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WORKING PAPER

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From: To:	General Secretariat of the Council 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

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

ANNEX

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

– State of play, possible way forward and preparation of interinstitutional negotiations –

and following informal videoconferences of the members of the JHA Counsellors (Migration, Integration, Expulsion) on 18 and 27 January, 2021

(WK 14956 2020 INIT and WK 1040 2021 INIT)

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AUSTRIA

Comments on WK 1040/2021:

Please be informed that the parts marked in yellow are to be understood as a reaction to explanations given in the meeting. Also, our comment on Art. 6 para 3 (a) is ment to underline that the national competence of Member States to conduct labor market tests must not be limited.

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

(i) salary threshold limits

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

(ii) Involvement of social partners

„After consultation with social partners“ instead of „in agreement with social partners“

(iii) Derogations

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

Scrutiny reservation. There were several other elements and recitals used in the Bulgarian proposal of 2018, especially concerning the relationship of the salary threshold with the applicable collective wage agreements. Would those elements be also incorporated in the new text of the PT Presidency? If so, to what extent?

As already stated in 2018, a May-clause concerning the introduction of the thresholds mentioned under derogation points 1-3 would be acceptable. The range 1.0 -1.6 needs further examination, since it deviates from the Council position agreed in 2017 (1.1-1.7) and the developments related to the discussions on skills and the labour market test need to be taken into account in our analysis.

Criteria for admission, refusal and withdrawal

Article 6 (1) (b):

Art 6/1 [L127] This clause should be kept as a "shall" (in line with the S&R as well as ICT directive). It would send the wrong message to move this clause to a "may" provision. We should not forget that the Blue card gives mobility rights to the holder. Keeping this clause as a "shall" is an important safeguard in cases of mobility.

Article 6 (3) (a):

(a) where the competent authorities of the Member State, after checking the labour market situation**, in particular where there is a high level of unemployment**, conclude that the concerned vacancy may be filled by national or Union workforce, by third-country nationals lawfully resident in that Member State and already forming part of its labour market by virtue of Union or national law, or by EU long-term residents wishing to move to that Member State for highly […] qualified employment in accordance with Chapter III of Directive 2003/109/EC.

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

We would prefer the text of Article 6 (3) (a) without the new passage „ *in particular where there is a high level of unemployment"* (as proposed by the Presidency), since that passage leaves space for unintended interpretation by the ECJ (inspired by the overall context or the purpose of the Directive) that could limit the competence of the MS by ruling out more common or average levels of unemployment, where an application of a labour market test can also be necessary to give priority to unemployed EU nationals or TCN residents (e.g.where a MS has financed programmes for workers to attain a high level of qualification and those workers do not find a job, because the employer prefers a TCN newcomer). Our position has not been changed by the new compromise wording proposed by another delegation in the Justice and Home Affairs counsellors` meeting on 27 January 2021 which would use the expression „for example" instead of „in particular", since the substance of that latest wording and related problems/impacts remain the same. With a view to keeping the text as clear and easy to read as possible for everyone concerned by the Directive, we should refrain from adding text elements counterproductive for this purpose, especially in this important issue regarding the competence of the MS."

Article 6 (3) (d):

Scrutiny reservation. We may point to those cases where a Blue Card holder works illegally beside his official job.

Art 6/3/d [L130] We cannot share the view of the Presidency. Blue Card holders have labor market access for highly qualified positions only. It is possible that the residence would be misused (eg for accessing the labor market in a medium or low skilled job). It is possible that the admission criteria are met, but the MS still has grave concerns that they are only met on paper. Therefore this is an important admission criteria.

Article 7

Amendment 93 [L142] proposing the deletion of the possibility that a MS may withdraw or refuse to renew a Blue Card "where appropriate, where the employer has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions". In the EP's view this provision encloses a "punishment" of the Blue Card holder for reasons that are beyond his/her control.

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

Scrutiny reservation. How is it in the cases where the worker cooperate with the employer in order to undercut those legal provisions especially with a view to working conditions?

The reasoning of the EP **does not take into account those cases where workers** cooperate with the employer to undercut those legal provisions especially with a view to working conditions, e.g. by working more than the official amount of daily working hours without extra payment, especially if he/she comes from a third country with much lower wages than the destination EU country.

Delete paragraph 2 (ba) [L142a]:

Art 7/2/ba [L142a] Deletion is okay provided salary thresholds are at an acceptable level.

Deletion of the last sentence of paragraph 2 (f) [L146] ("*makes use of the mobility provisions of […] Chapter V in an abusive manner* ") of the Council (and Commission) text:

Art 7/2/f [L146] The presidency proposal is acceptable in the spirit of compromise provided recital 21 remains as suggested by the Presidency in December 2020. We share the understanding that abusing of mobility provision would constitute non-compliance.

Article 20

Last sentence of paragraph 8a [L264]. In a view of a compromise, the Presidency asks Member States to agree on reducing the scope of the information transmitted to the cases where the grounds for refusing the mobility concern a threat to public policy, public security or public health posed by the third country national.

Art 20/8/a [L264] The meaning of the addition "In case the ground for the refusal decision is the one referred to in paragraph 2." is unclear to us. The ground for refusal is that the conditions laid down are not met. Art 20/2 states that the Blue Card holder/his employer should submit an application and the supporting documents. If all of those are submitted but the Blue Card holder is a threat to public order or public security surely an application must be refused, but that does not seem to be permissible given the added language

Also seems to be an issue on the numbering? Line 264 contains Art 20 paragraph 8 not 8a. Also in the proposal there is a lit (b) and (d) but no (c)?

Harmonization

Article 23 (1a) (**"1a. Where Member States issue national residence permits for the purpose of highly qualified employment, they shall ensure the same access to information on the EU Blue Card as on the national residence permits."):**

This proposal would be acceptable.

Recital 5: („….However, Member States should apply a level playing field between the EU Blue Card and such national residence permits, in terms of rights, procedures and access to information. In particular, Member States should ensure that EU Blue Card holders and their family members do not enjoy a lower level of procedural safeguards and rights than holders of national residence permits. They should also ensure that applicants for an EU Blue Card are not in a less favourable position than applicants for national residence permits with regard to recognition procedures for employers, and that they pay a comparable amount of fees for the handling of their application. Finally, Member States should ensure that the EU Blue Card benefits of the same level of information, promotion and advertisement activities than the national residence permits, for example through information on the national websites on legal migration, information campaigns and training programmes for the competent migration authorities."):

Scrutiny reservation.

We would like to expressly maintain the restriction of equal treatment as regards family benefits in relation to family members who reside in a third country.

