - Facilitation for easy and quick change from a national permit to the EU Blue Card at any point: 15 days, no new check of qualifications if already done for the national permit;
 - Take time spent with a national permit into account for the period of residence required for long-term resident status;
 - Make sure full information on the EU Blue Card is made available, equal promotion and info activities as a national scheme;
 - Ensuring that similar rights apply to EU Blue Card holders as to highly skilled workers holding a national scheme.

Article 3 - Scope

4. This Directive shall be without prejudice to the right of the Member States to issue residence permits other than an EU Blue Card for the purpose of highly **skilled** ~~qualified~~ employment. Such residence permits shall not confer the right of residence in other Member States as provided for in this Directive.

Article 10 - Procedural safeguards (in addition to other changes to this Article under point 5)

1. The competent authorities of the Member States shall adopt a decision on the application for an EU Blue Card and notify the applicant in writing, in accordance with the notification procedures laid down in the national law of the Member State concerned. The decision shall be adopted and notified at the latest within 90 days of the date of submission of the complete application.

Where the employer has been recognised in accordance with Article 12, the decision shall be adopted and notified at the latest within 30 days of the date of submission of the application.

Where Member States issue national permits for the purpose of highly skilled employment, they shall grant EU Blue Card holders the same procedural safeguards if these are more favourable than those provided for in this Article.

1a. Where an application for an EU Blue Card is made by a third country national who is a holder of a national permit for the purpose of highly skilled employment in a Member State, or by his/her employer, that Member State shall adopt a decision on the application for an EU Blue Card and notify the applicant in writing, in accordance with the notification procedures laid down in the national law of the Member State concerned, at the latest within 15 days of the date of submission of the complete application. By way of derogation from Article 5(1), the applicant shall not be required to present the documents referred to in Article 5(1)(d) if such check has been carried out for obtaining the national permit, nor the evidence referred to in Article 5(1)(e). By way of derogation from Article 6(2), the Member States shall not reject such application for an EU Blue Card based on a check as provided for in Article 6(2).

Article 11 – Fees

Member States may require the payment of fees for the handling of applications in accordance with this Directive. The level of fees required by a Member State for the processing of applications shall not be disproportionate or excessive. **Where Member States issue national permits for the purpose of highly skilled employment, they shall grant EU Blue Card holders the same level of fees if these are more favourable.**

Article 12 – Recognised employers

1. Member States may decide to provide for recognition procedures for employers in accordance with their national law or administrative practice for the purpose of applying simplified procedures for obtaining an EU Blue Card.

Where a Member State decides to provide for recognition procedures, it shall provide clear and transparent information to the employers concerned about, among others, the conditions and criteria for approval, the period of validity of the recognition and the consequences of non-compliance with the conditions, including possible withdrawal and non-renewal, as well as any sanction applicable.

Where Member States issue national permits for the purpose of highly skilled employment, they shall grant EU Blue Card holders, where applicable, the same recognised employer's procedures if these are more favourable than those provided for in this Article.

The recognition procedures shall not entail disproportionate or excessive administrative burden or costs for the employers.

Article 14 – Temporary unemployment

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 where the unemployment occurs more than once during the period of validity of an EU Blue Card. **Where Member States issue national permits for the purpose of highly skilled employment, they shall grant EU Blue Card holders, where applicable, the same period of temporary unemployment if it is more favourable than that provided for in this Article.**

Article 18a – National permanent or long-term resident status for EU Blue Card holders

Where Member States issue national permits for the purpose of highly skilled employment, they shall grant EU Blue Card holders, where applicable, the same access to national permanent or long-term residence status.

Article 23 - Access to information and monitoring

1. Member States shall make easily accessible to applicants the information on all the documentary evidence needed for an application and information on entry and residence conditions, including the rights, obligations and procedural safeguards, of the third-country nationals falling under the scope of this Directive and of their family members. This information shall include information on the salary thresholds set in the Member State concerned in accordance with Article 5(2), (4) and (5), and on the applicable fees.

