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From:	General Secretariat of the Council
To:	JHA Counsellors (Migration, Integration, Expulsion)
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Subject:	Proposal for a 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 - Blue Card Reform: State of play and possible way forward

Delegations will find attached a compilation of contributions received from Member States on the abovementioned subject.

WK 14463/2020 INIT

LIMITE

Written replies submitted by the Member States

in regard to the

Proposal for a 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

Blue Card Reform: State of play and possible way forward

and following informal videoconference of the members of the JHA Counsellors (Migration, Integration, Expulsion) on 4 December, 2020

(ST 13407/20 and WK 14263 2020 INIT)

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FRANCE

I- Harmonisation :

1. Systèmes nationaux parallèles (article 3 paragraphe 4) :

- La France salue le maintien des régimes nationaux parallèles ;
- Dans un esprit de compromis, nous pouvons accepter l'octroi de procédures similaires entre les cartes bleues européennes (CBE) et les titres nationaux visant les autres travailleurs hautement qualifiés.
- Nous sommes favorables à ce que l'égalité de traitement de l'article 15 s'applique autant aux titulaires de la carte bleue européenne qu'aux ressortissants de pays tiers hautement qualifiés titulaires d'un permis national.
- En ce qui concerne le passage d'un titre national à la carte bleue européenne, La France n'est pas opposée à la possibilité de solliciter à n'importe quel moment l'échange d'un titre national en une CBE, à condition que le demandeur remplisse les conditions de délivrance. Cette demande d'échange ne devrait pas conduire à une nouvelle vérification des « qualifications », si ces dernières ont déjà été vérifiées lors de l'obtention d'un titre national. La France se demande toutefois ce que la Présidence entend par « *qualifications* ». Est-il seulement question des diplômes ?
- Dans le même esprit de compromis, nous pouvons accepter la prise en compte des périodes passées sous un titre national afin de solliciter une carte de résident de longue durée (CRLD-UE) une fois titulaire d'une CBE (dès lors que les critères habituels de la CRLD-UE sont conservés : conditions de ressources pendant les années en situation régulière, etc.).
- Enfin, la France soutient les dispositions prévoyant que la CBE bénéficiera du même niveau d'information/promotion que les titres nationaux destinés aux travailleurs hautement qualifiés.

2. Accords bilatéraux/multilatéraux (article 4(1)(b))

- Les États membres doivent conserver la possibilité de négocier et ratifier des accords bilatéraux comportant des mesures -encore- plus favorables que la CBE.

II- Compétences

1. L'admission des ressortissants de pays tiers avant des compétences professionnelles supérieures devrait devenir obligatoire avec les limitations suivantes

- La France peut accepter la reconnaissance obligatoire des compétences pour les « *Information and Communications Technology Services Managers* (ISCO-08 classification 133) » et les « *Information and Communications Technology Professionals* (ISCO-08 classification 25) » ;

2. Concernant la durée minimale nécessaire pour atteindre des « compétences professionnelles supérieures »

- La France est totalement opposée à la réduction à 3 ans de la durée minimale d'expérience professionnelle requise. Cette durée est trop faible pour acquérir le statut de « travailleur très qualifié ». La durée minimale doit être conservée à 5 ans. Le maintien de la durée de 5 ans est la condition du ralliement de la France au compromis sur la catégorie des ICT.
- Cette opposition est d'autant plus forte que la renégociation de la directive CBE aboutit à une fourchette salariale inférieure à celle prévue par l'actuelle directive. La combinaison « faible niveau de compétences & faible niveau de salaire » aboutirait alors à la délivrance de CBE à des travailleurs ne relevant pas du champ d'application de la directive. Cela présente, en outre, un risque de dumping social dans les États membres à salaires élevés, préjudiciable tant pour les citoyens européens que pour les ressortissants de pays tiers pouvant légitimement prétendre au statut de travailleurs hautement qualifiés.
- À défaut, la France s'oppose à toute prise en compte des compétences, tant pour les professionnels ISCO-08 précités que pour l'ensemble des demandeurs.

3. Concernant l'évaluation des compétences professionnelles supérieures:

- La directive ne doit pas comporter de spécifications relatives à la méthode d'évaluation des compétences professionnelles ; les Etats-membres devraient conserver une marge de manœuvre sur la méthode ;
- Les États membres doivent également être libres de décider, si les résultats de l'évaluation des compétences ont un effet contraignant en dehors de la procédure d'admission à la CBE ;
- Si des États membres souhaitent procéder au contrôle de la réalité des compétences (« *plausibility check* »), la France ne s'y oppose pas ;
- La France peut accepter l'absence d'une période de transposition supplémentaire pour l'admission au séjour des RPT ayant des compétences dans les professions ISCO-08 précitées.
- Enfin, toute éventuelle extension de la liste des professions accessibles par reconnaissance des compétences doit être adoptée par le biais de la procédure législative ordinaire.

III- Mobilité de long terme (article 20)

1. Procédure de notification et procédure de candidature

- La France est favorable à la possibilité, pour l'État membre, de choisir entre une procédure de notification ou de dépôt d'une demande de titre.
- La France n'envisage pas de procédure de notification. En effet, il paraît légitime que le demandeur dépose une demande de titre de séjour en bonne et due forme (et peut alors bénéficier d'une autorisation de travail pendant la période d'instruction - voir *infra*). Ce dépôt permettra une étude complète de sa demande, limitera le risque de fraude et permettra la délivrance d'un titre de séjour qui facilitera l'accès aux droits annexes (prestations, etc.).

2. Commencer à travailler immédiatement

- La France ne voit aucun inconvénient à ce que le titulaire de la carte bleue soit autorisé, sans préjudice des exigences du droit national pour l'exercice des professions réglementées, à travailler immédiatement après la soumission de sa demande/notification, dès lors que l'utilisateur n'est pas en situation de première demande, mais en mobilité depuis un autre État membre.
- Concernant le point b, nous n'avons pas de remarque. Voir *supra*.

3. Documents à présenter

- En ce qui concerne le point a, nous ne sommes pas opposés à la clause optionnelle pour l'obligation de justifier d'une assurance maladie.
- En France, nous demanderons la production de deux documents : la preuve des qualifications professionnelles (qui permet de s'assurer que le demandeur remplit effectivement les conditions de délivrance de la CBUE) et la preuve d'une assurance maladie en cours de validité (qui permet de s'assurer qu'il ne sera pas une charge pour le système de santé durant l'instruction de son dossier).
- Concernant le point b, nous sommes opposés à ce que le deuxième État membre assure l'égalité de traitement avec ses ressortissants dès la phase d'instruction de la demande. Il n'est pas nécessaire d'attendre l'issue de l'instruction puisque le demandeur est, en principe, déjà pris en charge par le premier État-membre pour ce qui est de sa sécurité sociale.
- De telles dispositions, si elles sont *a priori* plus protectrices pour le ressortissant de pays tiers, conduisent à des conflits de lois positifs, sources de grande complexité juridique et administrative.

IV. Chômage

- Le France peut soutenir ce compromis dès lors que la période de chômage considérée par le compromis (3 ou 6 mois) est une période minimale et non maximale. Autrement dit, le ressortissant du pays tiers pourrait, à la discrétion de chaque État membre, conserver sa CBE même si la période de chômage subi excède la durée minimale de 3 ou 6 mois. Les États Membres doivent, en effet, conserver la possibilité d'accorder des périodes de chômage plus longues si nécessaires.

V. Examens du marché du travail

- La France ne pratique pas de test du marché du travail pour les titulaires de CBE (ou les membres de leurs de famille) et n'est donc pas directement concernée par ces dispositions.
- Nous sommes toutefois attachés à ce que les États membres pratiquant de tels tests conservent des marges de manœuvre permettant d'apprécier les besoins de leurs marchés du travail.

GREECE

Comments of the Greek Delegation on document “Blue Card Reform: State of play and possible way forward” (13407/20, JAI 1027)

[The answers to the Presidency’s questions in red]

I. Harmonization

1. Parallel national systems (Article 3 paragraph 4)

a) Do Member States support keeping the possibility of parallel national schemes for highly [qualified] third-country nationals while ensuring that similar procedural rights apply to EU Blue Card holders as to highly [qualified] workers benefiting from a national scheme (this would apply particularly to Articles 10, 11, 12, and 16, ensuring that the equal treatment is thus limited to procedural rights and Member States would retain the possibility to provide for different material rights such as access to long-term residence)?

EL Comments: We are of the opinion that MSs should maintain the possibility of having parallel national schemes for high qualified third-country nationals.

Regarding procedural rights of the national schemes:

- a) (Article 10) Deadlines for national schemes should not be the same with deadlines for the EU Blue Card Directive (very short). National law provides for general provisions in relation to deadlines for residence permits (e.g. deadlines in relation to single permit directive). Any amendment on deadlines would come against the provisions of national law, as well as the Single Permit Directive, since national schemes are related to residence permits under Single Permit Directive.**
- b) (Article 10) 1) Decision on rejecting an application for an EU Blue Card or decision on not renewing or withdrawing an EU Blue Card will be in writing, 2) in case of inadequate or incomplete application, the competent authorities shall notify the applicant for the additional information needed and 3) in case of pending renewal, the applicant will stay to the M-S until the administration decides on the renewal application: these provisions may be the same for the EU Blue Card Directive, as well as for national schemes (nevertheless those practices are already applied under Greek national migration law for all cases of applications).**

- c) **(article 11) the level of fees shall not be disproportionate or excessive: we consider that the wording already used to the single permit directive, could be used also for this case. We agree to use this also for national schemes (in any case this wording is already used for national schemes, as these residence permits are included to single permit procedure and rights).**
- d) **(article 12) this article is providing for a special (may clause) process for recognizing employers who wish to hire Blue Card holders – if this provision remains as a may clause, we can agree to adopt it also for the respective national scheme.**
- e) **(article 16) we consider that national and EU high skilled workers should both have the respective derogations as far as family reunification (we already implement those derogations to business executives and other relevant categories of our national law)**

b) Can Member States agree that the equal treatment provisions in Article 15 cover equal treatment of the EU Blue Card holder with highly [qualified] third-country nationals holding a national permit?

Due to the fact that TCN high skilled workers under national scheme are granted the rights based on equal treatment under single permit directive, we are of the opinion that most of the rights are already covered. We consider that a small distinction between the two categories on the provided rights should be maintained.

c) could Member States also (still) accept the following additions based on what was discussed in the JHA Counselors meeting on 11 January 2019⁴ (provided, of course, that the requirements for the EU Blue Card have been and still are fulfilled)?:

- facilitation for a quick and easy change from a national permit to the EU Blue Card at any point in the same Member State without a new check of qualifications if already done for the national permit;

YES – we can agree on that

- take time spent with a national permit in the same Member State before receiving the Blue Card into account for the (shortened) period of residence required for long-term resident status;

YES – we can agree on that

- make sure full information on the EU Blue Card is made available; equal promotion and information activities as for national schemes.

YES – we can agree on that

2. bilateral/multilateral agreements (point (b) of Article 4(1))

- a) **Do Member States agree? Can you give examples why this provision is necessary?**

YES – we need to keep the possibility of having bilateral or multilateral current or future agreements with third countries / nevertheless we are in the field of legal migration, so a level of national maneuver should be maintained.

- b) **Depending on the course of the negotiations, could Member States show some flexibility on this issue, if necessary to reach an overall compromise?**

We have some concerns – it is a matter of principle in relation to the rights of the member state in view of managing national labour market, as well as using bilateral agreements as a tool of migration and foreign affairs policy.