===➔

With reference to the question in the Presidency Flash concerning "long term resident status" we point out the following:

Austria is opposed to a „shall" clause for earlier access to long term resident status. It would add yet another exception and make the legal migration acquis more fragmented and difficult to understand/implement. A fact that has often be criticized by many stake holders.

Furthermore, third country nationals would be in a better position than EU nationals. The explanations given by the Commission does not convince us. Yes the status is different – EU national v third country national – but the proposal would treat highly qualified third country nationals better than equally highly qualified EU nationals.

As regard adding the stay in different member states we are also skeptical. An application from a residence permit after a stay in Austria for only two years and then possibly when not even holding a Blue Card would go against the system/understanding of a long term resident as well as the idea of promoting the blue card. If holding such a permit is not even required to acquire long term resident status on the basis of having a blue card.

We would also like to comment to Article 15 (2) + Article 15 (7), discussed 18.1.21:

Article 15(2) (equal treatment – line 203a):

We would like to expressly maintain the restriction of equal treatment as regards family benefits in relation to family members who reside in a third country.

Article 15(7) (equal treatment – line 208d):

We would like to expressly maintain the restriction of equal treatment as regards family benefits in relation to family members who reside in a third country.

BELGIUM

Comments on WK 14956/2020:

BE is withdrawing a red line on line 127a, after receiving additional clarifications from Commission. We can agree to proposal in this regard.

We would like to make two remarks:

- Line 133 and your suggestion to drop it in return for line 127b: we agree with other MS that line 133 and line 127b cover different situations. However, we believe that the situation in line 133 will not occur as a ground for refusal, but rather as a ground for non-renewal/withdrawal. We therefore like to suggest to move line 133 to Art. 7 – as it is also the case in the ICT-directive and the students/researchers directive.

Line 142a: I introduced during the meeting a scrutiny reservation. I can now drop this scrutiny and join the group of MS that expressed concerns on the possible more favorable conditions for blue card holders than for EU-citizens or TCN with a right to free movement.

Comments on WK 1040/2021:

Salary threshold proposals in art 5:

- BE supports a range between 1.0 and 1.6 of the general salary threshold
- BE supports the proposed changes by the presidency in art 5 (2) and (3), and in particular those regarding the involvement of social partners.
- Derogations:
    - BE could support the deletion of all derogations
    - BE could support keeping the derogations in the text, as long as they are optional "may"-clauses.
    - BE supports the deletion of amendment 116b of EP. This provision would not have much added value in our system.

Grounds for refusal – art 6.

During the meeting Belgium stated we could not accept the ground for refusal "where documents have been fraudulently acquired, or falsified or tampered with" as a "may"-clause as proposed by the EP, unless "with the knowledge of the third country national" would be deleted. Unfortunately, after the meeting, this proposal appears to be premature. **Belgium joins the position of the majority of MS this ground for refusal should be kept as "shall"-clause, in order to keep harmonized provisions between the different directives in the legal migration acquis**.
Therefore, Belgium supports keeping the "shall"-provision in line 127 while deleting the amendment of EP in line 133a. I do apologize for the confusion caused because of this change in position.

BULGARIA

Comments on WK 14956/2020:

Bulgaria can accept the proposals in line 30.

We agree to the proposal in line 31, but only if Article 6, paragraph 3b is kept (previous 3a and renumbered after the placement of the new paragraph 3a regarding the inspection of the situation on the labour market).

With regard to line 101, we support the text of the Council, but depending on the outcome of the political trialogue on the degree of harmonization, an alteration of position can be discussed. Bulgaria could agree on the Presidency's proposals in line 130a. However, the text of the Council in line 128 (under Article 6, paragraph 2) should be maintained.

On line 133a correlated to line 127b, we **place a scrutiny reservation on the proposal for deletion of art. 6, paragraph 3d**. We do not oppose the proposal under line 127 b, which is in line with the wording of other directives in the field of legal migration, but the texts of Article 6, paragraph 3 d) and Article 6, paragraph 1d) are not identical, are not interchangeable and are not even mutually exclusive. We would like to ask the Presidency for a clarification on the context of the proposal.

With regard to line 139, we favour the Council's position, but we can be flexible in case the EP is willing to agree other text, relevant to the Council.

On line 139a, even though we are sorry to see that the Council agrees to replace the provision from Art. 7, para. 1c (line 139a) to Art. 7, para. 2a. (line 141), we can support it, as the wording of the related recital 20 is sufficient. We accept the deletion of the fifth sentence as the principle of proportionality is sufficiently addressed in the previous sentence. We prefer that there would be no more discussions on texts that are directly related to security and public order.

We have no particular objections to the deletion of the text under Article 7, paragraph 2 (ba) (link to line 271) as highly qualified third-country nationals are presumed to be well paid and the likelihood of needing social support (including for family members) is minimized. In addition, reaching an agreement with the EP and the EC on verification by the second MS for long-term mobility would be positive highly qualified third-country nationals are presumed to be well paid and the likelihood of needing social support for maintenance (including for family members) is minimized.highly qualified third-country nationals are presumed to be well paid and the likelihood of needing social support for maintenance (including for family members) is minimized.highly qualified third-country nationals presumed to be well paid and likely to need social support for dependents (including family members) is minimized.highly qualified third-country nationals presumed to be well paid and likely to need social support for dependents (including family members) is minimized.. The approach will be in line with other instruments in the field of legal migration. Nevertheless, in view of the uncertainty regarding the outcome of the discussions on "recognition of skills" and whether, if recognized, they will not affect the payment thresholds, we propose not to rush into deleting Article 7, paragraph 2 (ba). The introduction of a mandatory recognition of skills and establishment of appropriate remuneration for many Member States would be a novelty and a challenge.

Regarding line 146a and Article 7, paragraph 2 (fa), we have no objections to the Presidency's proposal (and also to the EP's position). Every case of unemployment, exceeding the total allowed period due to illness, is to be observed taking into account the principle of proportionality and individual characteristics. Besides there are available mechanisms for checking possible abuses and, in our opinion, the issue does not even have a political connotation.

With regard to Article 20 and long-term mobility, we stand behind our position of maintaining the application procedure, rather than notification. As for para 3a, we would like to keep the requirement for presenting a valid medical policy/health insurance. The obligation may be assigned to the applicant for residence or to their employer.

The question of mandatory recognition of skills vs qualifications remains a red line for Bulgaria with the argument that it will put the third country nationals in a more privileged position compared to the citizens of the EU. For EU citizens there is no similar European framework.In addition, reaching an agreement with the EP and the EC on verification by the second MS for long-term mobility would be positive.In addition, reaching an agreement with the EP and the EC on verification by the second MS for long-term mobility would be positive.