In the case where Member States decide to introduce legislative or regulatory measures in accordance with Article 5a or make use of the possibility provided for by Article 6(3)(cc), this information shall be communicated in the same way. The information on check of the labour market situation pursuant to Article 6(3)(cc) shall specify, where appropriate, the sectors, occupations and regions concerned.

Where Member States issue national permits for the purpose of highly skilled employment, they shall assure equal promotion and information activities for the EU Blue Card as for such national permits.

Where Member States issue national permits for the purpose of highly skilled employment, they shall ensure the same access to information on and the same promotion of the EU Blue Card as for such national permits.

Article 17 - EU long-term resident status for EU Blue Card holders *(in addition to other changes to this Article under point 6)*

2. By way of derogation from Article 4(1) of Directive 2003/109/EC, Member States may grant EU long-term resident status to **EU Blue Card holders** ~~third-country nationals~~ who have legally and continuously resided as EU Blue Card holders **or as holders of national permits for the purpose of highly skilled employment** within their territory for three years immediately prior to the submission of the relevant application.

- After 5 years the Commission issues a report on the functioning of parallel schemes next to the EU Blue Card scheme, with the option of making a new proposal.

Article 25 - Reporting

Every three years, and for the first time by [five years after the date of entry into force of this Directive], the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States, in particular the assessment of the impact of Articles **3(4)**, 5, 12 [...] and Chapter V, and the impact of this Directive on the national labour market situations. The Commission shall propose any amendments that are necessary.

2. Scope:

- Categories included:
 - Beneficiaries of international protection (both in the Member State that granted protection as in other Member States, with no obligation of a certain duration of residence);
 - Seasonal workers (allowing them to apply for the EU Blue Card on the territory of a Member State);
 - Third-country national family members of EU citizens.
- Categories not included:
 - applicants for international protection.

Article 3 - Scope

2. This Directive shall not apply to third country nationals:

~~(f) who have been admitted to the territory of a Member State as seasonal workers pursuant to Directive 2014/36/EU of the European Parliament and of the Council;~~

~~2a. This Directive shall apply to beneficiaries of international protection where, after having resided for at least 12 months in the Member State which granted them the international protection, they apply to be admitted to the territory of another Member State for the purpose of highly qualified employment under the terms of this Directive. Member States may decide to apply the provisions of this Directive to beneficiaries of international protection to whom they granted international protection, after having resided for at least 12 months on their territory.~~

3. Admission conditions

- Salary threshold 1.0 – 1.6;
- Mandatory exemption for recent graduates and shortage occupations: Member States can set the salary threshold flexibly between 0.8 of the average salary and the general threshold;
- Optional “prevailing salary” derogation (predominant salary of comparable workers);
- Mandatory equivalence between higher education qualifications and professional experience: at least 5 years of relevant professional experience required, 4 extra years of transposition time, the Commission will provide necessary support to Member States for developing systems for skills assessment.

Article 5 - Criteria for admission

2. In addition to the conditions laid down in paragraph 1, the gross annual salary resulting from the monthly or annual salary specified in the work contract or binding job offer shall not be inferior to the salary threshold set and published for that purpose by the Member States. The salary threshold set by the Member States shall be at least 1.40 times but not higher than 1.76 times the average gross annual salary in the Member State concerned.

2a. By way of derogation from paragraph 2, Member States may apply a higher threshold of maximum 2.0 times the average gross annual salary in the Member State concerned where:

- the national average gross annual salary is lower than half of the average at EU level; and
- there is a significant difference in the levels of the average gross annual salary between regions in that Member State, which would cause the national salary threshold for highly **skilled** ~~qualified~~ workers to be disproportionately low.