II. Skills

1. The admission of TCNs with higher professional skills should become mandatory with the following limitations:

...

2. **Concerning the minimum necessary length for attaining ‘higher professional skills’: The EP supports the Commission’s proposal according to which higher professional skills are attained after at least 3 years of professional experience. In the Council’s position, at least 5 years of professional experience are required.**

...

Could Member States support this compromise proposal?

Our first reaction is that high professional skills should not become mandatory, but to be connected to national practices. In case of a general compromise, we might accept presidency’s compromise proposal, but with the limit of having at least a five year period of experience in the last seven years. This request is deemed necessary in order to safeguard real professional experience in the information and communications technology professions / field.

3. Concerning the assessment of higher professional skills:

- a) Do Member States agree that the admission procedure should include an assessment of whether the acquired skills are sufficient to exercise the specific professional activity listed in ISCO-08 classifications 133 or 25 that the TCN wishes to take up?

YES we agree.

- b) Do Member States agree that the Directive should not contain any specifications as to how higher professional skills are to be assessed?

YES we agree – It will be up to the MS to set up the process.

- c) Do Member States agree that they should be permitted to assess skills by means of a plausibility check based on the documents presented in the admission procedure?

YES we agree.

- d) Do Member States agree that they should be free to decide, for their respective territory, whether or not the results of the skills assessment should have a binding effect outside the EU Blue Card admission procedure?

YES we agree.

The process described above is what Greek authorities are already following, by derogation, in case an employer is requesting the invitation of a TCN, as high skilled, due to his experience and not due to his educational qualification. In any case, it should be clear in the text that professions, which need special licensing to be applied, will be a prerequisite for the admission.

4. From the Presidency's point of view, there is no need for an additional transposition period (Article 28(3)) regarding the admission of TCNs with higher professional skills for information and communications technology professions.

Do Member States agree?

YES we agree – no necessity for additional transposition period.

5. The Presidency suggests that any future extension of the list of professions accessible with 'higher professional skills' should be adopted through the ordinary legislative procedure. Do Member States agree or are Member States in favour of more flexibility (e.g. allowing the extension of the list of professions by the adoption of an Implementing Act or a Delegated Act)?

We believe that MSs should have the right to extend the list of professions, following the same procedure we have for the seasonal workers directive on setting up the areas where the directive is applied (but Member States' decision and notification to the European Commission).

III. Long-term mobility (Article 20)

1. Notification procedure vs. application procedure

- a) Following the corresponding provisions in the Students and Researchers Directive and in the Intra-Corporate Transferees Directive, could Member States support amending Article 20 in such a way that it is for Member States to decide whether they apply an application procedure or a notification procedure?

YES we agree

- b) Should the requirements requested in the notification procedure match the ones for the application procedure? Where do you see a need for specific provisions only for the notification procedure?

YES we agree on the notification procedure. The only issue that should be clear is that the residence permit issued to the first member state should be valid for all the period in the second member state, in order to apply the notification system safely.

2. Start working immediately

- a) Could Member States agree that the Blue Card holder shall be allowed to start working immediately after submitting the application/notification if care is taken to ensure that this will be without prejudice to requirements under national law for the exercise of regulated professions?

YES, we can agree with the suggestion. In Greece a Blue Card applicant (with a national D visa and an application for the residence permit) may start working from the first day that he/she will submit the application for the residence permit, unless his/her application is incomplete. (With the exception of the health care certificate).

- b) If not, do you think it would be possible to agree to such a provision if additional requirements are set out in the provision? Could these requirements be similar to those set out e.g. in Article 29(2)(d) of the SRD? In the alternative, what other requirements would you deem necessary?

- - -

3. Documents to be presented

- a) Since the request for documents attesting higher professional qualifications in relation to the work to be carried out as provided for in national law (point (ca) of paragraph 3 - 'unregulated professions') is an optional clause for Member States, the Presidency suggests reverting to the compromise suggestion tabled on 2 February 2018 and converting the provision on sickness insurance (point (f) of paragraph 3) into an optional one and moving both provisions into a new paragraph 3a⁷. This new paragraph 3a would then give those Member States who see a need for it the possibility to request those documents while others could choose not to impose such a requirement.

Could Member States support the Presidency's approach?

Yes we can support Presidency's approach.

- b) As indicated above, the objective of the EP is to simplify the procedures for moving to a second Member State. With a view to showing more flexibility towards the EP, a further simplification of the process could be considered.

...

Could Member States agree to providing equal treatment with the nationals of the second Member State already in the application phase?

We have some concerns, due to the fact that MSs practices might vary, maybe we should not touch upon that issue.

If you cannot agree, could you support equal treatment with union citizens, under corresponding application of Directive 2005/36/EC, keeping in mind that there might be a time gap?

Yes, we might agree on that (under positive reservation)

IV. Unemployment

Article 14 deals with the rights and obligations of EU Blue Card holders who are temporarily unemployed. The EP wishes to raise the maximum period of temporary unemployment (Article 14(1)) from three to six months. Concerning this point, the Presidency suggests the following compromise proposal:

...

Do Member States support this Presidency proposal?

We believe that the time period of three months is sufficient. It is a very sensitive issue to raise the unemployment time period especially in relation to unemployment rates of EU nationals in those areas (IT and informatics)

V. Labour market tests

... ..

1. The Presidency considers that, with regard to highly qualified workers, the protection of domestic labour markets through labour market tests is only necessary where the labour market for 'highly qualified professionals' is facing disturbances such as a high level of unemployment. The Presidency therefore suggests reconsidering parts of the Commission's initial proposal and makes the following suggestions:

- a) Labour market tests shall only be conducted if there are disturbances (but not “serious” disturbances as in the Commission proposal) on the domestic labour market of a Member State such as a high level of unemployment. However, a Member State would be obliged neither to notify the Commission of its intention to introduce a labour market test nor to give any reasons for the introduction of the labour market test. Moreover, there would not be any time limits for applying labour market tests.

Could Member States support this proposal?

We cannot support this proposal. We believe that labour market tests should remain to MSs National discretion without any other restrictions set out by the Directive.

As disturbances on domestic labour markets can vary substantially depending on occupations, sectors and regions within the territory of a Member State, a recital should clarify that Member States should consider limiting labour market tests to the concerned occupations, sectors and regions.

Could Member States support this proposal?

We cannot agree on this proposal (see previous comment).

2. Upon arrival, an EU Blue Card holder needs to be progressively integrated into the labour market. Especially during the initial period, it is important for Member States to have safeguards to ensure that persons admitted as highly qualified workers end up in corresponding occupations and the EU Blue Card scheme is not used for abusive purposes by either the employers or the TCNs. In the view of the Presidency, it is therefore crucial that Member States retain the right to conduct a labour market test if the EU Blue Card holder decides to change employer during the initial period of legal employment. However, the Commission and the EP clearly expressed their wish to abolish this right, which exists under the Blue Card Directive currently in force.

- a) Against this backdrop, the Presidency makes the following compromise suggestion: In general, Member States would retain the right to conduct a labour market test during the initial period of legal employment of an EU Blue Card holder in cases where he or she wishes to change employer. However, this right would be subject to the following condition: The labour market test may only be conducted if the Member State - when the competent authority adopts its decision - has also introduced such checks for TCNs who do not (yet) hold an EU Blue Card.

Could Member States support this proposal?

We consider that this provision is enough complex to apply

- b) According to Article 13(1a) of the Council's general approach, Member States would be allowed to conduct a labour market test in cases where an EU Blue Card holder wishes to change the employer during the first two years of legal employment. The Presidency suggests reducing this period to 12 months in the framework of an overall compromise.

Could Member States support this proposal?

Yes. We can agree

3. According to the second subparagraph of Article 16(6), (Commission proposal and Council general approach), Member States may conduct a labour market test before a family member of an EU Blue Card holder is granted access to employment. The EP does not want to grant Member States this right (EP Amendment 131). The Presidency does not consider this labour market test for family members to be crucial as these family members have a right to reside in the Member States. Moreover, facilitating access to the labour market for family members will facilitate their integration in the host Member State. The Presidency therefore suggests abstaining from conducting labour market tests for family members provided that such a test may still be conducted in regard to the Blue Card holder himself.

Could Member States support this proposal?

Yes. We can agree

4. Finally, the Presidency wishes to get a clearer picture on the question as to what extent labour market tests for TCNs are actually applied by Member States. Therefore the Presidency asks the following questions:

Do Member States currently apply labour market tests for TCNs? Have there been any changes recently?

Yes we apply labour market test, while for EU Blue Card holders we apply volumes of admission (every two years).

HUNGARY

We acknowledge the Presidency's efforts to reach a compromise. At the same time, in our view, much more important issues are on the agenda in the current situation, both at national and EU level. In view of this, we consider the intensity of the negotiations too excessive.

The Hungarian position on the dossier is unchanged, we have a number of red lines. We do not necessarily see the need to amend the directive if it results in rules that are less favourable to us.

Hungary does not agree that labour market needs should be addressed by encouraging immigration and that this should be promoted through harmonization at EU level. Especially in current times where national circumstances differ widely, the protection of the labour market is a priority for us, in order to protect our own citizens.

I. Harmonisation

Maintaining parallel national systems is a red line in the basic Hungarian position. Maintaining national competence in this area is a priority. We do not support proposals that would undermine competences with regard to both national systems and current or future international agreements.

We could accept ensuring similar procedural rights for EU Blue Card applicants and holders as to other third-country national highly qualified workers. Yet, we enter a scrutiny reservation on the equal treatment provisions in Article 15, as it requires further consultation due to its horizontal nature.

With regard to switching between permits, we need further clarification on what “facilitation for a quick and easy change” in practice could actually mean (requirement of a new application, length of procedure, fees). As regards omitting the new check of qualifications, it could only be accepted if the specific qualification required for the new position has been checked, and not any kind of qualification.

We do not object to taking into account the time spent with a national permit while deciding on the long-term residence of the Blue Card holder. We also agree with the equal promotion of the Blue Card scheme.

As for international agreements, we require full flexibility both legally and politically. Legally, the external competences of the Member States could not be more restrictive than internal competences in this field. We are also of the opinion, that regardless of the presently existing agreements, national competences should be reserved for concluding future agreements, as well.

II. Skills

Recognition of skills instead of formal qualification is not acceptable for any sector. It is important for Hungary that in the case of highly skilled employment, it is verified with proper documents that the applicant has the skills and formal qualifications necessary to fill the position. A binding provision is non-acceptable for Hungary, only optional skills recognition can be applied. We have already discovered abuses in connection with the proof of university degrees, that is why proof of practice can give rise to even more abuse, and it is impossible to carry out a thorough plausibility check without as the authenticity of the document could be fully verified. Furthermore, newly establishing a procedure for the recognition of skills would be burdensome, while the added value of the whole system is questionable. This situation could not be solved by an employer-driven system, or by the employer having to give its consent to the employment, as collusion with employers is often an element of abuse. As for establishing the

As regards extending the compulsory application of skills recognition to further sectors in the future, we cannot accept any preferential procedures in this regard, either.

III. Long-term mobility (Article 20)

1)

We do not agree with the parallel drawn with the other directives, as the personal scope of those directives as well as the nature of mobility is fundamentally different, limited in duration and activity. However, if the requirement of application is also an option, Hungary does not oppose such a regulatory concept.

2)

With regard to allowing the immediate start of work, we also consider it necessary for the Member State to be able to decide for itself whether to grant this possibility or not. It is important for Hungary to be able continue to regulate access to the domestic labour market at national level and that the principle of Community preference will be enhanced and that young Hungarian citizens should not be disadvantaged compared to third-country nationals. In view of all this, we oppose those elements of the proposal which have the opposite purpose.