Moreover, reaching agreement with the EP and the European Commission for examination by the second MS in long-term mobility would be positive.

As for line 264 (par. 8b) we believe that indicating the reason for refusal is sufficient without adding additional criteria for providing information, which leads to unnecessary administrative burden and duplication of obligations for the administrative decision-making body.

Regarding the payment thresholds (Art. 5, para. 2) we are in favour of range of 1.0 to 1.6. Any of the derogations discussed during the Bulgarian presidency, which would respond to the concerns of the delegations, would be acceptable.

CROATIA

Comments on WK 1040/2021:

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

Proposals for Article 5(2) and (3) i (iii) derogacije te amandman EP 69 (Linija 166b)

HR

- We would like to **keep the derogations as proposed in Council text, as long the proposed derogations are „may" provisions**.

- As regards the inclusion and role of social partners when determining the salary threshold, we can accept the inclusion of wording „after consultation" (we can not accept inclusion of wording „in agreement") only if amendment of the EP 69 in line 166b is not accepted.

Criteria for admission, refusal and withdrawal

Article 6, Para 1, b)-grounds for refusal

In paragraph 1:
(b) where the documents presented have been fraudulently acquired, or falsified or tampered with; [L127]
Can Member States accept this ground for refusal under a "may" clause as proposed by the EP in L 133a *[(ca) where, with the knowledge of the third-country national, the documents presented for the purpose of admission pursuant to Article 5 have been fraudulently acquired, or have been falsified or tampered with*]?

HR

We can not accept the proposed neither as a may clause, nor the proposed wording „with the knowledge of the third country national".

Article 6, Para 3, a) –grounds for refusal

> **(a)** where the competent authorities of the Member State, after checking the labour market situation, conclude that the concerned vacancy may be filled by national or Union workforce, by third-country nationals lawfully resident in that Member State and already forming part of its labour market by virtue of Union or national law, or by EU long-term residents wishing to move to that Member State for highly […] qualified employment in accordance with Chapter III of Directive 2003/109/EC. [L130]

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

> (a) where the competent authorities of the Member State, after checking the labour market situation**, in particular where there is a high level of unemployment**, conclude that the concerned vacancy may be filled by national or Union workforce, by third-country nationals lawfully resident in that Member State and already forming part of its labour market by virtue of Union or national law, or by EU long-term residents wishing to move to that Member State for highly […] qualified employment in accordance with Chapter III of Directive 2003/109/EC.

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

HR

> **We can agree with the proposed wording, but we also want a guarantee that even with inclusion of „in particular….", there are no restrictions in MSs right to check the labour market situation and that legal text would only be interpreted in this way.**

Article 6, Para 3, d)-grounds for refusal

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

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

HR

In case this provision is deleted under Article 6, we would like to propose to add it under Article 7 as a provision for withdrawal/non renewal of EU BC.

Article 7 , Paragraph 2, b)

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

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

HR

We do not accept deletion. The proposed provision does not enclose „punishment" for TCN. On the contrary, it aims to stop the illegal and abusive treatment of worker-EU Blue Card holder, even in cases when the worker himself in not in a position to report to the competent authorities that his rights are being breached by the employer.

This could be further tackled in connection with the guarantee in Art 7, Para 2 fa) (new), having in mind the fact that unemployment for up to 3 months will not result in cessation of EU BC, thus enabling BC holder to look for another employment.

Furthermore, we could look into possibility to allow TCN in a situation under Art.7. Para 2, point b), to remain on the territory of MS for certain amount of time (up to 3 months) to look for another employment and allow for new EUBC to be submitted from the territory, if there is no fault on his behalf.

Article 7, Paragrapf 2, f)

By way of compromise, the Presidency amended **recital 21 [L30**] adding some examples of what could constitute an abuse of the mobility referred to in **paragraph 2 (f) [L146].** Nevertheless, the EP insists on deleting the last sentence ("*makes use of the mobility provisions of […] Chapter V in an abusive manner* ") of the Council (and Commission) text.
The Presidency understands that an abusive use of the mobility provisions will, in any case, constitute a non-compliance of such provisions and asks Member States to share their views on this matter.

HR

We believe that for reason of legal certainty and clarity, the wording „in an abusive matter" must remain in operational part of the text.

Article 20

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

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

HR

We can accept the proposal, only if it proposes to state the mere fact that the grounds for refusal refer to public order, national security or public health.

If the grounds for refusal would need to be further elaborated, we would have scrutiny reservation due to the fact that consultations with relevant ministries, as well as security agencies, are needed in regard to the information that could be revealed to other MS (if this is possible and what kind of information), as well as on appropriate information channels.

Harmonization

To complete the set of proposals on harmonisation and as announced in the meeting of 21 January, the Presidency suggests the following text proposals on Article 23 and Recital 5:
On Article 23: proposal to add a new paragraph – 1a, after paragraph 1 with the following wording:
"1a. Where Member States issue national residence permits for the purpose of highly qualified employment, they shall ensure the same access to information on the EU Blue Card as on the national residence permits."

HR

We can accept the proposal.

Long term residence status (Long Term Regulation - LOTR) (Article 17)

HR

We do not oppose the more flexible rules on access to LOTR status (three years instead of 5 years). Regarding access to LOTR status in cases of intra-EU mobility (residence accumulated while holding another residence permit in another MS, not BC exclusively), we believe that person would qualify for LOTR if at least a half of that residence period is in status of EU Blue Card holder. We support the proposal of EC, as it gives us mechanism of control to a certain degree.

However, as regards the question on LOTR, for us this is a part of a larger picture on EU Blue card holders. As our above mentioned points regarding the access to LOTR is connected with other issues, namely the mandatory recognition of skills, which we can not support.

FRANCE

Comments on WK 1040/2021:

I) Critères pour l'admission, le refus et le retrait de titre – articles 6 et 7

- Article 6.1 (b) : La France maintient son soutien à la rédaction du texte, telle qu'elle avait été adoptée au Conseil. En effet, la rédaction proposée revient à faire porter sur l'État membre la charge de démontrer que le demandeur avait connaissance du caractère frauduleux des documents qu'il a présenté. Or, l'expérience des services en charge de ces questions démontre qu'il est quasi-impossible de prouver un élément aussi subjectif (alors même qu'il est rarissime qu'une personne produise un document frauduleux sans le savoir). Cela reviendrait *in fine* à délivrer des CBE à des personnes ayant sciemment fraudé ou, à tout le moins, à des personnes ne remplissant pas les conditions de délivrance de ce titre de séjour.