4. By way of derogation from paragraph 2, and for employment in professions which are in particular need of third-country national workers and which belong to major groups 1 and 2 of ISCO, Member States **shall set and publish** ~~apply~~ a lower salary threshold of at least 80 percent of the **average gross annual salary in the Member State concerned** ~~salary threshold set by the Member State concerned in accordance with paragraph 2.~~

5. By way of derogation from paragraph 2, as regards third-country nationals who have obtained a higher education qualification not more than three years before submitting the application for an EU Blue Card, Member States **shall set and publish** ~~apply~~ a lower salary threshold of at least 80 percent of the **average gross annual salary in the Member State concerned** ~~salary threshold set by the Member State concerned in accordance with paragraph 2.~~

Where the EU Blue Card issued during the period of three years is renewed, the salary threshold referred to in the first subparagraph shall continue to apply if:

- (a) the initial period of three years has not elapsed; or
- (b) a period of 24 months after the issuance of the first EU Blue Card has not elapsed.

Prevailing salary

Article 5

5a. By way of derogation from paragraph 2, 2a, 4 or 5, Member States may, where appropriate in consultation with the social partners, decide to allow the employer or third-country national to provide evidence that the prevailing salary in specific professions is lower than the salary threshold set by the Member State in accordance with paragraph 2, 2a, 4 or 5. In such case, the gross annual salary resulting from the monthly or annual salary specified in the work contract or binding job offer shall be equal to or higher than the prevailing salary. Where appropriate Member States may involve the social partners in assessing this evidence.

Article 2

(ja) prevailing salary” means the [usual / predominant] gross salary paid to the majority of comparable highly skilled workers in terms of:

- occupational classification, determined at ISCO unit group or 4-digit level,
- sector of employment,
- geographical area where the work is habitually carried out,
- job duties and responsibilities, and
- experience level of the applicant,

and established via legitimate sources of labour market and salary information, as determined by national law, such as applicable laws, collective agreements or practices, consultation with trade union and employer organisations, information acquired via statistics or surveys, or, in absence of other sources, evidence of the gross salaries paid by the employer concerned to highly skilled workers in a comparable situation.

Article 23(2)

2. Member States shall communicate to the Commission [...] upon each modification, but at least once per year:

- a) [...] the factor they have decided to set for determining the annual salary thresholds, and the resulting nominal amounts, in accordance with paragraph 2 or, where applicable, paragraphs 2a, 4 or 5 of Article 5;
- b) [...] the list of the professions for which a derogation in accordance with Article 5(4) applies, **the decision whether employers or third-country nationals may apply for derogations in accordance with Article 5(5a)** and, where applicable, the justification for a derogation in accordance with Article 5(2a);

c) [...] the list of allowed business activities, as meant in Article 2(l), for the application of Article 19;

d) information on legislative or regulatory measures in accordance with Article 5a, where applicable;

e) information on a check of the labour market situation provided for by Article 6(3)(cc), where applicable.

Equivalence between higher education qualifications and professional experience:

Change of language from „highly qualified“ to „highly **skilled**“ everywhere in the text.

Article 2 – Definitions:

(b) highly **skilled** ~~qualified~~ employment” means employment of a person, who:

- in the Member State concerned, is protected as an employee under national employment law or in accordance with national practice, irrespective of the legal relationship, for the purpose of exercising genuine and effective work for, or under the direction of, someone else;

- is paid; and

- has the required higher professional qualifications as attested by evidence of higher education qualifications or, ~~where provided by national law,~~ higher professional skills;

(i) "higher professional skills", ~~where provided for by national law or national procedures,~~ means **knowledge, skills and competences** attested by at least five years of professional experience of a level comparable to higher education qualifications and which is relevant in the profession or sector specified in the work contract or binding job offer;

Article 28 – Transposition

3. By way of derogation from paragraph 1, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with point (i) of Article 2 with regard to recognising higher professional skills as higher professional qualifications by [4 years after the general transposition deadline].

Regarding the Commission's support to Member States for developing systems for skills assessment, the Presidency will call on the Commission to take up such commitment and to issue a corresponding statement at adoption.

4. Labour market access

- Labour market test allowed upon first entry;
- Labour market test possible upon mobility (only if allowed for the first entry);
- No labour market test for family members;
- Immediate access to other highly skilled jobs (while fulfilling the Blue Card conditions) with the right to change position or employer upon communication to Member States if they so require;
- Possibility of self-employed activities next to the EU Blue Card.

