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From:	Presidency
To:	JHA Counsellors (Migration, Integration, Expulsion)
Subject:	Proposal for Directive of the European Parliament and the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment -Presidency compromise suggestions

With a view to the informal videoconference of the members of the JHA Counsellors (Migration, Integration, Expulsion (Legal Migration)) of 27 January 2021, delegations will find in the Annex to this note the Presidency compromise suggestions on Articles 5, 6, 7, 20, 23 and recital 5.

Proposed suggestions are indicated in bold and strikethrough.

Delegations are invited to examine the Presidency's compromise suggestions.

Following the JHA counsellors meeting on 18 January the Presidency inter alia discussed Articles 5, 6, 7 13 and 20 of the draft Blue Card Directive in more detail with the EP. Following these discussions, the Presidency took a closer look at some of the more technical aspects in these Articles with a view of finding possible compromises.

Delegations are invited to examine the Presidency's compromise suggestions.

Salary threshold and derogations - Article 5 - criteria for admission:

The salary threshold limits, its derogations and the involvement of the social partners are matters where the legislators do not, yet, agree. The Presidency would like to ask Member States for their support with regard to the compromise text, as proposed below, as a basis for discussions with the European Parliament.

(i) salary threshold limits

In the JHA Counsellors meeting of 18 January the Presidency reintroduced the discussion on the salary thresholds for the admission of highly qualified workers, following-up on the compromise suggestion presented by the Bulgarian Presidency. A large majority of Member States agreed that the proposal was a good basis for further progress. As a reminder, the suggestion was as follows:

- A range of 1.0 to 1.6 of the average gross annual salary in the Member State as a criterion for admission.

(ii) Involvement of social partners

Another issue still dividing the position of the EP and of the Council is the involvement of the social partners, in the establishment of the salary thresholds and its derogations.

The EP proposed [AM 69, L 116a] that the salary threshold would be defined in agreement with social partners, while the mandate adopted does not provide for such involvement.

A possible compromise solution would be to accept the consultation, but not the agreement, of the social partners in the process. The Presidency proposes, thus, a new wording for paragraph 2 of Article 5 [L 115] and would ask the Member States to agree on the proposal.

Proposals for Article 5(2) and (3)

- a) With a view to improve the structure of the provision the Presidency proposes that the order of paragraphs 2 and 3 is changed. Current paragraph 3 [L 116] should become paragraph 2 without any change in the wording.

- b) The current paragraph 2 [L115] would become paragraph 3. The Presidency proposes the following text (changes highlighted in yellow).

“In addition to the conditions laid down in paragraph 1 **and 2**, 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 **shall be** set by the Member States, **after consultation with the social partners, and** be at least [...] ~~1.1~~ **1.0** times but not higher than [...] ~~1.7~~ **1.6** times the average gross annual salary in the Member State concerned.”

(iii) Derogations

With a view to the upcoming technical meeting, the Presidency would like to further discuss the derogations in paragraphs 2a, 4 and 5 [L115, 117 and 118, respectively] and to have the understanding of the Member States' flexibility regarding EP amendment 69 [L 116b].

Criteria for admission, refusal and withdrawal

Following up of discussions held in the technical meeting of 21 January, the Presidency still identifies some points where the positions are not converging and require further analysis and discussion.

Article 6

In paragraph 1:

- (b) where the documents presented have been fraudulently acquired, or falsified or tampered with; [L127]

Can Member States accept this ground for refusal under a “may” clause as proposed by the EP in L 133a *[(ca) where, with the knowledge of the third-country national, the documents presented for the purpose of admission pursuant to Article 5 have been fraudulently acquired, or have been falsified or tampered with]*?

In paragraph 3:

- (a) where the competent authorities of the Member State, after checking the labour market situation, conclude that the concerned vacancy may 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 [...] qualified employment in accordance with Chapter III of Directive 2003/109/EC. [L130]

Regarding this provision, agreed among Member States during the JHA Counsellors meeting of 18 January, the EP declared that it could be accepted provided that the wording is adjusted as follows:

(a) where the competent authorities of the Member State, after checking the labour market situation, **in particular where there is a high level of unemployment**, conclude that the concerned vacancy may 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 [...] qualified employment in accordance with Chapter III of Directive 2003/109/EC.