  Afin d'éclairer la réflexion des États membres la France souhaite que le Parlement européen :

  - précise comment un demandeur pourrait présenter des faux documents sans avoir connaissance de leur caractère frauduleux (en pratique, nous avons surtout affaire à de faux diplômes, de faux contrats de travail et de fausses fiches de payes. Or, Il est difficile de croire que la personne obtenant un diplôme sans avoir suivi de cours, ou se prévalant d'un travail au sein d'une entreprise qu'il n'a jamais fréquenté, soit de bonne foi) ;
  - présente des situations concrètes où le demandeur, ayant produit des documents frauduleux, remplirait tout de même les conditions de délivrance d'une CBE ?

  À défaut d'un tel éclairage, nous ne pouvons que rejeter cet amendement, qui permet à toute personne de mauvaise foi d'obtenir facilement une CBE en soutenant qu'elle ignorait le caractère frauduleux des documents produits.

- Article 6.3 (a) : la France ne pratique pas de tests 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.

- Article 6.3 (d) : Dans le cas où un risque avéré existe de recours abusif au dispositif CBE à d'autres fins que celles identifiées par la directive, il nous semblerait utile, de conserver une formulation cohérente avec les autres directives en matière de migration légale, notamment la Directive 2014/66 et la Directive 2016/801.

- Article 7 : Concernant l'amendement 93 [L142], la France ne partage pas la vision du Parlement européen qui viserait à exclure la possibilité pour l'État membre de retirer ou refuser de délivre une CBE lorsque l'employeur viole ses obligations. Contrairement à ce qui est mentionné dans le flash de la Présidence, cette mesure vise avant tout à empêcher un employeur ne respectant pas ses obligations sociales, fiscales ou tirées du droit du travail, de continuer à employer des titulaires de CBE dans de telles conditions. Ces comportements portent directement atteinte aux droits des salariés et constituent, en outre, une distorsion de concurrence envers les entreprises vertueuses qui respectent leurs obligations.

  Concernant cet amendement, le compromis proposé à la ligne L148b, consistant à informer préalablement le salarié concerné et lui permettre de retrouver un autre emploi dans un délai raisonnable, peut être accepté.
  Concernant l'amendement 96 (L146], la France n'est pas opposée à la nouvelle rédaction du considérant 21 proposée par la Présidence.

- Par ailleurs, la France peut accepter la suppression de l'article 7.2 (ba).

- Article 20 : Concernant la mobilité de long terme entre États membres, la France est favorable à une obligation d'information entre États limitée aux seuls cas de refus fondés sur l'ordre public.

II) Harmonisation

- Article 23 : La France n'est pas opposée à l'ajout proposé.
- Considérant 5 : La France n'est pas opposée à l'ajout proposé.

III) Les seuils salariaux (article 5)

(i) Limites de la fourchette salariale

- A titre liminaire, la France souhaite rappeler que la CBE concerne les *« travailleurs* ***hautement*** *qualifiés »* et ces derniers doivent, légitimement, percevoir un salaire élevé en rapport avec leur niveau de qualifications. Si le seuil salarial retenu pour la délivrance d'une CBE est bas, le titre sera délivré à des travailleurs peu ou pas qualifié, dénaturant ainsi l'objectif du dispositif (en effet, le niveau d'études, à lui seul, ne nous semble pas être un critère suffisant).

- Toutefois, afin de soutenir la démarche de compromis de la Présidence, la France ne s'oppose pas à la fourchette proposée de 1.0 à 1.6 fois le salaire annuel moyen dans l'EM concerné.

(ii) Participation des partenaires sociaux

- La France est opposée à toute rédaction prévoyant une consultation obligatoire des partenaires sociaux. En effet, le sujet est complexe (et avant tout migratoire). En outre, les pratiques de dialogue social varient grandement d'un EM à l'autre. Par ailleurs, il faut rappeler que ni l'actuelle directive CBE, ni le mandat de renégociation adopté en 2017, ne prévoient une participation des partenaires sociaux pour l'établissement du seuil salarial.

- En revanche, la France est ouverte à une rédaction qui laisserait la possibilité d'une telle consultation, pour les Etats membres qui le souhaiteraient.

(iii) Dérogations

- La France est fermement opposée à toute dérogation tant obligatoire qu'optionnelle, qui pourrait permettre la délivrance d'une CBE à un salarié percevant un salaire inférieur au salaire annuel moyen de l'Etat membre. En effet, un niveau de salaire aussi faible ne correspond pas à celui d'un « travailleur hautement qualifié », qui est le seul public visé par cette directive.

  La France est donc notamment opposée aux dérogations proposées aux paragraphes 2a, 4 et 5, qui visent à permettre une baisse à 80% du seuil salarial retenu par l'Etat membre pour les professions en difficulté de recrutement et pour les jeunes diplômés. On peine à comprendre en quoi la délivrance de CBE à partir de salaires faibles (à peine 0.8 fois le salaire moyen annuel pour l'Etat membre ayant fait le choix du seuil minimal à 1.0) augmenterait le nombre de candidats dans les secteurs en manque de main d'œuvre et aiderait les jeunes diplômés. Au contraire, ce sont les salaires élevés qui augmentent l'attractivité des postes vacants et permettent de débuter sa vie professionnelle dans de bonnes conditions matérielles.

- En outre, ces seuils salariaux particulièrement faibles présentent un risque de « dumping salarial » (-> le maintien de salaires faibles dans certains secteurs sera facilité par la possibilité de recruter à ce niveau de salaire des ressortissants de pays tiers qui bénéficieront des avantages de la CBE). Ce risque de « dumping » est d'autant plus inacceptable que les titulaires de ces CBE aux conditions salariales fortement allégées bénéficieront de la mobilité à court terme, leur permettant de réaliser des missions sur le territoire des autres Etats membres. Ils concurrenceront alors les travailleurs locaux aux compétences similaires (et aux salaires locaux plus élevés), ce qui risque de priver ces derniers d'opportunités professionnelles et d'entretenir la défiance de certains citoyens envers le législateur européen.

- L'amendement proposé à la ligne 116b, qui prévoit la possibilité qu'il n'y ait pas de seul salarial pour certaines branches d'activité, est contraire à l'objet même de la directive puisque des CBE pourraient être délivrées à des travailleurs ayant des salaires de travailleurs peu qualifiés. La France s'y oppose fermement.

