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**Brussels, 11 December 2020**

**WK 14470/2020 INIT**

**LIMITE**

**MIGR**

**SOC**

**EMPL**

**EDUC**

**CODEC**

### WORKING PAPER

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### **WORKING DOCUMENT**

|                |                                                                                                                                                                                                                              |
|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| From:          | General Secretariat of the Council                                                                                                                                                                                           |
| To:            | JHA Counsellors (Migration, Integration, Expulsion)                                                                                                                                                                          |
| N° prev. doc.: | WK 13179 2020 INIT; WK 13584 2020 INIT                                                                                                                                                                                       |
| 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<br>– Reform of the Blue Card Directive |

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

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WK 14470/2020 INIT

**LIMITE**

**EN**

**Written contributions submitted by the Member States**

**in regard to: Drafting suggestions on Articles 5 (7), 6, 7 and 19 to 22**

**of 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 –**

**Reform of the Blue Card Directive**

**and following informal videoconferences of the members of the JHA Counsellors (Migration, Integration, Expulsion) on 20 and 30 November, 2020)**

**(WK 13179 2020 INIT and WK 13584 2020 INIT)**

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## **AUSTRIA**

### **As regards document WK 13584 2020 INIT**

#### **Point 245, art. 20:**

As already stated orally in the meeting, the proposed insertion of the words „reside and work“ is only acceptable for Austria if the holder of a Blue-Card may only take up a highly qualified work also in the second MS. This however seems to be questionable due to the taking into brackets.

Justification: The lowering of the level of qualifications for admission in a second MS would lead to a circumvention of rules: A more generous practice of admission in a first MS might lead to circumventing the stricter rules/practice of admission in a second MS, especially as regards the qualification.

#### **Point 245, recital (41):**

As already stated orally in the meeting, the proposed insertion of the words “before the decision on the application is adopted” is only acceptable for Austria if this whole sentence is being formulated as a may-provision; ie. if the part in brackets “the second Member State to allow” is being reinserted into the final text.

Justification: An admission for a job in the second MS, before issuing a Blue Card in the second MS, is susceptible to misuse and would also not be necessary, due to the short procedural deadline of only 30 days. In addition, such a provision would lead to multiple problems in the second MS when it comes to controls of authorities against illegal employment. Also, it would question the national competence and usefulness of job market tests in the second MS (priority for EU citizens and already integrated TCN in the second MS compared to newly arriving TCN).

## **As regards document WK 13179 2020 INIT**

### **Point 41, recital (32):**

Equal treatment as granted to EU Blue Card holders should include equal treatment in respect of those branches of social security listed in Article 3 of Regulation (EC) No 883/2004 of the European Parliament and of the Council. This Directive does not harmonise the social security legislation of Member States. It is limited to applying the principle of equal treatment in the field of social security to the third-country nationals falling within its scope.

AT insists on an exception to equal treatment, as foreseen in recital 41 of the Council position (doc. 10552/17).

This Directive should not grant rights in relation to situations which lie outside the scope of Union law and the situation of family members residing in a third country.

### **Point 82, art. 2 letter h):**

The compromise should clearly adopt the original Council's text and only make a reference to ISCED 2011. ISCED has been and continues to be a reliable and valid source of international comparison and evidence of higher education qualifications.

In the scope of this Directive (third country nationals), it is strongly advised, not to make a reference to the EQF as it was solely set up as a European referencing tool. Up until now, the implementation and usage of this tool still differs widely across the European Member States. In addition, the EQF does not define qualifications as such, it only maps them by using descriptors“.

## CROATIA

### Document WK 13584/2020 INIT

#### Article 5 (7)-(Criteria for admission)

In the spirit of compromise, we can accept the proposal that the reason for refusal which refers to third-country nationals who “*are considered to pose a threat to public policy, public security or public health*” be moved to Article 6 which lays down the reasons for the refusal of the EU Blue Card.

#### Article 6 (Grounds for refusal)

As regards the compromise proposal of the wording in item a) and the related Recital 22 with the added sentence („**Where such misconduct concerns the failure of the employer to meet its legal obligations regarding social security, taxation, labour rights or working conditions, it should constitute a ground for rejection, withdrawal or refusal to renew only when it was a serious breach of its obligations or was committed repeatedly prior to the date of the application**“), we think that the proposed wording is too limiting and that it shouldn't be necessary for the employer to commit a breach for the second or third time.

Likewise, we believe that both Recital 22 (“minor misconduct”) and Article 6, paragraph 5 contain sufficient guarantees.

We would like to draw your attention to the fact that this wording is significantly different in the ICT Directive (and it poses an obligation for implementation) with its “shall, if applicable” clause.

### **Article 7 and 7a (Withdrawal or non-renewal of the EU Blue Card)**

**We would like to keep the “shall” provision related to the withdrawal or refusal to renew the EU Blue Card for reasons of public policy, national security or public health. In the spirit of compromise, we could potentially accept the proposed change** from a “shall” to a “may” provision. More specifically, the PRES argues that a similar (may) provision on withdrawal or refusal of the EU Blue Card due to **reasons of public policy, national security or public health** is already contained in the current EU Blue Card Directive and also the “latest” ICT Directive and the Directive on students and researchers.