3)

We can agree to a proposal allowing the Member States to decide whether or not the request for certain documents is deemed necessary.

If the proposed modifications are actually only structural modifications, and the existence of higher professional qualification and health insurance can be checked as a second Member State, the suggested modification is considered acceptable.

Recognition of diplomas

Hungary is still examining the practical effects of the proposal, with negative reservations.

IV. Unemployment

In Hungary, in the case of Hungarian (and EU) citizens, the jobseeker's allowance can be granted for a maximum of 90 days and an entitlement period of 3 years can be taken into account. As the government did not consider it appropriate to increase the period in view of the epidemic situation, we do not support the increase to 6 months in the case of a Blue Card holder, either.

V. Labour market tests

With regard to labour market test, we reject proposals limiting national competences. It is the duty of the state to protect the national labour market and thus the employment of its own citizens in any situation. In addition to the different nature of national labour markets, we emphasize that the labour market situation can change rapidly (eg. job losses due to COVID-19), so the use of a national instrument cannot be made conditional either. The national competence may not be limited. Proposals mentioning high unemployment rates are not considered supportable in this regard, because they can be interpreted too broadly, and several interpretation question may occur (eg. who would considering an unemployment rate to be high, is it up to the Member States to decide or would it be determined at EU level?).

With regard to the proposed recital, instead of using “should”, we consider a solution to be supported by the wording “could” so that the Member State can decide when to apply the labour market test when applying for a Blue Card. Hungary applies labour market test to all third-country nationals as a main rule, although with a number of exceptions. Based on these national provisions, we can be flexible as regards exempting family members of Blue Card holders from the requirement of work permit, or as regards requiring the labour market test of Blue Card holders to only be conducted if similar measures are also introduced for other third-country nationals. Nevertheless, no further restriction of the application of labour market test is allowed, eg. we cannot accept reducing the 2-year period to 12 months as regards preferential rules in case of change of employment.

ITALY

“Proposal for a 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. Blue Card Reform: State of play and possible way forward”

I. Harmonisation

1. Parallel national systems (Article 3 paragraph 4)

- a) Do Member States support keeping the possibility of parallel national schemes for highly [qualified] third-country nationals while ensuring that similar procedural rights apply to EU Blue Card holders as to highly [qualified] workers benefiting from a national scheme (this would apply particularly to Articles 10, 11, 12, and 16, ensuring that the equal treatment is thus limited to procedural rights and Member States would retain the possibility to provide for different material rights such as access to long-term residence)?**

Italy agrees to maintain parallel national schemes for the entry of highly qualified workers.

Italy agrees to maintain for the Member States the right to regulate a difference in treatment with respect to the provisions of Articles 10-11-12-16, ensuring equal treatment for entry procedures.

Italy also agrees with the possibility for Member States to provide for different material rights for highly [qualified] workers benefiting from a national scheme, such as, for example, the possibility of accessing a residence permit for long-term residents.

- b) Can Member States agree that the equal treatment provisions in Article 15 cover equal treatment of the EU Blue Card holder with highly [qualified] third-country nationals holding a national permit?**

Italy agrees.

c) could Member States also (still) accept the following additions based on what was discussed in the JHA Counsellors meeting on 11 January 2019 (provided, of course, that the requirements for the EU Blue Card have been and still are fulfilled)?:

☐ ☐ **facilitation for a quick and easy change from a national permit to the EU Blue Card at any point in the same Member State without a new check of qualifications if already done for the national permit;**

Italy agrees with the amendments to the Directive aimed at facilitating the conversion from a national permit to the EU Blue Card without a new check of qualifications, if already done for the issue of the national permit, only in the hypothesis that no changes have occurred compared to the documentation already presented.

☐ ☐ **take time spent with a national permit in the same Member State before receiving the Blue Card into account for the (shortened) period of residence required for long-term resident status;**

Under the Italian law, the holder of an EU Blue Card, issued by another Member State and authorized to stay in Italy, can ask the competent Office of Public Security for the issue of the EC residence permit for long-term residents upon demonstration: a) to have legally and continuously resided for five years in the territory of the Union as EU Blue Card holder; b) to have been in possession of an EU Blue Card permit for at least two years. The absences of the foreigner from the territory of the Union don't interrupt the duration of the period referred to in this paragraph and are included in the calculation of the same period when they are less than twelve consecutive months and don't exceed a total of eighteen months in the period referred to in letter a).

☐ ☐ **make sure full information on the EU Blue Card is made available; equal promotion and information activities as for national scheme**

Italy agrees with the provision that all information on the EU Blue Card is easily accessible, ensuring the same methods of communication, information and promotion provided for national residence permits.

2. bilateral/multilateral agreements (point (b) of Article 4(1))

The Presidency suggests keeping the possibility of bilateral or multilateral agreements with third countries, which are more favourable than the regime offered by the Blue Card Directive.

a) Do Member States agree? Can you give examples why this provision is necessary?

Italy agrees with the possibility, through bilateral or multilateral agreements with third countries, to provide for more favorable regimes for the access of highly qualified personnel.

b) Depending on the course of the negotiations, could Member States show some flexibility on this issue, if necessary to reach an overall compromise?

According to Italy, it is necessary to maintain the possibility of providing for more favorable regimes to conclude through bilateral or multilateral agreements.

II. Skills

1. The admission of TCNs with higher professional skills should become mandatory with the following limitations:

- **It would only be mandatory to allow TCNs with higher professional skills to apply for an EU Blue Card with regard to information and communications technology professions;**
- **Moreover, not all information and communications technology professions would be accessible, but only the following ‘higher’ positions: Information and Communications Technology Services Managers (ISCO-08 classification 133) and Information and Communications Technology Professionals (ISCO-08 classification 25);**
- **The required professional experience would have to be of a level comparable to academic qualifications; and**
- **All other requirements for obtaining an EU Blue Card would have to be fulfilled.**

As for the entry of TCNs with higher professional skills in the field of information and communications technology (in particular managers and professionals referred to in the ISCO-08 classifications 133 and 25, with professional experience comparable to the academic one and in possession of all the others requirements established by the Directive for the issuance of the Blue Card), Italy is in favor of allowing such entries both within the Blue Card scheme and the parallel national regimes.

2. Concerning the minimum necessary length for attaining ‘higher professional skills’: The EP supports the Commission’s proposal according to which higher professional skills are attained after at least 3 years of professional experience. In the Council’s position, at least 5 years of professional experience are required.

The Presidency suggests lowering the required minimum length of professional experience to 3 years if the following additional requirement is put in place: the 3 years of professional experience must have been acquired during the last 7 years.

Could Member States support this compromise proposal?

As regards the duration of the professional experience required, Italy agrees with the compromise proposal to allow entry for TCNs who have acquired at least 3 years of professional experience during the last 7 years.

3. Concerning the assessment of higher professional skills:

a) Do Member States agree that the admission procedure should include an assessment of whether the acquired skills are sufficient to exercise the specific professional activity listed in ISCO-08 classifications 133 or 25 that the TCN wishes to take up?

Italy agrees with the possibility of granting Blue Card entry for managers and professionals in the IT and communications sector on the basis of a verification of professional skills.

b) Do Member States agree that the Directive should not contain any specifications as to how higher professional skills are to be assessed?

Italy agrees.

- c) **Do Member States agree that they should be permitted to assess skills by means of a plausibility check based on the documents presented in the admission procedure?**
Italy agrees
- d) **Do Member States agree that they should be free to decide, for their respective territory, whether or not the results of the skills assessment should have a binding effect outside the EU**

Blue Card admission procedure?

Italy agrees that Member States should be left free to assess the effects of the verification of competences (beyond the procedures relating to the issuance of the Blue Card).

4. From the Presidency's point of view, there is no need for an additional transposition period (Article 28(3)) regarding the admission of TCNs with higher professional skills for information and communications technology professions.

Do Member States agree?

Scrutiny reservation.

5. The Presidency suggests that any future extension of the list of professions accessible with 'higher professional skills' should be adopted through the ordinary legislative procedure.

Do Member States agree or are Member States in favour of more flexibility (e.g. allowing the extension of the list of professions by the adoption of an Implementing Act or a Delegated Act)?

Scrutiny reservation.

III. Long-term mobility (Article 20)

Scrutiny reservation on all the PCY proposals contained in this section of the document.

IV. Unemployment

Article 14 deals with the rights and obligations of EU Blue Card holders who are temporarily unemployed. The EP wishes to raise the maximum period of temporary unemployment (Article 14(1)) from three to six months. Concerning this point, the Presidency suggests the following compromise proposal:

The maximum period of temporary unemployment shall remain three consecutive months in cases where the TCN has held the EU Blue Card for less than two years. However, in cases where the TCN has been an EU Blue Card holder for two years or more, the maximum period of temporary unemployment shall be six consecutive months.

Do Member States support this Presidency proposal?

Italy does not agree on periods of unemployment that would lead to unequal treatment with other non-EU workers on the Italian labor market (12 months for unemployment); currently the EU Blue Card holder is subject to the provisions of the Italian laws on migration, according to which the foreigner who loses his job "can be registered in the employment lists for the residual validity period of the permit of residence, and in any case, except in the case of a residence permit for seasonal work, for a period of not less than one year or for the entire duration of the income support service received by the foreign worker, if higher ". Therefore, strong doubts are expressed about the proposal.

V. Labour market tests

PCY proposals n. 1/3

Scrutiny reservation.

4. **Finally, the Presidency wishes to get a clearer picture on the question as to what extent labour market tests for TCNs are actually applied by Member States. Therefore the Presidency asks the following questions:**

Do Member States currently apply labour market tests for TCNs? Have there been any changes recently?

The Italian legislation provides for the preventive verification of manpower on the internal labor market, available to fill the detailed jobs. For the purpose of issuing the nulla osta, the Italian or foreign employer legally residing in Italy who intends to establish a fixed-term or permanent employment relationship in Italy with a foreigner residing abroad must declare at the competent center for employment the unavailability, of a worker present on the national territory, duly documented and subject to verification, at the immigration office of the province of residence or of the one in which the company has its registered office, or of the one where the job must be carried out.

MALTA

I. Harmonisation

1. Parallel national systems (Article 3 paragraph 4)

Given the stated flexibility of the Commission regarding national schemes - and, of course, depending on the overall compromise in the end - the Presidency believes that it is likely that the EP will (eventually) accept to keep parallel national schemes in the Directive. However, the Commission and the EP have made it clear that it is important that there is no discrimination of the Blue Card holder or applicant¹.

a) Do Member States support keeping the possibility of parallel national schemes for highly [qualified] third-country nationals while ensuring that similar procedural rights apply to EU Blue Card holders as to highly [qualified] workers benefiting from a national scheme (this would apply particularly to Articles 10, 11, 12, and 16, ensuring that the equal treatment is thus limited to procedural rights and Member States would retain the possibility to provide for different material rights such as access to long-term residence)?

It continues to remain a red line for Malta to maintain the possibility to have parallel national schemes. Malta wants to maintain autonomy in national schemes in order to have flexibility in addressing its labour markets needs.

¹ In the following 'Blue Card holder'. Where the provisions are also applicable to applicants, they are included accordingly.

b) Can Member States agree that the equal treatment provisions in Article 15 cover equal treatment of the EU Blue Card holder with highly [qualified] third-country nationals holding a national permit?