IV) Statut de résident de longue durée pour détenteurs de la CBE (article 17)

- Concernant la durée de résidence requise pour l'accès au statut de Résident de longue durée UE après trois ans de résidence continue sous statut de CB-UE (au lieu de cinq ans requis pour les titulaires d'un autre titre de séjour) : la rédaction actuelle ("may cause") convient à la France, qui n'est pas favorable à une "*shall clause*" sur ce sujet. En effet, la période de trois années parait bien faible pour acquérir un statut de résident de longue durée. À titre de comparaison, un citoyen UE n'accède au séjour permanent dans un autre EM qu'après 5 ans de séjour régulier (article 16 de la directive 2004/38/CE).

- S'agissant de possibilités d'accéder au statut de Résident de longue durée-UE après 5 années de résidence continue cumulées dans différents États membres, et ce quel que soit le statut de séjour antérieur : la France est opposée à cette proposition, surtout si elle devait être analysée en *shall clause*. En effet, nous considérons que seules les années passées sous couvert d'un titre CBE (ou, à la limite, sous couvert d'un des titres nationaux parallèles) devraient être prises en compte pour définir la durée et l'éligibilité au statut de RLD-UE. Le cas contraire, il faudrait prendre en compte des publics titulaires de titres ne donnant pas vocation à s'installer durablement en Europe (étudiant, visiteur, étranger malade, etc.).

De la même façon, nous nous opposons à l'option envisagée du retrait possible, pendant les deux premières années, de la carte de résident RLD-UE délivrée obligatoirement au détenteur d'une CBE après trois ans de résidence continue (cf. point 1). L'introduction de cette option de retrait, aurait pour effet de complexifier le droit applicable, en créant deux régimes différents pour les détenteurs de la carte de résident de longue durée-UE, en fonction du cadre d'obtention du statut (les cartes RLD-UE obtenues sur la base d'une Carte bleue européenne, d'une part, et les cartes de RLD-UE délivrées sur la base d'autres titres de séjour, d'autre part). Cela complexifierait inutilement le droit applicable, tant pour les administrations que pour les usagers.

GERMANY

Comments on WK 1040/2021:

1) Presidency proposals for Articles 5, 6, 7, 20, 23 and recital 5

1. Article 5 (salary threshold)

a) Presidency's suggestions to change the order of para. 2 and 3 and to change the wording of (former) para. 2 to include a "fork" of 1.0 – 1.6 and a consultation of the social partners

- Germany agrees to the lower threshold of 1.0, but wishes to keep the upper threshold at 1.7. *If necessary in the end to finally agree on a package deal, Germany could consider to also accept a threshold of 1.0 – 1.6.*
- Germany can agree to the swapping of paragraph 2 and 3. Systematically, this makes sense as all provisions concerning salary threshold will be put one after the other with this suggestion.
- Concerning the involvement of social partners when setting the salary threshold, Germany can agree to the Presidency's proposal if the words "where appropriate" are inserted before the words "after consultation" and only if that means that the consultation is not obligatory. This is a standard wording used in many EU legal acts such as the Seasonal Workers Directive (Article 2 para. 2). The entire expression should then be as follows:

"**where appropriate** after consultation with the social partners"

It is important that the authorities of the Member States retain the **right to decide** on the salary threshold; a pure **consultation, where appropriate,** with social partners is acceptable in this regard.

b) Derogations

aa) Article 5 para. 2a of the Council General Approach ("2.0-derogation", line 115a)

Germany is flexible regarding this derogation and could agree to delete it.

bb) Article 5 para. 4 („shortage professions", line 117)

Germany supports the Council General Approach ("may" instead of "shall"; "at least" 0.8). This derogation must be kept.

cc) Article 5 para. 5 ("career beginners"; line 118)

Germany supports the Council General Approach ("may" instead of "shall"; "at least" 0.8). This derogation must be kept.

dd) EP amendment 69 (line 116b)

Germany is of the opinion that the suggestions of the EP concerning the salary threshold are too complicated. Germany does not support these suggestions. Moreover, Germany cannot accept to transfer any kind of decision-making competence to the social partners when it comes to the salary threshold. A salary threshold of 1.0 – 1.4 would be too narrow. The salary threshold should apply to all professions in a Member State (derogations only for shortage professions and career beginners).

2. Article 6

a) Article 6 para. 1 lit. b (line 127)

Germany cannot accept to turn this ground of refusal into a "may"-clause. This would not be coherent with Article 7 para. 1 lit. b of the ICT-Directive as well as Article 20 para. 1 lit. b of the Students & Researchers Directive. Additionally, as intent is hard to prove, Germany cannot support the additional wording of the EP "with the knowledge of the TCN". This would render the provision ineffective.

b) Article 6 para. 3 lit. a ("labour market test", line 130a)

Regarding the proposal of the EP to insert the words "in particular where there is a high level of unemployment": Germany could support the EP's amendment only if the wording is slightly changed. The words "in particular" are too restrictive. Member States should retain the competence to decide whether they introduce labour market tests. Germany therefore suggests to delete the words "in particular" and to insert the words "for example". The wording would therefore be as follows:
"**for example** where there is a high level of unemployment"

Moreover, it should be clarified in a **recital** that Member States retain the competence to decide whether they introduce labour market tests.

c) Article 6 para. 3 lit. d (line 133e and 127b):

Germany can agree to the deletion of Article 6 para. 3 lit. d (line 133e) if the new line 127b is kept. It is a legitimate interest to prevent misuse of the Blue Card and the provision is necessary in the light of the ECJ judgment Ben Alaya (C-491/13).

3. Article 7

a) Article 7 para. 2 lit. b ("failure of the employer to meet its legal obligations", line 142)

Germany does not agree with the deletion of this ground of withdrawal/non-renewal. The Blue Card Directive should be aligned here with the Students & Researchers Directive as well as the ICT-Directive for reasons of coherence (see Article 21 para. 2 lit. a of the S&R-Directive; Article 8 para. 5 lit. b of the ICT-Directive). Moreover, it is only a "may"-clause anyway and there is already an additional safeguard for the protection of the EU Blue Card holder foreseen by the Council for these cases in line 148b.

b) Article 7 para. 2 lit. ba of the Council General Approach (line 142a)

Germany supports deleting Article 7 para. 2 lit. ba (line 142a) if, in return, 2nd Member States retain the right to check whether the EU Blue Card holder has sufficient resources to maintain his or her family members in cases of long-term mobility (see existing compromise proposal in line 271).

c) Article 7 para. 2 lit. f (line 146; recital 21 = line 30)

Germany does not agree to the deletion of the "abusive manner"-alternative as the two alternatives in Article 7 para. 2 lit. f – the "non-compliance"-alternative and the "abusive manner"-alternative – cover different cases - see only the examples in recital 21. If a person acts in an abusive manner and thus intentionally, there should be consequences. Germany would like to flag that it is only a "may-clause" anyway. In the spirit of compromise, however, Germany would be open to consider the insertion of the word "repetitively" - as suggested by the Commission.