- Labour market test allowed upon first entry

Article 6(3)(cc): Member States may check whether the concerned vacancy could not be filled by national or Union workforce, by third-country nationals lawfully resident in that Member State and already forming part of its labour market by virtue of Union or national law, or by EU long-term residents wishing to move to that Member State for highly **skilled ~~qualified~~** employment in accordance with Chapter III of Directive 2003/109/EC.

- Labour market test possible upon mobility (only if also for the first entry): no changes to the text

Article 20(6): The second Member State may reject an application for an EU Blue Card on the basis of a check carried out in accordance with Article 6(3)(cc) only if that Member State carries out such checks when it is the first Member State.

- No labour market test for family members

Article 16(6): By way of derogation from Article 14 (2) of Directive 2003/86/EC, Member States shall not apply any time limit in respect of access to the labour market. By way of derogation from Article 14(1)(b) of that Directive, and without prejudice to the restrictions referred to in Article 13(3) of this Directive, family members shall have access to any employment, and to self-employed activity in accordance with applicable requirements under national law, in the Member State concerned.

~~Before a family member is granted access to employment, Member States may check whether the concerned vacancy could not be filled by national or Union workforce, by third-country nationals lawfully resident in that Member State and already forming part of its labour market by virtue of Union or national law, or by EU long-term residents wishing to move to that Member State for employment in accordance with Chapter III of Directive 2003/109/EC.~~

- Immediate access to other highly skilled jobs (while fulfilling the Blue Card conditions) with the right to change position or employer upon communication to Member States if they so require:

Article 13: 1. EU Blue Card holders shall have access to highly ~~skilled~~ **skilled** ~~qualified~~ employment in the Member State concerned provided that the criteria for admission laid down in Article 5 are fulfilled. **Member States may require that a change of employer or changes affecting the fulfilment of the criteria for admission as set out in Article 5 are communicated in accordance with procedures laid down by national law.**

~~1a. During the first two years of legal employment in the Member State concerned as an EU Blue Card holder, Member States may require that a change of employer be subject to the check set out in Article 6(2).~~

~~The right of the Blue Card holder to pursue the employment may be suspended until the outcome of this check confirms that the vacancy concerned could not be filled by the persons listed in Article 6(2).~~

~~1b. During the first two years of legal employment in the Member State concerned as an EU Blue Card holder, Member States may require that a change of employer and changes which may affect the fulfilment of the criteria for admission as set out in Article 5 are:~~

~~(a) subject to the prior authorisation in writing of the competent authorities in the Member State concerned in accordance with procedures laid down by national law, to be granted or denied within 30 days of the date of the request made by the EU Blue Card holder; or~~

~~(b) communicated by the EU Blue Card holder or his or her prospective employer in accordance with procedures laid down by national law.~~

~~After these first two years, the Member State may only require such changes to be communicated in accordance with the procedures laid down by national law. The communication procedure shall not suspend the right of the EU Blue Card holder to pursue the employment.~~

~~**- Possibility of self-employed activities next to the EU Blue Card:**~~

~~Article 13(2): Without prejudice to the criteria for admission set out in Article 5, Member States may allow EU Blue Card holders to engage in self-employed activity in parallel to the activity in highly **skilled** qualified employment **under the same** in accordance with conditions laid down in national law **as for nationals**. Member States are entitled to limit the scope of allowed self-employed activity.~~

5. Processing time: 60 days *(in addition to other changes to this Article under point 1)*

Article 10

1. The competent authorities of the Member States shall adopt a decision on the application for an EU Blue Card and notify the applicant in writing, in accordance with the notification procedures laid down in the national law of the Member State concerned. The decision shall be adopted and notified at the latest within ~~90~~ **60** days of the date of submission of the complete application.

Where the employer has been recognised in accordance with Article 12, the decision shall be adopted and notified at the latest within 30 days of the date of submission of the application.

2. Under exceptional and duly justified circumstances linked to the complexity of the application, Member States may extend the maximum period referred to in paragraph 1 by 30 days. They shall inform the applicant of the extension before the maximum period has expired.