The co-legislators agree that the aim of this reform is to have a more attractive Blue Card. Assuming that the EP agrees to keep the possibility of parallel national schemes on condition that the reformed Directive provides for sufficient incentives for applying for a Blue Card instead of a national permit.

Refer to reply above.

c) could Member States also (still) accept the following additions based on what was discussed in the JHA Counsellors meeting on 11 January 2019² (provided, of course, that the requirements for the EU Blue Card have been and still are fulfilled)?:

- **facilitation for a quick and easy change from a national permit to the EU Blue Card at any point in the same Member State without a new check of qualifications if already done for the national permit;**

Yes, subject that the admittance to TCN was based on highly qualified criteria.

- **take time spent with a national permit in the same Member State before receiving the Blue Card into account for the (shortened) period of residence required for long-term resident status;**

Malta can agree to this, as long as the shortened period remains a 'may' clause.

- **make sure full information on the EU Blue Card is made available; equal promotion and information activities as for national schemes.**

Malta can agree to this.

² Council document 15787/18, 21 December 2018, p. 2.

2. **bilateral/multilateral agreements (point (b) of Article 4(1))**

The Presidency suggests keeping the possibility of bilateral or multilateral agreements with third countries, which are more favourable than the regime offered by the Blue Card Directive.

a) **Do Member States agree? Can you give examples why this provision is necessary?**

Notwithstanding that Malta does not have current or prospective agreements regarding such category of migrants, Malta still maintains that this should be retained. This provides flexibility in line with Malta's position indicated in question 1 relating to national schemes. Furthermore, this would be beneficial for Member States which may experience labour and skills shortages.

b) **Depending on the course of the negotiations, could Member States show some flexibility on this issue, if necessary to reach an overall compromise?**

Yes, Malta would be open to discuss any possible proposal exploring flexibility on the issue.

II. **Skills**

The Presidency understands from previous discussions in the Council and bilateral consultations with Member States that the vast majority of Member States oppose a **general** opening of the scope of the Directive to third-country nationals (TCNs) with higher professional skills.

However, the Presidency considers that in the framework of an overall compromise, a **limited** opening of the scope of the Directive to TCNs with higher professional skills could be envisaged: the scope of admissible TCNs could potentially be enlarged to include **highly skilled professionals in the area of information and communications technology**. It is the Presidency's understanding that, due to a lack of highly qualified workers in these specific professions, it is common for businesses throughout Europe today to hire workers with higher professional skills even though they might lack formal qualifications.

In this context, the Presidency asks Member States if they could support a compromise proposal along the following lines:

1. The admission of TCNs with higher professional skills should become **mandatory with the following limitations**:

- It would **only** be **mandatory** to allow TCNs with higher professional skills to apply for an EU Blue Card with regard to **information and communications technology professions**;
- Moreover, not all information and communications technology professions would be accessible, **but only the following ‘higher’ positions**: Information and Communications Technology Services Managers (ISCO-08 classification 133) and Information and Communications Technology Professionals (ISCO-08 classification 25);
- The required professional experience would have to be of a **level comparable to academic qualifications**; and
- All other requirements for obtaining an EU Blue Card would have to be fulfilled.

Malta can support such a proposal. Malta would also like to request clarification whether it would be possible for a Member State to add additional sectors occupations without the ordinary legislative procedure mentioned below.

2. Concerning the minimum necessary length for attaining ‘higher professional skills’: The EP supports the Commission’s proposal according to which higher professional skills are attained after at least 3 years of professional experience. In the Council’s position, at least 5 years of professional experience are required.

The Presidency suggests lowering the required minimum length of professional experience to 3 years if the following additional requirement is put in place: the 3 years of professional experience must have been acquired during the last 7 years.

Could Member States support this compromise proposal?

Yes, Malta can accept this proposal.

3. Concerning the assessment of higher professional skills:

a) Do Member States agree that the admission procedure should include an assessment of whether the acquired skills are sufficient to exercise the specific professional activity listed in ISCO-08 classifications 133 or 25 that the TCN wishes to take up?

Yes, the benchmark for admission should be specifically established, and harmonised, by the ISCO classification. The possibility for a Member State to apply this check should be maintained.

b) Do Member States agree that the Directive should not contain any specifications as to how higher professional skills are to be assessed?

Yes, it should be decided at national level.

c) Do Member States agree that they should be permitted to assess skills by means of a plausibility check based on the documents presented in the admission procedure?

Yes – this possibility should be maintained.

d) Do Member States agree that they should be free to decide, for their respective territory, whether or not the results of the skills assessment should have a binding effect outside the EU Blue Card admission procedure?

Yes, Malta agrees to maintain this possibility.

4. From the Presidency's point of view, there is no need for an additional transposition period (Article 28(3)) regarding the admission of TCNs with higher professional skills for information and communications technology professions.

Do Member States agree?

Malta can accept that there would not be an additional transposition period for Article 28 (3).

5. The Presidency suggests that any future extension of the list of professions accessible with 'higher professional skills' should be adopted through the ordinary legislative procedure.

Do Member States agree or are Member States in favour of more flexibility (e.g. allowing the extension of the list of professions by the adoption of an Implementing Act or a Delegated Act)?

Malta has requested clarification whether the Presidency's proposal would allow Member States to individually include more sectors and occupations, in addition to the mandatory sectors indicated.

III. Long-term mobility (Article 20)

In the understanding of the Presidency, the EP considers long-term mobility as a key element for making the Blue Card more attractive. In that sense, it is the declared objective of the EP to simplify the procedures in the second Member State for the Blue Card holder by waiving the obligation to apply for a new Blue Card and instead introducing a notification procedure as well as asking for fewer documents to be presented.

1. Notification procedure vs. application procedure

In recent discussions, many Member States supported the need for a stronger coherence between the existing EU directives in the field of legal migration wherever possible. With that in mind, the Presidency suggests adapting the provisions on long-term mobility in the Blue Card Directive to reflect similar provisions in the two most recently adopted Directives: the Students & Researchers Directive³ (SRD) and the Intra-Corporate Transferees Directive⁴ (ICTD).

a) Following the corresponding provisions in the Students and Researchers Directive and in the Intra-Corporate Transferees Directive, could Member States support amending Article 20 in such a way that it is for Member States to decide whether they apply an application procedure or a notification procedure?

In the affirmative, it will be necessary to establish, in addition to the application procedure, the details of the notification procedure.

Malta views that EU Blue Card holders are a different category of migrants than those referred in question and will not be applying the notification procedure. Nonetheless, it would accept the possibility for other Member States to have flexibility and apply a notification procedure should this be preferred.

b) Should the requirements requested in the notification procedure match the ones for the application procedure? Where do you see a need for specific provisions only for the notification procedure?

Please refer to reply above.

³ Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purpose of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing.

⁴ Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intracorporate transfer.

2. Start working immediately

EP and Commission are strongly in favour of allowing the Blue Card holder to start working immediately whereas the Council wants to leave it up to Member States to decide whether to allow it. Since it is mostly the employer (and the Blue Card holder) that bears the risk of the TCN starting to work before the verification process has been concluded, the Presidency believes that the Council should consider accepting the 'shall' in Article 20 (2) if this proves necessary to reach a compromise. However, care should be taken to ensure that this will be without prejudice to requirements under national law for the exercise of regulated professions, as already mentioned in the Council's proposal for recital 34.

a) Could Member States agree that the Blue Card holder shall be allowed to start working immediately after submitting the application/notification if care is taken to ensure that this will be without prejudice to requirements under national law for the exercise of regulated professions?

No, Malta does not agree that EU Blue Card holder can start to work immediately in a second MS prior to authorisation from the said MS.

b) If not, do you think it would be possible to agree to such a provision if additional requirements are set out in the provision? Could these requirements be similar to those set out e.g. in Article 29(2)(d) of the SRD? In the alternative, what other requirements would you deem necessary?

Malta does not agree with the provision that TCNs are allowed to work immediately. Access to employment should only be given when the overall process is complete, and the Blue Card is issued. This is a red line.

3. Documents to be presented

EP and COM are aiming to simplify the procedure, notably by reducing the number of documents that must be presented. A number of Member States on the other hand consider that they should be entitled to assess themselves if the Blue Card holder fulfills all necessary requirements if the TCN wants to stay and work on their territory.

a) Since the request for documents attesting higher professional qualifications in relation to the work to be carried out as provided for in national law (point (ca) of paragraph 3 (- ‘unregulated professions’) is an optional clause for Member States, the Presidency suggests reverting to the compromise suggestion tabled on 2 February 2018 and converting the provision on sickness insurance (point (f) of paragraph 3) into an optional one and moving both provisions into a new paragraph 3a⁵. This new paragraph 3a would then give those Member States who see a need for it the possibility to request those documents while others could choose not to impose such a requirement.

Could Member States support the Presidency's approach?

Since the option to request sickness insurance would still remain an option, Malta can accept this proposal.

b) As indicated above, the objective of the EP is to simplify the procedures for moving to a second Member State. With a view to showing more flexibility towards the EP, a further simplification of the process could be considered.

Under the current regime, an EU Blue Card holder who has either

- an EU professional qualification or
- a non-EU professional qualification which is recognised in a first Member State,

⁵ Council Document WK 1284/2018 INIT, 2.2.2018, compromise suggestion for Article 20(3a) in 4CT.

might decide to move to a second Member State and may need to have his or her professional qualification recognised again. Directive 2005/36/EC establishes rules with regard to access to regulated professions in a Member State and recognition of professional qualifications that were obtained in one or more other Member States. However, that Directive only applies to EU nationals. For TCNs, the right to equal treatment in the second Member State and thus the possibility of invoking the application of Directive 2005/36/EC, as stated in the Commission's Legal Migration Fitness Check in 2019⁶, do not exist during the preparatory phase of the Intra EU

Mobility but only once the TCN has obtained a legal status in the second Member State: According to point (d) of Article 15(1)) EU Blue Card holders shall enjoy equal treatment with nationals of the Member State issuing the EU Blue Card, as regards recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures.

Now the approach suggested by the Presidency would be to grant Blue Card holders equal treatment rights regarding the recognition of professional qualifications with nationals of the second Member State already during the application for a Blue Card in that Member State.

Another alternative could be to grant Blue Card holders equal treatment rights explicitly with union citizens in corresponding application of Directive 2005/36/EC. However, whereas long-term-mobility in the Blue Card will already be possible after twelve months, for qualifications acquired in a third country Directive 2005/36/EC only applies once the activity has been carried out for three years (Article 3 (3) Directive 2005/36/EC). That needs to be taken into account.

Could Member States agree to providing equal treatment with the nationals of the second Member State already in the application phase?

No, Malta would not accept such a proposal.

⁶ Fitness Check on EU Legislation on legal migration, 29 March 2019, SWD(2019) 1055 final – part 2/2, Annex 5, no. 2.7.2.

If you cannot agree, could you support equal treatment with union citizens, under corresponding application of Directive 2005/36/EC, keeping in mind that there might be a time gap?

Malta is still scrutinising this proposal. However, as an initial reaction, it is considered that this proposal could result in a significant administrative burden.

IV. Unemployment

Article 14 deals with the rights and obligations of EU Blue Card holders who are temporarily unemployed. The EP wishes to raise the **maximum period of temporary unemployment (Article 14(1))** from three to six months. Concerning this point, the Presidency suggests the following compromise proposal:

The maximum period of temporary unemployment shall remain three consecutive months in cases where the TCN has held the EU Blue Card for less than two years. However, in cases where the TCN has been an EU Blue Card holder for two years or more, the maximum period of temporary unemployment shall be six consecutive months.

Do Member States support this Presidency proposal?