4. Article 20

Germany can in general accept to limit the transmission of information to certain grounds of refusal. Germany supports the reference to para. 4 lit. (d). However, in addition to lit. (d) the information that documents were fraudulently acquired, or falsified or tampered with, is also relevant for the 1st MS (e.g. a certificate that was the basis also for the BC in the 1st MS turns out to be falsified). Germany therefore can agree to limit the transmission of information if the grounds for refusal as being stated in para. 4 lit. (b) and (d) are covered.

5. Article 23

Germany can support the insertion of the proposed para. 1a.

6. Recital 5

For reasons of clarification, Germany asks to insert the following addition in the first sentence of the new text:

> **"However, Member States should apply a level playing field between the EU Blue Card and such national residence permits, in terms of procedural and equal treatment rights, procedures and access to information."**

Apart from that, Germany can support the Presidency's proposal.

2) Long Term Residence Status for EU Blue Card holders, Article 17 (Questions in Presidency Flash of 22 January 2021)

- **Access to LTR status after 3 years of continuous residence**
  - Germany can in general accept to provide "access to LTR status through a continuous residence period of three years in one Member State **as an EU Blue Card holder**, instead of 5 years as generally provided for in the LTR Directive" – as long as a withdrawal remains possible in the timeframe of 5 years as set out in the Council's position on para. 2 second subparagraph.
  - However, it should be noted that providing LTR status to EU Blue Card holders earlier than foreseen in the LTR Directive must not become a precedent for other categories of third country nationals.
- **Access to LTR status in cases of intra-EU mobility**
  - Germany can accept to consider a time of residence while holding another residence permit than the EU Blue Card under the condition that the requirements for the EU Blue Card have been fulfilled also during that time.
- **Withdrawal of the LTR permit**

GER can accept a mandatory issuance of long-term residence status after three years of residence only if the possibility of withdrawal remains possible in the timeframe of 5 years – and with the conditions set out in the Council's position on para. 2 second subparagraph.

GREECE

Comments on WK 14956/2020:

Following the JHA Counsellors' meeting of 18 January on 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, we send you the EL comments on the changes introduced in the new version of the four-column table, regarding the following specific issues:

A. Harmonisation

We can agree with all PCY's suggestions regarding parallel national schemes and harmonisation.

B. Access to labour market and temporary unemployment.

In principle, we can agree with the PCY's suggestions regarding access to the labour market and temporary unemployment. Nevertheless, we should not lose sight of the fact that the right of MS to control their labour market should be maintained horizontally and not conditionally, otherwise their competence, which is, after all, based on the Treaties, is called into question. Having said that, we have reservations about the EP's position that labour market control should be applied only in cases of high unemployment, as it is linked to the right of MS to regulate matters relating to the functioning of their labour markets.

C. Grounds for refusal, withdrawal or non - renewal of the EU Blue Card.

We can agree with PCY' s suggestions on Article 6(3),(a),(line 130a)/ (3),(b), (line 131)/ (3)(d) as well as on Article 7(2),(fa), (line 146a).

Regarding **article 7(1),(c), (line 139a)** we have concerns on moving the provisions regarding the non-renewal or withdrawal of a permit for reasons of public policy and public security (currently Article 7(1)c) **to Article 7(2)a) (line 141) as a "may provision"** . We are of the opinion that public security is of primary importance to all MS and, therefore, the EPs suggestion needs to be further examined thoroughly.

On **article 7(2)(ba)** we have concerns on accepting the deletion of this provision. We are of the opinion that highly skilled TCNs should have sufficient resources to maintain themselves and, where applicable, the members of their family, without having recourse to the social assistance system of the MS. Furthermore, we should not neglect the fact that "sufficient resources" have to be clearly specified in the work contract.

D. Long-term intra-EU mobility

We support all PCY's suggestions regarding long term intra - EU mobility (Article 20(3a) and (8)(b))

E. Salary threshold - Article 5(2)

We agree with the range of 1.0 to 1.6 of the average gross annual salary. Regarding the derogations, we are of the opinion that they will not help to harmonize and address the salary threshold in a uniform way. The establishment of a proportional range would be, in principle, confusing. Nevertheless, if MS agree on the derogations, in a spirit of compromise we are ready to accept the suggestions.

Comments on WK 1040/2021:

Subject: EL comments on the amendments introduced in the new version of the four-column table regarding 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.

Following the JHA Counsellors' meeting of 27 January on 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, kindly find below the EL comments on the amendments introduced in the new version of the four-column table, regarding the following specific issues:

A. Salary threshold (Article 5).

We can agree with the range of 1.0 to 1.6 of the average gross annual salary as a criterion for admission.

Regarding the involvement of social partners in a spirit of compromise we could accept the consultation, but not the agreement/assent, of social partners in the process.

On the derogations, we would like to reiterate our position that, in principle, they will not help to harmonize and address the salary threshold in a uniform way. Nevertheless, if MS agree on the derogations of par. **2a, 4 and 5**, in a spirit of compromise we are ready to accept the suggestions.

B. Long-term residence status for Blue Card holders (Article 17).

We can agree with all PCY' s suggestions on Article 17.

C. Grounds for refusal, withdrawal or non - renewal of the EU Blue Card (Articles 6 and 7).

Regarding **article 6, par.1** we have major concerns on accepting this ground for refusal as an optional one and we cannot support this amendment. This provision is one of the substantial and main reasons that a MS is rejecting an application and, therefore, we consider that a possible amendment of this provision to a "may clause" would: a) leave uncertainty on the way it would be applied by MS in its transposition, b) raise legal complexity issues among MS that should be avoided and c) lead to a *"legal paradox"*, since a MS will have the possibility not to reject an application for a residence permit with documentation fraudulently acquired or falsified or tampered with.

On **article 6, par.3,** we can agree with the EP's suggested adjustment. Regarding **article 7, par.2,** we support the deletion of this provision.

Regarding **article 7, par.2 (ba)** we have a substantial reservation on the proposed amendment. In our view, highly skilled TCNs should have sufficient resources to maintain themselves and, where applicable, the members of their family, without having recourse to the social assistance system of the MS. Furthermore, as stated in our previous comments regarding this issue, we should not neglect the fact that "sufficient resources" have to be clearly specified in the work contract.