### **Provisions on mobility - Articles 19 to 22**

#### **Article 21 Residence for family members in the second Member State**

We propose that the wording “and valid travel document” be added in the proposed compromise proposal for Article 1a for family members.

## **ESTONIA**

### **Document WK 13584/2020**

- **on Article 20.1**(AM 140, line 245) - Estonia is careful to add the wording reside and work  
We would like to keep the previous wording. The right to reside and work will be issued by the second MS through the notification or application procedure or without any procedure. To secure rights to reside and work is controversial in a situation where a Member State requires an application procedure without allowing to work in advance.
- **on Article 22.7** (AM 174, line 293) - Estonia prefers general reference to the SBC instead of the specific reference to SBC art 8.3.

## **FRANCE**

La présente note de commentaires écrits vise à rappeler nos réserves exprimées lors de la réunion MIE du 30/11, tout en proposant des formulations alternatives.

- Décision de refus, de retrait ou de refus de renouvellement d'une CBE (ligne 31, considérant 22) :
  - **La France ne peut pas soutenir en l'état cette proposition de compromis, en raison de sa complexité et de la subjectivité des termes employés qui risquent d'engendrer des difficultés d'application (« *serious breach* », « *repeatedly committed* »).**
  - **Un équilibre doit être trouvé entre la nécessité d'une part, de sanctionner les employeurs coupables de fraudes, afin de privilégier le recours à la CBE par des employeurs vertueux, et l'impératif, d'autre part, de ne pas pénaliser les titulaires et bénéficiaires potentiels de la CBE, lorsque ceux-ci sont extérieurs aux malversations de l'employeur en cause.**
  - **Une proposition rédactionnelle alternative pourrait être la suivante :**  
  
*« (...) where such misconduct concerns the failure of the employer to meet its legal obligations regarding social security, taxation, labour rights of working conditions, it should constitute a ground for rejection, withdrawal or refusal to renew, **only following an individual assessment of each case** ~~only when it was a serious breach of its obligations or was committed repeatedly prior to the date of the application~~ ».*
- Critères d'admission (ligne 121, article 5) :
  - **S'agissant de la ligne 131, nous rappelons nos positions évoqués au titre du considérant 22.**
- Retrait ou non-renouvellement de la CBE (lignes 139a et 141, article 7) :
  - **La France comprend les enjeux de mise en cohérence avec les directives mentionnées et de l'obtention d'un compromis interinstitutionnel.**



- **Toutefois, la France rappelle l'importance, pour chaque État membre, de prévenir toute menace ou atteinte à l'ordre public ou à la santé publique.**
- **Ainsi, le retrait ou le refus de renouvellement devrait être imposé, après un examen minutieux de la situation de l'intéressé, en cas de menace à l'ordre public ou à la santé publique.**
- **Une proposition rédactionnelle alternative pourrait être la suivante :**  
  
*« 1. Member States shall withdraw or refuse to renew an EU Blue Card where : (...) (c) only following an individual assessment of each case, the reasons of public policy, public security or public health so require »*

## **HUNGARY**

### **Articles 5 (7) and 6(1)**

Based on the Commission's explanation regarding the room for manoeuvre during the transposition of the Directive, we could accept shifting Article 5(7) to Article 6(1).

### **Article 6(3)a) and Recital (22)**

We could accept the provisions that provide an explanation based on the principle of proportionality.

### **Article 7**

We cannot accept the suggested shift of the withdrawal based on reasons of public policy, public security or public health to Paragraph 2 setting out optional withdrawal grounds; we still find it essential to set out this case as an obligatory provision.

### **Articles 19 to 22**

We do not oppose the suggested structural changes as long as their compliance with Schengen acquis is ensured. As further amendments might be needed, we enter a scrutiny reservation regarding the wording proposal.

As regards Article 20 and Recital (41) we maintain our position that the possibility of Member States should be kept to only allow the beginning of employment in the second Member State once a positive decision on the application is adopted.

## **ITALY**

### **With regard to Article 13(3a)**

Please be informed that the Italian legal system moves within the framework outlined by the provisions of art. 45 T.F.E.U. and respects the principle of non-discrimination, as defined by the jurisprudence of the EU Court of Justice. Therefore, access to public employment activities is legitimately reserved to Italian citizens as regards positions that involve a direct and specific, prevalent and habitual exercise of public authority, aimed at protecting the national interest. As for other types of activities, the IT national legislator does not specify further limitations.

## **MALTA**

Following the discussion at the JHA Counsellors meeting on 30 November 2020 and the discussion on the four-column document (WK13584/2020), below please find Malta's comments, as follows:

- **Line 31 (recital 22 linked to Article 6):**

MT prefers to maintain the Council text; thus, the proposed additions are not included in the recital but kept in Article 6. As a compromise, it could also be considered, that a reference to national law is included.