In the view of the Presidency, the text added and the expression used (“in particular”) does not restrict the competence of the Member States to reject an application where it was concluded that the vacancy could be filled by the EU citizens or legal residents. Would Member States share this view?

(d) the Member State has evidence or serious and objective grounds to establish that the third-country national would reside for purposes other than those for which he or she applies to be admitted.

In the view of the Presidency, the inclusion of identical provision in the S&R and ICT directives aimed at precluding a third country national to access the labour market by misusing the conditions set forth in those instruments that limited the purpose of the residence to the objectives defined therein. In the case of the Blue Card directive such concerns are not applicable. In this regard, and in a spirit of compromise, the Presidency supports the deletion of this provision and asks the Member States for their support.

Article 7

As mentioned in the technical meeting of 2 December 2020, the Council agreed to reflect on amendment 93 [L142] proposing the deletion of the possibility that a MS may withdraw or refuse to renew a Blue Card “where appropriate, where the employer has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions”. In the EP’s view this provision encloses a “punishment” of the Blue Card holder for reasons that are beyond his/her control.

Would the Member States agree with the reasoning presented by the EP? And in this case, could this provision be deleted?

Regarding the proposal of the Presidency to delete paragraph 2 (ba) [L142a], and having regard to the explanations provided at the last meeting on its needless, Member States are invited to share their understanding on, whether, in a spirit of compromise, the proposal could be amended.

By way of compromise, the Presidency amended recital 21 [L30] adding some examples of what could constitute an abuse of the mobility referred to in paragraph 2 (f) [L146]. Nevertheless, the EP insists on deleting the last sentence (“*makes use of the mobility provisions of [...] Chapter V in an abusive manner*”) of the Council (and Commission) text.

The Presidency understands that an abusive use of the mobility provisions will, in any case, constitute a non-compliance of such provisions and asks Member States to share their views on this matter.

Article 20

In the technical discussions, the EP didn't accept the Council proposal for the last sentence of paragraph 8a [L264]. In a view of a compromise, the Presidency asks Member States to agree on reducing the scope of the information transmitted to the cases where the grounds for refusing the mobility concern a threat to public policy, public security or public health posed by the third country national.

If agreed, paragraph 8a would read as follows:

(b) where the conditions laid down in this Article are not fulfilled, [refuse to issue an EU Blue Card and] oblige the applicant and his family members, in accordance with the procedures provided for in national law, to leave its territory. **In case the ground for the refusal decision is the one referred to in paragraph 2 (d), in its notification to the first MS, the second MS shall specify the reasons for the decision.**

Harmonization

To complete the set of proposals on harmonisation and as announced in the meeting of 21 January, the Presidency suggests the following text proposals on Article 23 and Recital 5:

On Article 23: proposal to add a new paragraph – 1a, after paragraph 1 with the following wording:

“1a. Where Member States issue national residence permits for the purpose of highly qualified employment, they shall ensure the same access to information on the EU Blue Card as on the national residence permits.”

On recital 5: a clarification on the approach on harmonisation, as follows:

(5) An EU-wide admission system to attract and retain highly [skilled/qualified] workers into the Union should be created. This Directive should be applicable regardless of whether the initial purpose of residence of the third-country national is highly qualified employment or if he or she resides first on other grounds and changes status towards this purpose subsequently. It is necessary to take into account the priorities, **and** labour market needs ~~and reception capacities~~ of the Member States. This Directive should be without prejudice to the competence of the Member States to maintain or to introduce ~~new~~ national residence permits for the purpose of highly qualified employment. The third-country nationals concerned should have the possibility to apply for an EU Blue Card or for a national residence permit. ~~Moreover, this Directive should not affect the possibility for an EU Blue Card holder to enjoy additional rights and benefits which may be provided by national law, and which are compatible with this Directive.~~ **However, Member States should apply a level playing field between the EU Blue Card and such national residence permits, in terms of rights, procedures and access to information. In particular, Member States should ensure that EU Blue Card holders and their family members do not enjoy a lower level of procedural safeguards and rights than holders of national residence permits. They should also ensure that applicants for an EU Blue Card are not in a less favourable position than applicants for national residence permits with regard to recognition procedures for employers, and that they pay a comparable amount of fees for the handling of their application. Finally, Member States should ensure that the EU Blue Card benefits of the same level of information, promotion and advertisement activities than the national residence permits, for example through information on the national websites on legal migration, information campaigns and training programmes for the competent migration authorities.**