Malta considers that three months is sufficient time for one to find reemployment. This also raises the question, why one should differentiate between those residing in a MS for less than two years and those residing in a MS for a longer period.

V. Labour market tests

According to the EP, conducting a labour market test should be conditional on a high level of unemployment in a given occupation or sector which may be limited to a certain part of the territory of a Member State. Moreover, a Member State would be obliged to notify the Commission, at the latest one month in advance, of its intention to apply a labour market test to a given occupation, sector, and possibly region. The notification would only be valid for the following six months and would need to be justified. In addition, similarly to the Commission, the EP would not allow a labour market test in cases where the TCN changes employers during the first two years of legal employment in the Member State concerned. Finally, according to the EP position, Member States would not be allowed to conduct a labour market test before granting a family member of an EU Blue Card holder access to the labour market.

1. The Presidency considers that, with regard to highly qualified workers, the protection of domestic labour markets through labour market tests is only necessary where the labour market for ‘highly qualified professionals’ is facing disturbances such as a high level of unemployment. The Presidency therefore suggests reconsidering parts of the Commission's initial proposal and makes the following suggestions:

a) Labour market tests shall only be conducted if there are disturbances (but not “**serious**” disturbances as in the Commission proposal) on the domestic labour market of a Member State such as a high level of unemployment. However, a Member State would be obliged neither to notify the Commission of its intention to introduce a labour market test nor to give any reasons for the introduction of the labour market test. Moreover, there would not be any time limits for applying labour market tests.

Could Member States support this proposal?

Malta does not accept this proposal.

b) As disturbances on domestic labour markets can vary substantially depending on occupations, sectors and regions within the territory of a Member State, a recital should clarify that Member States should consider limiting labour market tests to the concerned occupations, sectors and regions.

Could Member States support this proposal?

Malta does not support this proposal. Labour market tests should not be linked to disturbances of the domestic labour market and linked to specific occupations, sectors and regions. Moreover, Malta has a small and dynamic labour market and therefore it is considered essential to retain the possibility of carrying out such tests also for Blue Card applicants.

2. Upon arrival, an EU Blue Card holder needs to be progressively integrated into the labour market. Especially during the initial period, it is important for Member States to have safeguards to ensure that persons admitted as highly qualified workers end up in corresponding occupations and the EU Blue Card scheme is not used for abusive purposes by either the employers or the TCNs. In the view of the Presidency, it is therefore crucial that Member States retain the right to conduct a labour market test if the EU Blue Card holder decides to change employer during the initial period of legal employment. However, the Commission and the EP clearly expressed their wish to abolish this right, which exists under the Blue Card Directive currently in force.

a) Against this backdrop, the Presidency makes the following compromise suggestion:

In general, Member States would retain the right to conduct a labour market test during the initial period of legal employment of an EU Blue Card holder in cases where he or she wishes to change employer. However, this right would be subject to the following condition: The labour market test may only be conducted if the Member State - when the competent authority adopts its decision - has also introduced such checks for TCNs who do not (yet) hold an EU Blue Card.

Could Member States support this proposal?

Malta prefers for Member States to retain the right to carry out labour market tests even when the Blue Card holder wishes to change employer.

b) According to Article 13(1a) of the Council's general approach, Member States would be allowed to conduct a labour market test in cases where an EU Blue Card holder wishes to change the employer **during the first two years of legal employment**. The Presidency suggests reducing this period to **12 months** in the framework of an overall compromise.

Could Member States support this proposal?

Same as comment above, Member States should have the possibility to carry out labour market tests. Malta does not agree with the reduction to 12 months from two years.

3. According to the second subparagraph of Article 16(6), (Commission proposal and Council general approach), Member States may conduct a labour market test before a family member of an EU Blue Card holder is granted access to employment. The EP does not want to grant Member States this right (EP Amendment 131). The Presidency does not consider this labour market test for family members to be crucial as these family members have a right to reside in the Member States. Moreover, facilitating access to the labour market for family members will facilitate their integration in the host Member State. The Presidency therefore suggests abstaining from conducting labour market tests for family members provided that such a test may still be conducted in regard to the Blue Card holder himself.

Could Member States support this proposal?

Malta does not agree with this proposal. Member States should have the possibility to carry out labour market tests even for family members.

4. Finally, the Presidency wishes to get a clearer picture on the question as to what extent labour market tests for TCNs are actually applied by Member States. Therefore the Presidency asks the following questions:

Do Member States currently apply labour market tests for TCNs? Have there been any changes recently?

Malta presently carries out labour market tests for third country nationals. There are many aspects to labour market consideration, including the national situation in respect of surpluses or shortages in the given occupation and sector; the employer's history and situation in terms inter alia of recruitment and redundancy patterns; business investments; and contractual commitments. The third country national's skill level, relevant experience and overall suitability for the position in question are also taken into account.

The tests carried out also vary depending on the rate of unemployment. The pandemic prompted changes to such testing whereas employers needed to contact recruitment advisers prior to applying for TCNs in order to check if there are suitable registering unemployed that have an automatic right to work in Malta.

THE NETHERLANDS

I. Harmonisation

1. Parallel national systems (Article 3 paragraph 4)

Given the stated flexibility of the Commission regarding national schemes - and, of course, depending on the overall compromise in the end - the Presidency believes that it is likely that the EP will (eventually) accept to keep parallel national schemes in the Directive. However, the Commission and the EP have made it clear that it is important that there is no discrimination of the Blue Card holder or applicant⁷.

- a) **Do Member States support keeping the possibility of parallel national schemes for highly [qualified] third-country nationals while ensuring that similar procedural rights apply to EU Blue Card holders as to highly [qualified] workers benefiting from a national scheme (this would apply particularly to Articles 10, 11, 12, and 16, ensuring that the equal treatment is thus limited to procedural rights and Member States would retain the possibility to provide for different material rights such as access to long-term residence)?**

Yes

- b) **Can Member States agree that the equal treatment provisions in Article 15 cover equal treatment of the EU Blue Card holder with highly [qualified] third-country nationals holding a national permit?**

Yes

⁷ In the following 'Blue Card holder'. Where the provisions are also applicable to applicants, they are included accordingly.

The co-legislators agree that the aim of this reform is to have a more attractive Blue Card. Assuming that the EP agrees to keep the possibility of parallel national schemes on condition that the reformed Directive provides for sufficient incentives for applying for a Blue Card instead of a national permit,

c) could Member States also (still) accept the following additions based on what was discussed in the JHA Counsellors meeting on 11 January 2019⁸ (provided, of course, that the requirements for the EU Blue Card have been and still are fulfilled)?:

- facilitation for a quick and easy change from a national permit to the EU Blue Card at any point in the same Member State without a new check of qualifications if already done for the national permit;

Yes, as long as the national permit holder fulfils all requirements for the BC, especially the salary criterion. NB: if this change from national permit to BC involves a simultaneous change from recognised employer to non-recognised employer, the Immigration Service should still be allowed to require all documents that are part of the regular application procedure.

- take time spent with a national permit in the same Member State before receiving the Blue Card into account for the (shortened) period of residence required for long-term resident status;

Yes, this is already the case

- make sure full information on the EU Blue Card is made available; equal promotion and information activities as for national schemes.

Yes, we can agree on this point too

⁸ Council document 15787/18, 21 December 2018, p. 2.

2. **bilateral/multilateral agreements (point (b) of Article 4(1))**

The Presidency suggests keeping the possibility of bilateral or multilateral agreements with third countries, which are more favourable than the regime offered by the Blue Card Directive.

a) **Do Member States agree? Can you give examples why this provision is necessary?**

Yes, we support this provision. Although NL has not entered into such agreements as of yet, we would like to keep this option open for the future.

b) **Depending on the course of the negotiations, could Member States show some flexibility on this issue, if necessary to reach an overall compromise?**

NL is in favour of including such a provision, but as far as the issue of harmonisation is concerned, the possibility to retain our national scheme is more important.

II. Skills

The Presidency understands from previous discussions in the Council and bilateral consultations with Member States that the vast majority of Member States oppose a *general* opening of the scope of the Directive to third-country nationals (TCNs) with higher professional skills.

However, the Presidency considers that in the framework of an overall compromise, a *limited* opening of the scope of the Directive to TCNs with higher professional skills could be envisaged: the scope of admissible TCNs could potentially be enlarged to include **highly skilled professionals in the area of information and communications technology**. It is the Presidency's understanding that, due to a lack of highly qualified workers in these specific professions, it is common for businesses throughout Europe today to hire workers with higher professional skills even though they might lack formal qualifications.

In this context, the Presidency asks Member States if they could support a compromise proposal along the following lines:

1. The admission of TCNs with higher professional skills should become **mandatory with the following limitations**:
 - It would **only** be **mandatory** to allow TCNs with higher professional skills to apply for an EU Blue Card with regard to **information and communications technology professions**;
 - Moreover, not all information and communications technology professions would be accessible, **but only** the following ‘higher’ positions: Information and Communications Technology Services Managers (ISCO-08 classification 133) and Information and Communications Technology Professionals (ISCO-08 classification 25);
 - The required professional experience would have to be of a **level comparable to academic qualifications**; and
 - All other requirements for obtaining an EU Blue Card would have to be fulfilled.
2. Concerning the minimum necessary length for attaining ‘higher professional skills’: The EP supports the Commission’s proposal according to which higher professional skills are attained after at least 3 years of professional experience. In the Council’s position, at least 5 years of professional experience are required.

The Presidency suggests lowering the required minimum length of professional experience to 3 years if the following additional requirement is put in place: the 3 years of professional experience must have been acquired during the last 7 years.

Could Member States support this compromise proposal?

The Netherlands feels that in order to qualify as a highly skilled migrant, the educational background is not *the* only determining factor. Businesses themselves are capable of assessing which they value and are in shortage of. We are still a proponent of a *general* opening of the scope of the Directive to third-country nationals (TCNs) with higher professional skills, but we also commend the Presidency for resourceful compromise proposal. NL is in favour of flexibility as regards to skills. Therefore we wonder about this proposal’s long-term consequences. Labour markets change rapidly, and the need for ICT professionals may change accordingly. Should and could the BC adapt? What is the Presidency’s view on this issue?

3. Concerning the assessment of higher professional skills:

- a) Do Member States agree that the admission procedure should include an assessment of whether the acquired skills are sufficient to exercise the specific professional activity listed in ISCO-08 classifications 133 or 25 that the TCN wishes to take up?

NL could agree to a slightly different process: ideally, the employer carries out this assessment (through reviewing CVs, conducting interviews etc) *before* the admission procedure is started. The Immigration Service should however always retain the authority to perform checks or reassess the case.

- c) Do Member States agree that the Directive should not contain any specifications as to how higher professional skills are to be assessed?

Yes

- d) Do Member States agree that they should be permitted to assess skills by means of a plausibility check based on the documents presented in the admission procedure?

Yes, if a MS wishes to do so, it should be permitted.

- e) Do Member States agree that they should be free to decide, for their respective territory, whether or not the results of the skills assessment should have a binding effect outside the EU Blue Card admission procedure?

Yes

4. From the Presidency's point of view, there is no need for an additional transposition period (Article 28(3)) regarding the admission of TCNs with higher professional skills for information and communications technology professions.

Do Member States agree?

Yes

5. The Presidency suggests that any future extension of the list of professions accessible with 'higher professional skills' should be adopted through the ordinary legislative procedure.

Do Member States agree or are Member States in favour of more flexibility (e.g. allowing the extension of the list of professions by the adoption of an Implementing Act or a Delegated Act)?