- **Line 268 (Article 21.1a):**

MT would like to request clarification on the use of the term 'internal borders' as opposed to the reference to 'external borders' in the EP suggested text.

### **Malta's Comments on Article 13 (3a)**

Following the discussion at the JHA Counsellors meeting on 20 November 2020, the question set out in the presidency paper and the discussion on Article 13 (3a) of the Council General Approach, below please find Malta's comment, as follows:

**In the domestic law of Member States, are there any employment activities which are reserved to nationals, Union citizens or EEA citizens and which do not entail the at least occasional involvement in the exercise of public authority? If so, could you please name these employment activities?**

According to the Article 5 of the Legal Notice 315 of 2011 (Laws of Malta) regarding the Nationality Requirements for Appointments in Public Administration, certain posts are reserved for Maltese nationals.

The Principal Permanent Secretary may issue directives and guidelines in terms of the Public Administration Act to ministries, departments, agencies, government entities and boards or commissions, to reserve for Maltese nationals any posts involving the exercise of public authority and the safeguarding of the general interests of the State, including any or all of the following:

- (a) posts in the Office of the President, the House of Representatives, the Prime Minister's and Ministers' secretariats, the Cabinet Office, and the offices of the Principal Permanent Secretary and any Permanent Secretary;
- (b) posts involving the preparation of expert advice in the field of prosecution of offences or lawmaking, and posts entailing responsibility for advisory constitutional bodies;
- (c) posts involving the sovereignty of the State, including diplomatic and foreign representation;
- (d) posts in the Office of the Prime Minister and the Ministries of Finance, Justice, Home Affairs and Foreign Affairs;
- (e) posts within departments charged with the protection of the economic interests of the State, including tax authorities;
- (f) positions in the Senior Executive Service;
- (g) posts in the disciplined forces and offices responsible for defence matters; and (h) posts in the security services and in the field of civil protection and defence.

However, the same regulation states that, where Maltese nationals suitably qualified for appointment to a reserved post are not found, or where the Principal Permanent Secretary believes that they are not likely to be found, the Principal Permanent Secretary may authorise the appointment of a non-Maltese national through such procedures as may be applicable and under such terms and conditions as he may prescribe.

## **THE SLOVAK REPUBLIC**

### **The position of the Slovak Republic to the document WK – 13584/2020 – compromise proposals**

#### **LINE 31 (recital 22):**

in order to agree with the proposed text in fourth column we would need the clarification regarding term “**serious breach**”. What conduct would fall under the serious breach of obligation on the employer’s side? Where will it be defined?

#### **LINE 245 (Article 20 para. 1 Long-term mobility):**

The Slovak Republic position has not changed and therefore **it cannot agree with the proposed compromise** on the possibility for the second Member State to allow EU Blue Card holder to begin employment before a decision on the application is adopted.

#### **LINE 251:**

the **Slovak Republic does not agree** with the skills recognition.

#### **Reiteration of Slovak redlines as sent to the German Presidency in the summer (still valid):**

- **Parallel national schemes** – after the new government took the office in March 2020, the national position is under negotiation.
- **The inclusion of non-formal skills** – Slovakia is not in favour of non-formal skills recognition (to be seen if it is a redline), there are several questions related to the equivalence of the skills recognition and its validity among the Member States.

#### **Other red lines for SK**

- Slovakia cannot agree with the **widening of the scope** of the EU Blue Card Directive regarding the international protection holders and seasonal workers, as well as with the granting of the long-term residence after 3 years.

- **Long-term mobility:** redline regarding the commencement of the long-term mobility only after the 30 day period lapses for objections
- Slovakia does not agree with the **parallel self-employed activity** (article 13(2)). Among other things due to the fact that the residence is bound to the concrete purpose, in this case highly qualified employment.
- **Salary:** Slovakia can agree with 80% for graduates up to 3 years after the graduation and not for managers or professionals.
- **Salary threshold:** we can agree with the 1,0 level and not less.

**Regarding article 13/3a BC:**

*Act no. 5/2004 Coll. on employment services and on Amendments to Certain Acts, does not sets out a provision governing work activities specifically reserved for nationals, Union citizens or EEA citizens.*

*According to the provisions of § 2 of Act no. 55/2017 Coll. on Civil Service and on Amendments to Certain Acts, the civil service is reserved only for citizens of the Slovak Republic, a citizen of another Member State of the European Union, a citizen of a state party to the Agreement on the European Economic Area and a citizen of the Swiss Confederation.*

*Civil service positions where the civil service can only serve a citizen of the Slovak Republic are established by a Regulation of the Government of the Slovak Republic.*

## **SWEDEN**

**SE** has a proposal for a wording in recital 22 that perhaps could make the text a bit more balanced. For us, it is important to find a proportionate wording that does not send the signal that the EU/MS are willing to ignore misconduct by the employers.

**Where such misconduct concerns the failure of the employer to meet its legal obligations regarding social security, taxation, labour rights or working conditions, it should not result in a rejection, withdrawal or refusal to renew if the breach in question was minor and not committed repeatedly or if such a decision appears unreasonable.**