On **article 7, par. 2 (f)** we have concerns on deleting the last sentence ("makes use of the mobility provisions of […] Chapter V in an abusive manner ").

D. Access to labour market and temporary unemployment.

In principle, we support the PCY's suggestions regarding access to the labour market and temporary unemployment. Nevertheless, we should not lose sight of the fact that the right of MS to control their labour market should be maintained horizontally and not conditionally, otherwise their competence, which is, after all, based on the Treaties, is called into question. Having said that, we have reservations about the EP's position that labour market control should be applied only in cases of high unemployment, as it is linked to the right of MS to regulate matters relating to the functioning of their labour markets.

E. Long-term intra-EU mobility (Article 20 (8a)).

We can agree with the PCY's suggestion on par. 8a.

F. Harmonisation (Article 23 and Recital 5)

We agree both with the suggested amendment to insert a new par. (1a) in article 23 and the new wording in recital 5.

HUNGARY

WK 14956/2020 / meeting of 18 and 27 January 2021

1. Harmonization

Hungary supports the maintenance of parallel national systems and considers the proposals on equal rights to be acceptable.

With regard to Article 10 (7), in our view, if a third-country national applies for an EU Blue Card in possession of a residence permit, it is appropriate to examine the application in full, taking into account the available background documents and the documents contained therein.

The proposal is acceptable if the required qualification has already been examined in a previous authorization procedure when applying for an EU Blue Card. This benefit can only be provided in the case of same jobs.

The proposal regarding application of the same approach (same procedural rights) with regard to information and promotion activities (via the amendment of Article 23) is acceptable.

2. Grounds for refusal, withdrawal and non-renewal of a permit

Article 6 (1) (line 133a)

We do not support the EP proposal. The Council proposal (line 127) is acceptable for us, where Member States shall reject (mandatory) an application, where the documents presented have been fraudulently acquired, or falsified or tampered with; where the knowledge of the third-country national is irrelevant.

Article 6(3)(a) (line 130a) - On the basis of a labour market test

The EP proposal including high level of unemployment is not acceptable for Hungary.

Article 6(3)(b) (line 131) - Employers failing to meet their legal obligations

On behalf of Hungary, we can accept the change in the possible compromise proposal, in which there is no "multiple" indicator in the EP proposal before the infringement nor the five-year prevention period.

Article 6(3)(d) - The applicant's other purpose of residence / abuse by the employer

The provision regarding other purpose of residence may be dropped, if in cases where the authority was misleaded, this could be a ground for mandatory refusal.

Article 7(1)(c) (line 139a) - Public order, public safety, public health

We consider the provision acceptable.

Article 7 (line 142) Where the employer has failed to meet its legal obligations

We do not support the EP proposal for deleting the provision.

Article 7 (2) ba) (line 142a) - Sufficient resources

We do not support the EP proposal for deleting the provision.

Article 7 (2) f) – (line 146) Non-compliance with the conditions of mobility

We do not support the proposal for deleting the provision.

Article 7(2)(fa) (line 146a) – Temporary unemployment in case of illness

We consider the provision acceptable.

Article 13 Labour market access

Regarding Article 13 1a-1b we support the Council's text referring to the competence of the Member States to require a labour market test if the Blue Card holder changes employer within two years.

We can accept the Council's proposal in connection with Article 13 2-2a. Member States should decide whether they allow self-employed or other professional activity parallel to their highly qualified/main activity or not.

Art 14 (1) Temporary unemployment

We support PRES's proposal in relation to Article 14 (1) that the withdrawal of a Blue Card in the event of unemployment is lawful if the duration of the unemployment exceeds 3 consecutive months or the employment relationship has been terminated more than once during the period of validity of the Blue Card.

3. Long-term intra-EU mobility

Article 20(3a)

On the Hungarian side, we can accept an optional provision, but we would not be able to make any further concessions.

Article 20(8)(b) (line 264)

On the Hungarian side, we can accept an obligation for the second Member State to send reasoned information to the first Member State if it rejects the mobility application. An online platform built in the framework of the EMN IES ("EU mobile") could be an appropriate platform for this, but we would also appreciate getting feedback from the Commission.

We can accept the EP proposal to limit the cases of notification of the ground for refusal, in the light of a compromise, based on other Member States' agreement.

4. Salary threshold

Article 5(2):

Hungary cannot accept the EP's proposal on setting the salary threshold, as the obligation on the agreement with the social partners would be an indirect interference in the autonomy and decision-making process of the Member States. However, we support the Presidency with the compromise text of 1.0-1.6 times salary threshold. We support derogations in case they are optional. We also agree with the thresholds proposed with the derogations.

LITHUANIA

Comments on WK 1040/2021:

Article 5 - LT has been in favour of higher **salary threshold limits** from the very beginning, but in the spirit of compromise we agree on a range of 1.0 to 1.6, yet the possibility to apply derogations should remain. Regarding the **involvement of the social partners**, we could agree with compromise proposal on the consultation of the social partners in the process, but not on their agreement (e.g. *the MS may consult with the social partners* when setting the salary limits) and it should be clear that the social partners are not involved in deciding whether or not to apply the derogations. The EP proposal in L 116b could only be acceptable if it covers only those areas where collective agreements have been signed.

Article 6 – we accept the ground for refusal under a "may" clause as proposed by the EP in **L 133a**. As regards **L 130**, we welcome the addition of a labour market test, especially where unemployment is high. For **L 133e** - in the spirit of compromise I managed to persuade my capital to agree with the transfer to Article 7 (withdraw or refuse to renew), not deletion, though my capital is concerned that this would lessen possibilities to effectively prevent abusing the system.

Article 7 – unfortunately we cannot support the deletion of lines 142 and 142a. The purpose of these provisions is to protect from exploitation and this should apply not only to unqualified workers, but also to Blue Card holders. We can support the EP proposal for L 146, as well as the addition of recital 21 (L 30).

Article 17 - issuance of a permanent residence permit – unfortunately we maintain our red line for 5 years, so the proposal for a mandatory issuance of a permanent residence permit after 3 years is not suitable for us. We believe that 3 years is insufficient period for integration, especially having in mind that Blue Card holders are encouraged for mobility. Withdrawal of status is always more difficult and requires more resources than not issuing. **Calculating periods in the case of mobility** - the proposal to issue after 5 years of residence in the EU is acceptable for us. The COM's proposal for additional withdrawal grounds (financial means) is also acceptable.

Article 20 – we can agree.

Article 23 and recital 5 – we can agree as well.

MALTA

Comments on WK 14956/2020:

- **Line 101 -** Article 3(4) on allowing national schemes: MT agrees to maintain the current text to allow Member States to establish parallel national schemes.