NL agrees to adhere to the ordinary legislative procedure, on the other hand the NL is open to explore the possibilities of a more flexible approach via e.g. an implementing act.

III. Long-term mobility (Article 20)

In the understanding of the Presidency, the EP considers long-term mobility as a key element for making the Blue Card more attractive. In that sense, it is the declared objective of the EP to simplify the procedures in the second Member State for the Blue Card holder by waiving the obligation to apply for a new Blue Card and instead introducing a notification procedure as well as asking for fewer documents to be presented.

1. Notification procedure vs. application procedure

In recent discussions, many Member States supported the need for a stronger coherence between the existing EU directives in the field of legal migration wherever possible. With that in mind, the Presidency suggests adapting the provisions on long-term mobility in the Blue Card Directive to reflect similar provisions in the two most recently adopted Directives: the Students & Researchers Directive⁹ (SRD) and the Intra-Corporate Transferees Directive¹⁰ (ICTD).

⁹ Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purpose of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing.

¹⁰ Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer.

- a) **Following the corresponding provisions in the Students and Researchers Directive and in the Intra-Corporate Transferees Directive, could Member States support amending Article 20 in such a way that it is for Member States to decide whether they apply an application procedure or a notification procedure?**

Yes, most certainly.

In the affirmative, it will be necessary to establish, in addition to the application procedure, the details of the notification procedure.

- b) **Should the requirements requested in the notification procedure match the ones for the application procedure? Where do you see a need for specific provisions only for the notification procedure?**

There is no reason for different requirements in the notification resp. application procedure.

2. Start working immediately

EP and Commission are strongly in favour of allowing the Blue Card holder to start working immediately whereas the Council wants to leave it up to Member States to decide whether to allow it. Since it is mostly the employer (and the Blue Card holder) that bears the risk of the TCN starting to work before the verification process has been concluded, the Presidency believes that the Council should consider accepting the 'shall' in Article 20 (2) if this proves necessary to reach a compromise. However, care should be taken to ensure that this will be without prejudice to requirements under national law for the exercise of regulated professions, as already mentioned in the Council's proposal for recital 34.

- a) **Could Member States agree that the Blue Card holder shall be allowed to start working immediately after submitting the application/notification if care is taken to ensure that this will be without prejudice to requirements under national law for the exercise of regulated professions?**

- b) **If not, do you think it would be possible to agree to such a provision if additional requirements are set out in the provision? Could these requirements be similar to those set out e.g. in Article 29(2)(d) of the SRD? In the alternative, what other requirements would you deem necessary?**

NL considers that the ‘may’ clause offers more flexibility, but could also accept a ‘shall’ with additional requirements in the same vein as the SRD.

3. Documents to be presented

EP and COM are aiming to simplify the procedure, notably by reducing the number of documents that must be presented. A number of Member States on the other hand consider that they should be entitled to assess themselves if the Blue Card holder fulfills all necessary requirements if the TCN wants to stay and work on their territory.

- a) Since the request for documents attesting higher professional qualifications in relation to the work to be carried out as provided for in national law (point (ca) of paragraph 3(- ‘unregulated professions’) is an optional clause for Member States, the Presidency suggests reverting to the compromise suggestion tabled on 2 February 2018 and converting the provision on sickness insurance (point (f) of paragraph 3) into an optional one and moving both provisions into a new paragraph 3a¹¹. This new paragraph 3a would then give those Member States who see a need for it the possibility to request those documents while others could choose not to impose such a requirement.

Could Member States support the Presidency's approach?

Yes

- b) As indicated above, the objective of the EP is to simplify the procedures for moving to a second Member State. With a view to showing more flexibility towards the EP, a further simplification of the process could be considered.

¹¹ Council Document WK 1284/2018 INIT, 2.2.2018, compromise suggestion for Article 20(3a) in 4CT.

Under the current regime, an EU Blue Card holder who has either

- an EU professional qualification or
- a non-EU professional qualification which is recognised in a first Member State,

might decide to move to a second Member State and may need to have his or her professional qualification recognised again. Directive 2005/36/EC establishes rules with regard to access to regulated professions in a Member State and recognition of professional qualifications that were obtained in one or more other Member States. However, that Directive only applies to EU nationals. For TCNs, the right to equal treatment in the second Member State and thus the possibility of invoking the application of Directive 2005/36/EC, as stated in the Commission's Legal Migration Fitness Check in 2019¹², do not exist during the preparatory phase of the Intra EU Mobility but only once the TCN has obtained a legal status in the second Member State: According to point (d) of Article 15(1)) EU Blue Card holders shall enjoy equal treatment with nationals of the Member State issuing the EU Blue Card, as regards recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures.

Now the approach suggested by the Presidency would be to grant Blue Card holders equal treatment rights regarding the recognition of professional qualifications with nationals of the second Member State already during the application for a Blue Card in that Member State.

¹² Fitness Check on EU Legislation on legal migration, 29 March 2019, SWD(2019) 1055 final – part 2/2, Annex 5, no. 2.7.2.

Another alternative could be to grant Blue Card holders equal treatment rights explicitly with union citizens in corresponding application of Directive 2005/36/EC. However, whereas long-term-mobility in the Blue Card will already be possible after twelve months, for qualifications acquired in a third country Directive 2005/36/EC only applies once the activity has been carried out for three years (Article 3 (3) Directive 2005/36/EC). That needs to be taken into account.

Could Member States agree to providing equal treatment with the nationals of the second Member State already in the application phase?

NL agrees, since Directive 2005/36/EC provides numerous guarantees with respect to recognition of professional qualifications.

If you cannot agree, could you support equal treatment with union citizens, under corresponding application of Directive 2005/36/EC, keeping in mind that there might be a time gap?

IV. Unemployment

Article 14 deals with the rights and obligations of EU Blue Card holders who are temporarily unemployed. The EP wishes to raise the **maximum period of temporary unemployment (Article 14(1)) from three to six months**. Concerning this point, the Presidency suggests the following compromise proposal:

The maximum period of temporary unemployment shall remain three consecutive months in cases where the TCN has held the EU Blue Card for less than two years. However, in cases where the TCN has been an EU Blue Card holder for two years or more, the maximum period of temporary unemployment shall be six consecutive months.

Do Member States support this Presidency proposal?

Within its national scheme, NL has also introduced a three-month-long ‘search period’ for highly skilled migrants who lose their jobs. There have been discussions about extending this period to six months, but a final decision has not been taken yet. What makes the issue delicate is the fact that extension will result in increased spending on unemployment benefits. The Presidency’s proposal would entail similar consequences, along with distorting the level playing field for BC holders and highly skilled migrants with a national permit.

V. Labour market tests

According to the EP, conducting a labour market test should be conditional on a high level of unemployment in a given occupation or sector which may be limited to a certain part of the territory of a Member State. Moreover, a Member State would be obliged to notify the Commission, at the latest one month in advance, of its intention to apply a labour market test to a given occupation, sector, and possibly region. The notification would only be valid for the following six months and would need to be justified. In addition, similarly to the Commission, the EP would not allow a labour market test in cases where the TCN changes employers during the first two years of legal employment in the Member State concerned. Finally, according to the EP position, Member States would not be allowed to conduct a labour market test before granting a family member of an EU Blue Card holder access to the labour market.

1. The Presidency considers that, with regard to highly qualified workers, the protection of domestic labour markets through labour market tests is only necessary where the labour market for ‘highly qualified professionals’ is facing disturbances such as a high level of unemployment. The Presidency therefore suggests reconsidering parts of the Commission's initial proposal and makes the following suggestions:
 - a) Labour market tests shall only be conducted if there are disturbances (but not “**serious**” disturbances as in the Commission proposal) on the domestic labour market of a Member State such as a high level of unemployment. However, a Member State would be obliged neither to notify the Commission of its intention to introduce a labour market test nor to give any reasons for the introduction of the labour market test. Moreover, there would not be any time limits for applying labour market tests.

Could Member States support this proposal?

NL supports this proposal: the option to conduct a labour market test would be a useful one. That being said, NL would not object to an obligation for member states to justify conducting such a test.

- b) As disturbances on domestic labour markets can vary substantially depending on occupations, sectors and regions within the territory of a Member State, a recital should clarify that Member States should consider limiting labour market tests to the concerned occupations, sectors and regions.

Could Member States support this proposal?

Yes

2. Upon arrival, an EU Blue Card holder needs to be progressively integrated into the labour market. Especially during the initial period, it is important for Member States to have safeguards to ensure that persons admitted as highly qualified workers end up in corresponding occupations and the EU Blue Card scheme is not used for abusive purposes by either the employers or the TCNs. In the view of the Presidency, it is therefore crucial that Member States retain the right to conduct a labour market test if the EU Blue Card holder decides to change employer during the initial period of legal employment. However, the Commission and the EP clearly expressed their wish to abolish this right, which exists under the Blue Card Directive currently in force.

- a) Against this backdrop, the Presidency makes the following compromise suggestion:

In general, Member States would retain the right to conduct a labour market test during the initial period of legal employment of an EU Blue Card holder in cases where he or she wishes to change employer. However, this right would be subject to the following condition: The labour market test may only be conducted if the Member State - when the competent authority adopts its decision - has also introduced such checks for TCNs who do not (yet) hold an EU Blue Card.

Could Member States support this proposal?

Yes

- b) According to Article 13(1a) of the Council's general approach, Member States would be allowed to conduct a labour market test in cases where an EU Blue Card holder wishes to change the employer **during the first two years of legal employment**. The Presidency suggests reducing this period to **12 months** in the framework of an overall compromise.

Could Member States support this proposal?

Yes

3. According to the second subparagraph of Article 16(6), (Commission proposal and Council general approach), Member States may conduct a labour market test before a family member of an EU Blue Card holder is granted access to employment. The EP does not want to grant Member States this right (EP Amendment 131). The Presidency does not consider this labour market test for family members to be crucial as these family members have a right to reside in the Member States. Moreover, facilitating access to the labour market for family members will facilitate their integration in the host Member State. The Presidency therefore suggests abstaining from conducting labour market tests for family members provided that such a test may still be conducted in regard to the Blue Card holder himself.

Could Member States support this proposal?

Yes, in NL, a BC holder's family members already have free access to the labour market.

4. Finally, the Presidency wishes to get a clearer picture on the question as to what extent labour market tests for TCNs are actually applied by Member States. Therefore the Presidency asks the following questions:

Do Member States currently apply labour market tests for TCNs? Have there been any changes recently?

Yes. In general, a work permit is only issued after it has been established that the employer was unable to find a suitable candidate within the Netherlands and EEA and Switzerland

- **The vacancy has to have been open and placed with the competent authority (UWV Werkbedrijf) for at least 5 weeks without any positive result.**
- **The employer has had to have actively searched for a suitable candidate for at least 3 months.**

There are numerous schemes exempted from this labour market test, such as the highly skilled migrant scheme.

As of 1 January 2020, family members of entrepreneurs are no longer obliged to apply for a work permit, which means they are exempted from the labour market test.

POLAND

Poland is concerned about the EC's clarifications with regard to the requirement to ensure equal rights in the procedures for highly qualified employees admitted to BC and national systems. This may force Poland and other Member States that do not have national systems dedicated to the admission of highly qualified workers to a far-reaching reconstruction of their systems for the admission of foreigners for work purposes. We need time for further analysis.

SLOVAKIA

The position of the Slovak Republic to the document WK 13407/2020 - State of play and possible way forward

I. Harmonisation

1. Parallel national systems (Article 3 paragraph 4)

- a) There is a negotiation on going between the Ministry of Interior and Ministry of Labour due to the conflicting position on necessity of harmonization and abolition of parallel schemes.
No final position for the time being.
- b) See answer ad a).
- c) See answer ad a).

