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From:	Presidency
To:	JHA Counsellors (Migration, Integration, Expulsion)
N° prev. doc.:	2016/0176(COD)
Subject:	Proposal for Directive of the European Parliament and the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment - Presidency compromise suggestions

With a view to the informal videoconference of JHA Counsellors (Legal Migration) of 8 February 2021, delegations will find below a few elements of discussion regarding the following topics: processing times of applications (which are considered here as a package), procedural guarantees, recognised employers and rights of family members, including the Presidency compromise proposals on Articles 16 and 20.

Proposed suggestions are indicated in bold and strikethrough.

With a view to the informal videoconference of JHA Counsellors (Legal Migration) of 8 February 2021, delegations will find below a few elements of discussion regarding the following topics: processing times of applications (which are considered here as a package), procedural guarantees, recognised employers and rights of family members, including the Presidency compromise proposals on Articles 16 and 20.

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1. Times for processing applications:

In the view of the Presidency, a revision of the times for processing of application is an important element of attractiveness and effectiveness of the new proposal. There are four instances where the Directive establishes times for processing of applications:

- a. application of the Blue Card holder (90 days) [L167]
- b. applications in case of recognised employers (30 days) [L168]
- c. applications for family reunification (90 days) [L213]
- d. applications for long-term mobility (90 days) [L262]

The European Parliament considers that all these deadlines for processing applications should be shortened: 30 days for the cases in (a), (c) and (d), and 15 days for (b).

The Presidency proposes that Member States consider the following proposals regarding the processing times together, as a package that could contribute to the overall objective of increasing the attractiveness and effectiveness of Blue Card: while the Council would keep the 90-day deadline for processing the first application for a Blue Card (a), including for recognised employers (b), it would accept to make an effort in cases where the procedure is based, even if only partially, on a set of already available information. In the case of family reunification, the administrative procedure involves the examination of the evidence of the existence of the family relationship, accommodation, sickness insurance and the stable and regular resources which should be easily verified in light of the requirements set out for the salary of the sponsor. As for long-term mobility, the documents to be assessed are the work contract and the documents attesting the fulfilment of the conditions to exercise regulated professions and, possibly, evidence of insurance and documents attesting higher professional qualifications.

In a spirit of compromise, the Presidency proposes, regarding the applications for family reunification (b) and long-term mobility (d), to agree with a period for processing applications of 30 days. Especially in the case of long-term mobility, this could be an important improvement to make the procedure more effective than in the current Blue Card scheme.

Drafting Proposals:

Article 16(4): compromise proposal as follows:

4. By way of derogation from the first subparagraph of Article 5(4) of Directive 2003/86/EC, where the conditions for family reunification are fulfilled and the complete applications were submitted simultaneously, [...] the decision for family members shall

*be [...] adopted and notified at the same time as the EU Blue Card. Where the family members join the EU Blue Card holder after the EU Blue Card has been granted to him or her and where the conditions for family reunification are fulfilled, [...] the decision shall be [...] adopted and notified as soon as possible but at the latest within [...] ~~90~~ **30** days from the date on which the complete application was submitted. Article 10(3) of this Directive shall apply accordingly. [line 213]*

Article 20(8): compromise proposal as follows:

*8. [...] The second Member State shall adopt a decision on an application for an EU Blue Card and notify the applicant and the first Member State in writing as soon as possible, but at the latest within [...] ~~90~~ **30** days of the date of submission of the complete application of its decision to either (...) [line 262]*

2. Procedural safeguards (Article 10):

Agreement on Procedural safeguards depends, aside the deadlines for processing applications, on the discussion on technical aspects related to administrative procedures.

In this regard, the Presidency understands that EP amendment 110 [L170] brings no added value and it is covered by text of the Council and the amendment is unacceptable since it contains a positive discriminatory treatment for highly skilled workers that is unjustified.

On the other hand, the Presidency would ask Member States to accept the proposal of the EP for recital 22a [L171] with the following explanation: the EP agreed to move the last sentence of its amendment 111 to a recital. Although there is no added value accepting the proposal would be a trade-off for other negotiations.

Finally, a discussion is envisaged with the Commission on its proposals in Lines 169 and 172.

3. Recognised employers (Article 12):

The Presidency would like to call the attention of the Member States to Article 12(2) [line 181]. The mandate of the Council indicates that applicants shall be exempt of one or more pieces of evidence when the procedure is done in a simplified procedure linked to recognised employers. In the list of exemptions, the Council included the exemption from presenting the evidence referred in Article 5(1)(b), which refers to the conditions for exercising regulated professions. The Commission proposal refers instead to exemption from presenting the evidence referred in Article 5(1)(c), which refers to higher professional qualifications for unregulated professions. The Presidency considers that the possible exemption from presenting the evidence where a system of recognised employers exists requires more discussion.

4. Labour market access of family members:

While the Presidency is working based on the premise that labour market tests may be requested in the application process for a Blue Card, in order to increase the goodwill of the Parliament, it would request Member States to consider more in detail the situation of the Blue Card holder's family members.

According to the Blue Card proposal (Article 16 (6) 2nd subparagraph) [L216] and the Council drafting proposal, Member States may check whether the vacancy to be occupied by the family member of the Blue Card holder could not be filled by a national, an EU citizen, a third-country national already forming part of its labour market or by EU long-term residents wishing to move to that Member State for employment. The European Parliament suggests to delete this sentence.

The Presidency's understanding is that the conditions for family reunification of Blue Card holders are an essential element of attractiveness of the EU Blue Card scheme. It is well established that, in their decision to move to other countries, highly skilled workers consider the possibility of their partners or spouses to be able to integrate the labour market of the receiving country one of the most important elements of decision. This has been recognised in the ICT Directive, which has ensured to the family members of the ICT full access to employment and self-employment in the territory of the Member State which issues the family member residence permit.

Bearing in mind the objectives behind the revision of the Blue Card Directive, the Presidency's understanding is that more attractive conditions involve, necessarily, the establishment of favourable conditions allowing the highly skilled professional to keep his/her family together.

In this regard, and also in a spirit of compromise with the EP, could Member States agree on deleting the 2nd subparagraph of Article 16(6)?