6. Access to long-term resident status

- Should be granted after 3 years' residence as a EU Blue Card holder in the same Member State;
- Should be granted after 5 years' residence with different statuses in different Member States (minimum 2 years in the last Member State).

Article 17 – EU long-term resident status for EU Blue Card holders *(in addition to other changes to this Article under point 1)*

2. By way of derogation from Article 4(1) of Directive 2003/109/EC, Member States ~~shall~~ **may** grant EU long-term resident status to third-country nationals who have legally and continuously resided as EU Blue Card holders within their territory for three years immediately prior to the submission of the relevant application.

The EU long-term resident status granted in accordance with the first subparagraph of this paragraph may be withdrawn before the period of legal and continuous residence of five years referred to in Article 4(1) of Directive 2003/109/EC within the territory of the Member States has been completed, where the third-country national [...] does not have sufficient resources to maintain himself or herself and, where applicable, the members of his or her family, without having recourse to the social assistance system of the Member State concerned. Member States shall not withdraw the EU long-term resident status where the withdrawal would be disproportionate taking into account the reasons underlying the lack of sufficient resources of the third-country national concerned.

3. By way of derogation from Article 4(1) of Directive 2003/109/EC, the EU Blue Card holder having made use of the possibility provided for in Article 20 of this Directive is allowed to cumulate periods of residence in different Member States in order to fulfil the requirement concerning the duration of residence, if that holder has accumulated:

(a) five years of legal and continuous residence as an ~~EU Blue Card holder~~ within the territory of the Member States; and

(b) two years of legal and continuous residence as an EU Blue Card holder immediately prior to the submission of the relevant application within the territory of the Member State where the application for the EU long-term resident status is submitted.

7. Long-term intra-EU mobility

- allowed after 12 months in the first Member State;
- qualification assessment waived for unregulated profession;
- sickness insurance waived;
- processing time: 30 days;
- allowed to work during processing.

Article 20 - Long-term mobility in a second Member State

1. After twelve months of legal residence in the first Member State as an EU Blue Card holder, the third-country national shall be entitled to enter a second Member State for the purpose of highly **skilled** ~~qualified~~ employment on the basis of the EU Blue Card and a valid travel document under the conditions set out in this Article.

2. As soon as possible and no later than one month after entering the territory of the second Member State, the EU Blue Card holder or his or her employer or both shall submit an application for an EU Blue Card to the competent authority of that Member State and present all the documents proving the fulfilment of the conditions referred to in paragraph 3 for the second Member State.

The ~~second Member State may allow the~~ EU Blue Card holder **shall be allowed** to start working immediately after submitting the application.

The application may also be submitted to the competent authorities of the second Member State while the EU Blue Card holder is still residing in the territory of the first Member State.

3. For the purposes of the application referred to in paragraph 2, the EU Blue Card holder shall [...]:

(a) present the valid EU Blue Card issued by the first Member State;

(b) present a valid work contract or, as provided for in national law, a binding job offer for highly [...] qualified employment, of at least six months in the second Member State;

(c) for regulated professions, present a document attesting fulfilment of the conditions set out under national law for the exercise by Union citizens of the regulated profession specified in the work contract or binding job offer as provided for in national law;

~~(ca) if requested by the Member State concerned, present the documents attesting higher professional qualifications in relation to the work to be carried out as provided for in national law;~~

(d) present a valid travel document, as determined by national law;

(e) present evidence of meeting the salary threshold set in the second Member State in application of paragraph 2 or, where applicable, of paragraphs 4 or 5 of Article 5;

~~(f) provide evidence of having, or if provided for by national law, applied for a sickness insurance for all the risks normally covered for nationals of the Member States concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or resulting from, the work contract.~~

[...]

8. The second Member State shall adopt a decision on an application for an EU Blue Card and notify the applicant and the first Member State in writing as soon as possible, but at the latest within **30** ~~90~~ days of the date of submission of the complete application of its decision to either: [...]