2. bilateral/multilateral agreements (point (b) of Article 4(1)) – Slovakia can agree and be flexible.

II. Skills – the Slovak Republic **opposes** a **general** opening of the scope of the Directive to third-country nationals (TCNs) with higher professional skills without formal qualification including highly skilled professionals in the area of information and communication technology, Information and Communications Technology Services Managers (ISCO-08 classification 133) and Information and Communications Technology Professionals (ISCO-08 classification 25).

Reasoning: While keeping the parallel national schemes for highly qualified third-country nationals with comparable procedural rights, this proposal is irrelevant.

Ad 2) The Slovak Republic does not agree with the compromise proposal to shorten the period of professional experience to 3 years for acquisition of higher professional skills.

III. Long-term mobility (Article 20)

1. Notification procedure vs. application procedure

- a) Following the corresponding provisions in the Students and Researchers Directive and in the Intra-Corporate Transferees Directive, could Member States support amending Article 20 in such a way that it is for Member States to decide whether they apply an application procedure or a notification procedure? **The Slovak Republic can support this proposal.**
- b) Should the requirements requested in the notification procedure match the ones for the application procedure? Where do you see a need for specific provisions only for the notification procedure? **Yes.**

2. Start working immediately

- a) **The Slovak Republic does not agree with this proposal. Slovakia wants to keep the right for Member States to decide whether the EU Blue Card holder shall be allowed to start working immediately after submitting the application/notification. The EU Blue Card holder has enough time during his/her stay in first Member State for submitting of application for the EU Blue Card in the second Member State.**

3. Documents to be presented

- a) **Slovakia can support the Presidency approach.**
- b) **Slovakia supports equal treatment with Union citizens, under corresponding application of Directive 2005/36/EC with time gap if the activity is carried out for 3 years.**

IV. Unemployment

Slovakia can support the Presidency compromise.

V. Labour market tests

1. a) We would seek the clarification regarding the definition of high level of unemployment in Member States

a)b) The possibility of labour market test should be left on the decision of the Member State. The labour market test shall be carried out in particular sector.

2. Change of employer during the initial period of the legal employment.

a) Slovakia supports the Presidency compromise proposal.

b) Slovakia can agree with Presidency proposal.

3. Slovakia supports the Presidency compromise proposal regarding abstention from conducting labour market tests for family members if such a test may still be conducted concerning the Blue Card holder himself.

4. Currently, Slovakia applies the labour market test for the third-country nationals. The recent changes regarding the labour market test are as follows: For the occupations with constant labour shortages in regions with the registered unemployment rate below 5% with the effect from 1 May 2018 the conditions of employment of third-country nationals are simplified. Quantitative limits 30% from the total number of employees apply to third-country nationals regarding identified professions with labour shortages.

Updated position of the Slovak Republic on 9 December 2020:

After internal reflection involving Ministry of education and Ministry of labour, the Slovakia can support compromise suggestion regarding skills recognition (IT sector). This is a change comparing to the original position and as presented on JHA counsellors.

SLOVENIA

I. Harmonisation

1. Parallel national systems (Article 3 paragraph 4)

Given the stated flexibility of the Commission regarding national schemes - and, of course, depending on the overall compromise in the end - the Presidency believes that it is likely that the EP will (eventually) accept to keep parallel national schemes in the Directive. However, the Commission and the EP have made it clear that it is important that there is no discrimination of the Blue Card holder or applicant¹³.

- a) **Do Member States support keeping the possibility of parallel national schemes for highly [qualified] third-country nationals while ensuring that similar procedural rights apply to EU Blue Card holders as to highly [qualified] workers benefiting from a national scheme (this would apply particularly to Articles 10, 11, 12, and 16, ensuring that the equal treatment is thus limited to procedural rights and Member States would retain the possibility to provide for different material rights such as access to long-term residence)?**

Slovenia is of the opinion that the issue of national schemes has to be dealt with together with the issue of salary threshold. Namely, in the recent years, the practice has shown us that the Blue Card scheme is not very attractive for Slovenian employers, mainly due to the higher minimum salary threshold (namely, 1.5 average gross annual salary). Accordingly, as a consequence, Slovenian employers much rather use the national scheme, where no such threshold is set.

In line with this, Slovenia would support a salary threshold that would be set around the average gross monthly / annual salary. Compromise solution, already proposed in the document 15787/18, seems to be the step in right direction. The compromise solution set the salary threshold between 1.0 – 1.6 of average gross monthly/annual salary.

Slovenia would also support the option, already proposed by the Romanian presidency, in regard of mandatory exemption for recent graduates and shortage occupations – only 0.8 of the average salary threshold.

¹³ In the following 'Blue Card holder'. Where the provisions are also applicable to applicants, they are included accordingly.

- b) Can Member States agree that the equal treatment provisions in Article 15 cover equal treatment of the EU Blue Card holder with highly [qualified] third-country nationals holding a national permit?**

Yes, we can agree on this.

The co-legislators agree that the aim of this reform is to have a more attractive Blue Card. Assuming that the EP agrees to keep the possibility of parallel national schemes on condition that the reformed Directive provides for sufficient incentives for applying for a Blue Card instead of a national permit,

- c) could Member States also (still) accept the following additions based on what was discussed in the JHA Counsellors meeting on 11 January 2019¹⁴ (provided, of course, that the requirements for the EU Blue Card have been and still are fulfilled)?:**

- **facilitation for a quick and easy change from a national permit to the EU Blue Card at any point in the same Member State without a new check of qualifications if already done for the national permit;**

No. There is a need to specify what kind of check of qualifications is meant by this. Member states have specific national legislation in place, regarding the recognition of qualifications.

- **take time spent with a national permit in the same Member State before receiving the Blue Card into account for the (shortened) period of residence required for long-term resident status;**

We could agree on this provision.

- **make sure full information on the EU Blue Card is made available; equal promotion and information activities as for national schemes.**

We can also agree on this last point.

¹⁴ Council document 15787/18, 21 December 2018, p. 2.

2. **bilateral/multilateral agreements (point (b) of Article 4(1))**

The Presidency suggests keeping the possibility of bilateral or multilateral agreements with third countries, which are more favourable than the regime offered by the Blue Card Directive.

a) **Do Member States agree? Can you give examples why this provision is necessary?**

We agree.

b) **Depending on the course of the negotiations, could Member States show some flexibility on this issue, if necessary to reach an overall compromise?**

We could be flexible.

II. Skills

The Presidency understands from previous discussions in the Council and bilateral consultations with Member States that the vast majority of Member States oppose a **general** opening of the scope of the Directive to third-country nationals (TCNs) with higher professional skills.

However, the Presidency considers that in the framework of an overall compromise, a **limited** opening of the scope of the Directive to TCNs with higher professional skills could be envisaged: the scope of admissible TCNs could potentially be enlarged to include **highly skilled professionals in the area of information and communications technology**. It is the Presidency's understanding that, due to a lack of highly qualified workers in these specific professions, it is common for businesses throughout Europe today to hire workers with higher professional skills even though they might lack formal qualifications.

In this context, the Presidency asks Member States if they could support a compromise proposal along the following lines:

1. The admission of TCNs with higher professional skills should become **mandatory with the following limitations:**

- It would **only** be **mandatory** to allow TCNs with higher professional skills to apply for an EU Blue Card with regard to **information and communications technology professions**
- Moreover, not all information and communications technology professions would be accessible, **but only the following 'higher' positions:** Information and Communications Technology Services Managers (ISCO-08 classification 133) and Information and Communications Technology Professionals (ISCO-08 classification 25);
- The required professional experience would have to be of a **level comparable to academic qualifications**; and
- All other requirements for obtaining an EU Blue Card would have to be fulfilled.

2. Concerning the minimum necessary length for attaining 'higher professional skills': The EP supports the Commission's proposal according to which higher professional skills are attained after at least 3 years of professional experience. In the Council's position, at least 5 years of professional experience are required.

The Presidency suggests lowering the required minimum length of professional experience to 3 years if the following additional requirement is put in place: the 3 years of professional experience must have been acquired during the last 7 years.

Could Member States support this compromise proposal?

Due to the fact that »higher professional qualifications« cannot be equated to the »higher professional skills« we cannot support this proposal. Accordingly, we once again reiterate our reservation for the recognition of the higher professional skills or qualifications (putting aside how it is called) of a third-country national, when it is based on the professional experience at the level of difficulty that is comparable to higher education. The position of the Republic of Slovenia remains, that it should be left to the Member States to establish their own approaches when it comes to recognizing professional qualifications of individuals from the third countries. Limiting the recognition to certain professions only, does not change the fact that, by doing so, European Commission prejudices the recognition methods in the Member States – with which, as stated above, we cannot agree. For Slovenia, this issue remains a red line in the process of discussing the so-called Blue Card directive.

3. Concerning the assessment of higher professional skills:

- a) Do Member States agree that the admission procedure should include an assessment of whether the acquired skills are sufficient to exercise the specific professional activity listed in ISCO-08 classifications 133 or 25 that the TCN wishes to take up?

As stated before, we do not agree with this.

- b) Do Member States agree that the Directive should not contain any specifications as to how higher professional skills are to be assessed?

Yes. The directive should refrain from any provisions related to skills assessment. The decision on whether someone is highly qualified should be left to employers and not lead to official document/certification

- c) Do Member States agree that they should be permitted to assess skills by means of a plausibility check based on the documents presented in the admission procedure?

As specified before, recognition of non-formal knowledge should be under full authority and responsibility of member states and not prejudiced by the Directive.

- d) Do Member States agree that they should be free to decide, for their respective territory, whether or not the results of the skills assessment should have a binding effect outside the EU Blue Card admission procedure?

Due to the fact that we do not understand what is meant by this question and cannot foresee the consequences in the real life, we would need more information about this question.

4. From the Presidency's point of view, there is no need for an additional transposition period (Article 28(3)) regarding the admission of TCNs with higher professional skills for information and communications technology professions.

Do Member States agree?

See the answers above.

5. The Presidency suggests that any future extension of the list of professions accessible with 'higher professional skills' should be adopted through the ordinary legislative procedure.

Do Member States agree or are Member States in favour of more flexibility (e.g. allowing the extension of the list of professions by the adoption of an Implementing Act or a Delegated Act)?

No, if it is connected to questions above.

III. Long-term mobility (Article 20)

In the understanding of the Presidency, the EP considers long-term mobility as a key element for making the Blue Card more attractive. In that sense, it is the declared objective of the EP to simplify the procedures in the second Member State for the Blue Card holder by waiving the obligation to apply for a new Blue Card and instead introducing a notification procedure as well as asking for fewer documents to be presented.

1. Notification procedure vs. application procedure

In recent discussions, many Member States supported the need for a stronger coherence between the existing EU directives in the field of legal migration wherever possible. With that in mind, the Presidency suggests adapting the provisions on long-term mobility in the Blue Card Directive to reflect similar provisions in the two most recently adopted Directives: the Students & Researchers Directive¹⁵ (SRD) and the Intra-Corporate Transferees Directive¹⁶ (ICTD).

- a) Following the corresponding provisions in the Students and Researchers Directive and in the Intra-Corporate Transferees Directive, could Member States support amending Article 20 in such a way that it is for Member States to decide whether they apply an application procedure or a notification procedure?**

We can agree. If it is for the Member States to decide which procedure they will apply, we can support the proposal.

¹⁵ Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purpose of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing.

¹⁶ Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer.

In the affirmative, it will be necessary to establish, in addition to the application procedure, the details of the notification procedure.

- b) Should the requirements requested in the notification procedure match the ones for the application procedure? Where do you see a need for specific provisions only for the notification procedure?**

The current requirements for the long-term mobility (Article 20) are in our view appropriately addressed. We do not see a need to introduce specific provisions only for the notification procedure – except in order to define the means of notification, following the example of the Students & Researchers Directive (SRD) and the Intra-Corporate Transfers Directive (ICTD).

2. Start working immediately

EP and Commission are strongly in favour of allowing the Blue Card holder to start working immediately whereas the Council wants to leave it up to Member States to decide whether to allow it. Since it is mostly the employer (and the Blue Card holder) that bears the risk of the TCN starting to work before the verification process has been concluded, the Presidency believes that the Council should consider accepting the ‘shall’ in Article 20 (2) if this proves necessary to reach a compromise. However, care should be taken to ensure that this will be without prejudice to requirements under national law for the exercise of regulated professions, as already mentioned in the Council’s proposal for recital 34.

- a) Could Member States agree that the Blue Card holder shall be allowed to start working immediately after submitting the application/notification if care is taken to ensure that this will be without prejudice to requirements under national law for the exercise of regulated professions?**

Yes, we can agree on that.

- b) If not, do you think it would be possible to agree to such a provision if additional requirements are set out in the provision? Could these requirements be similar to those set out e.g. in Article 29(2)(d) of the SRD? In the alternative, what other requirements would you deem necessary? /**

3. Documents to be presented

EP and COM are aiming to simplify the procedure, notably by reducing the number of documents that must be presented. A number of Member States on the other hand consider that they should be entitled to assess themselves if the Blue Card holder fulfills all necessary requirements if the TCN wants to stay and work on their territory.

- a) Since the request for documents attesting higher professional qualifications in relation to the work to be carried out as provided for in national law (point (ca) of paragraph 3(- 'unregulated professions') is an optional clause for Member States, the Presidency suggests reverting to the compromise suggestion tabled on 2 February 2018 and converting the provision on sickness insurance (point (f) of paragraph 3) into an optional one and moving both provisions into a new paragraph 3a¹⁷. This new paragraph 3a would then give those Member States who see a need for it the possibility to request those documents while others could choose not to impose such a requirement.

Could Member States support the Presidency's approach?

Yes.

- b) As indicated above, the objective of the EP is to simplify the procedures for moving to a second Member State. With a view to showing more flexibility towards the EP, a further simplification of the process could be considered.

¹⁷ Council Document WK 1284/2018 INIT, 2.2.2018, compromise suggestion for Article 20(3a) in 4CT.

Under the current regime, an EU Blue Card holder who has either

- an EU professional qualification or
- a non-EU professional qualification which is recognised in a first Member State,

might decide to move to a second Member State and may need to have his or her professional qualification recognised again. Directive 2005/36/EC establishes rules with regard to access to regulated professions in a Member State and recognition of professional qualifications that were obtained in one or more other Member States. However, that Directive only applies to EU nationals. For TCNs, the right to equal treatment in the second Member State and thus the possibility of invoking the application of Directive 2005/36/EC, as stated in the Commission's Legal Migration Fitness Check in 2019¹⁸, do not exist during the preparatory phase of the Intra EU Mobility but only once the TCN has obtained a legal status in the second Member State: According to point (d) of Article 15(1)) EU Blue Card holders shall enjoy equal treatment with nationals of the Member State issuing the EU Blue Card, as regards recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures.

Now the approach suggested by the Presidency would be to grant Blue Card holders equal treatment rights regarding the recognition of professional qualifications with nationals of the second Member State already during the application for a Blue Card in that Member State.

¹⁸ Fitness Check on EU Legislation on legal migration, 29 March 2019, SWD(2019) 1055 final – part 2/2, Annex 5, no. 2.7.2.

Another alternative could be to grant Blue Card holders equal treatment rights explicitly with union citizens in corresponding application of Directive 2005/36/EC. However, whereas long-term-mobility in the Blue Card will already be possible after twelve months, for qualifications acquired in a third country Directive 2005/36/EC only applies once the activity has been carried out for three years (Article 3 (3) Directive 2005/36/EC). That needs to be taken into account.

Could Member States agree to providing equal treatment with the nationals of the second Member State already in the application phase?

If you cannot agree, could you support equal treatment with union citizens, under corresponding application of Directive 2005/36/EC, keeping in mind that there might be a time gap?

We have a reservation at this question. We do not oppose to this proposal, but we would like to expose that after three years of working experiences in first Member state, the Blue card holder will have the right for recognition of his/her professional qualifications in the second Member State under the Directive 2005/36/EC - therefore we have some concerns in terms of achieving the aim of the proposed provision.

IV. Unemployment

Article 14 deals with the rights and obligations of EU Blue Card holders who are temporarily unemployed. The EP wishes to raise the **maximum period of temporary unemployment (Article 14(1))** from three to six months. Concerning this point, the Presidency suggests the following compromise proposal:

The maximum period of temporary unemployment shall remain three consecutive months in cases where the TCN has held the EU Blue Card for less than two years. However, in cases where the TCN has been an EU Blue Card holder for two years or more, the maximum period of temporary unemployment shall be six consecutive months.

Do Member States support this Presidency proposal?

A compromise solution of the German Presidency is in line with our national legislation. However, we have to point out, that the right to unemployment benefits is not grounded in the period of holding the EU blue card permit, but in the period of attachment to the Slovenian social system on the basis of highly qualified employment.

V. Labour market tests

According to the EP, conducting a labour market test should be conditional on a high level of unemployment in a given occupation or sector which may be limited to a certain part of the territory of a Member State. Moreover, a Member State would be obliged to notify the Commission, at the latest one month in advance, of its intention to apply a labour market test to a given occupation, sector, and possibly region. The notification would only be valid for the following six months and would need to be justified. In addition, similarly to the Commission, the EP would not allow a labour market test in cases where the TCN changes employers during the first two years of legal employment in the Member State concerned. Finally, according to the EP position, Member States would not be allowed to conduct a labour market test before granting a family member of an EU Blue Card holder access to the labour market.

1. The Presidency considers that, with regard to highly qualified workers, the protection of domestic labour markets through labour market tests is only necessary where the labour market for ‘highly qualified professionals’ is facing disturbances such as a high level of unemployment. The Presidency therefore suggests reconsidering parts of the Commission's initial proposal and makes the following suggestions:
 - a) Labour market tests shall only be conducted if there are disturbances (but not “**serious**” disturbances as in the Commission proposal) on the domestic labour market of a Member State such as a high level of unemployment. However, a Member State would be obliged neither to notify the Commission of its intention to introduce a labour market test nor to give any reasons for the introduction of the labour market test. Moreover, there would not be any time limits for applying labour market tests.

Could Member States support this proposal?

Slovenia would only support such solution that would allow Members States to check the Labour market test upon first entry for Blue card applicants and their family members, in case of their employment on the Slovenian labour market.

- b) As disturbances on domestic labour markets can vary substantially depending on occupations, sectors and regions within the territory of a Member State, a recital should clarify that Member States should consider limiting labour market tests to the concerned occupations, sectors and regions.

Could Member States support this proposal?

We could support such solution, but only as a last resort in the spirit of a compromise.

2. Upon arrival, an EU Blue Card holder needs to be progressively integrated into the labour market. Especially during the initial period, it is important for Member States to have safeguards to ensure that persons admitted as highly qualified workers end up in corresponding occupations and the EU Blue Card scheme is not used for abusive purposes by either the employers or the TCNs. In the view of the Presidency, it is therefore crucial that Member States retain the right to conduct a labour market test if the EU Blue Card holder decides to change employer during the initial period of legal employment. However, the Commission and the EP clearly expressed their wish to abolish this right, which exists under the Blue Card Directive currently in force.

- a) Against this backdrop, the Presidency makes the following compromise suggestion:

In general, Member States would retain the right to conduct a labour market test during the initial period of legal employment of an EU Blue Card holder in cases where he or she wishes to change employer. However, this right would be subject to the following condition: The labour market test may only be conducted if the Member State - when the competent authority adopts its decision - has also introduced such checks for TCNs who do not (yet) hold an EU Blue Card.

Could Member States support this proposal?

Yes, we could support such compromise solution.

b) According to Article 13(1a) of the Council's general approach, Member States would be allowed to conduct a labour market test in cases where an EU Blue Card holder wishes to change the employer **during the first two years of legal employment**. The Presidency suggests reducing this period to **12 months** in the framework of an overall compromise.

Could Member States support this proposal?

Yes, we could support it.

3. According to the second subparagraph of Article 16(6), (Commission proposal and Council general approach), Member States may conduct a labour market test before a family member of an EU Blue Card holder is granted access to employment. The EP does not want to grant Member States this right (EP Amendment 131). The Presidency does not consider this labour market test for family members to be crucial as these family members have a right to reside in the Member States. Moreover, facilitating access to the labour market for family members will facilitate their integration in the host Member State. The Presidency therefore suggests abstaining from conducting labour market tests for family members provided that such a test may still be conducted in regard to the Blue Card holder himself.

Could Member States support this proposal?

No, we could not support it.

4. Finally, the Presidency wishes to get a clearer picture on the question as to what extent labour market tests for TCNs are actually applied by Member States. Therefore the Presidency asks the following questions:

Do Member States currently apply labour market tests for TCNs? Have there been any changes recently?

Slovenia applies labour market test in every case of new employment of TCNs, without any exceptions in regard of TCNs attained education or higher qualifications or status.

Since this mechanism is the only mechanism for the regulation of the situation on the Slovenian labour market, we are not very keen on any changes of the already established and working mechanism.

SWEDEN

Sweden has the following written comments.

Harmonization

- The possibility to keep and develop parallel national schemes is the most important issue for Sweden. The PRES proposal does restrict Member States flexibility, which is an issue for us, especially when it comes to processing procedures.
- Changing from a national permit to the EU Blue Card is not a problem but the responsible authority must make sure that the requirements are met. That is a basic principle in Swedish administrative law. Also, the requirements will not be the same in different systems.
- Sweden does not support the proposal to take time with a national permit into account for the shortened period of residence requires for a long-term resident status. That possibility should be reserved for highly-skilled workers since attracting such labour migrants is the purpose of that provision. National permits include all kinds of labour migration.
- Also, it is important not to restrict the national competence when it comes to bilateral agreements, for example regarding social security.

Skills

- Sweden can accept the PRES proposal of 3 years of professional experience for some IT-professions but would like to point out that lowering the required limit to 3 years must be combined with a relatively high salary threshold, to ensure the focus on high-skilled labour migration.

Long-term Mobility

- Sweden can support the general outline of the PRES proposal but will not be able to provide equal treatment already in the application phase. That would intrude on national competence regarding social security.

Unemployment

- 6 months is too long to go without employment and an income. In Sweden, such workers would be able to lift financial aid from the State. 3 months should also be enough for someone who is highly-skilled.

Labour Market Tests

- The possibility to apply labour market tests is very important for Sweden. We can accept some exemptions but as a main rule, such tests must be possible. It is therefore difficult for us to accept the PRES proposal that such tests only could be applied if there are *disturbances*. Does that mean that MS can apply labour market tests for EU Blue Card applications in general, if there is unemployment, or would there have to be unemployment in the profession in question?
- We would like to keep the 2 years-limit for change of employer.
- Some exemptions are acceptable to us, for example for family members. We would also not apply labour market tests for Blue Card-holders if we did not have the same test for national permits.