- **Lines 173b**: MT can accept this level of harmonisation.

- **Line 173c**: MT does not support the proposed compromise. This would in practice hinder MS' ability to carry out parallel national schemes which has always been a red line for MT.

- **Line 175a** - Article 11(2): MT does not support this text and stresses the need to retain national competence.

- **Line 183a** - Article 12(4) concerning recognised employers: MT does not support the proposed compromise, in view of national competence.

- **Line 208d** - Article 15(7) on equal treatment: MT does not support this provision.

- **Line 220a** - Article 16(11) on family members: MT does not support the Presidency's suggestion to apply the same approach (same procedural rights) with regard to information and promotion activities, via the amendment of Article 23.

- **Lines 184 – 194a** – Articles 13 and 14 on labour market access and temporary unemployment: MT is willing to accept the above compromises, as long as Member States are still allowed to carry out Labour Market Tests. This is a red line for MT.

- **Lines 130a and 131**: MT is willing to accept the compromises outlined in lines 130a and 131, as long as MS are still allowed to carry out LMT. This is a red line for MT.

- **Line 127b:** MT does not agree to dropping current drafting for 'd'. The new wording is very loosely drafted and does not address any illegal or illegitimate activity.

- **Line 139a:** MT is flexible on moving the provision if it is included as a 'may' or 'shall', as long as provision is included.

- **Line 142a:** MT cannot accept this proposal. The EU Blue Card is a residence permit provided on the basis that the applicant has a high-income employment. If one is not able to maintain himself or his family, that residence permit should no longer be valid.

- **Line 146a:** MT can accept this proposal however not in combination with the above proposal i.e. the EU Blue Card holder should always be able to support himself and his dependents.
-
- **Lines 254c-254e:** MT can accept this proposal as a may clause.

- **Line 264 - Article 20(8)(b):** MT agrees that such communication should be established.

- **Line 115 - Article 5(2):** MT considers that the range of 1.0 to 1.6 of the average gross annual salary in the Member State as a criterion for admission as acceptable.

- **Line 115a** Derogation 1: MT does not have any issues with this provision and the possible application of a factor of 2.0 by those Member States.

- Derogation 2: MT considers that salary thresholds in professions where there are shortages should not be lower than 1.0 factor.

Derogation 3: MT considers that salary thresholds for young professionals should not be lower than 1.0 factor.

Comments on WK 1040/2021:

- **Article 6 (3) (a):** Since the term 'in particular' does not limit MS possibility to carry out labour market tests, MT can accept the proposed text.

- **Article 6 (3) (d):** MT supports BE proposal to include this as a ground for withdrawal or non-extension.
-
- **Article 7:** MT does not agree with the suggested deletion in Line 142

- **Article 20 (8a):** MT can accept this proposal

- **Article 23 (1a) and Recital 5:** MT maintains its position on harmonisation and national schemes. It remains important for MT to be able to carry out parallel national schemes and also have autonomy on the conditions of the same national schemes.
-

Long Term Residence: Malta does not agree that an EU Blue Card holder can be provided with a long-term residence permit after three years or five years accumulated under different statuses. The Long-Term Residence Directive implies that third country nationals should have acquired a certain degree of integration in the Member State before acquiring long term residence. Malta has doubts on whether this level of integration can be achieved in three years.

POLAND

Comments on WK 1040/2021:

Poland's position on the LTR status:

1. **LTR after 3 years of continuous residence**: We cannot agree to this proposal. In our view, 3 years is not enough to ensure that a TCN integrates well with the society, especially that the level of integration should be a prerequisite to consider a TCN eligible for obtaining a LTR status. We opt for keeping it as a "may" clause.
2. **Access to LTR in cases of intra-EU mobility**: we can support this proposal under the condition that:
   - the 2 year period of stay prior the submission of an application for a LTR status is kept unchanged AND
   - that this 2 year stay is taking place in a MS where a TCN is applying for a LTR status AND
   - that the TCN is applying for a LTR as a Blue Card holder.
3. Withdrawal of the LTR status: We cannot agree to the EP suggestion. In case when a TCN (a BC holder) makes use of the 3 year period to be granted a LTR status, he/she should have sufficient financial means to be able to support himself/herself for the standard period for LTR (namely 5 years).

PL position on derogations - in particular their deletion, as requested by the EP:

Poland is not against removing derogations from general thresholds (our previous position was to ensure their voluntary implementation) – we can accept the European Parliament's proposal.

SLOVAKIA

Comments on WK 14956/2021:

Following the Monday VTC on EU Blue Cards, please, find attached the Slovak position to the main issues and some remarks in the fourth column table.

The Slovak position should be in red and where possible highlighted in yellow. I hope this helps in faster orientation.

The Slovak Republic can support most of the proposals presented during the JHA Counsellors meeting held on 18 January 2021. However, there are some provisions where we do have concerns or questions:

- **Grounds for refusal, withdrawal and non-renewal of a permit (Articles 6 and 7** – lines 124 to 149a; recital 22 –
    - **line 31 (recital 22)**: the term „minor misconduct of the employer“ should be defined. What does it cover?
    - **• Article 6(3)(b) (line 131**): We can support the proposed wording, however, our experts would recommend to add the following wording from the EP´s position at the end „during a period of five years prior to the date of the application“.

- (b) ***where*** the employer has failed to meet its legal obligations regarding social security, taxation, labour
- rights or working conditions during a period of five years prior to the date of the application“

Article 7(2)(ba)

The proposal intends to give Member States a right to withdraw or not to renew an EU Blue Card where the EU Blue Card holder does not have sufficient resources to maintain himself or herself as well as his or her family members without having recourse to the social assistance system of the Member State. In a spirit of compromise with the Parliament and the Commission, there is the proposal that the Council accepts the deletion of this provision. In return, the Commission and EP would accept that, in a situation of long-term mobility, the 2nd Member State would retain the right to check the resources of the EU Blue Card holder to maintain his or her family members (Article 21(3) and (5) = line 271).

• Article 20(8)(b)

So far Article 20(8)(b) provides that the second Member State notifies the applicant and the first Member State where the conditions of the EU Blue Card in the second Member State are not fulfilled. Considering that the first Member State may have an interest to get to know why the EU Blue Card was rejected in the second Member State. The reference in Article 20(4a) to the provision in Article 10(3), (4) indicates that the applicant should be informed about the precise condition that was not fulfilled. It is however arguable if that would be sufficient to imply that the first Member State has to receive this information as well. The second Member State may, in transposition, not require its authorities to provide this information to the first Member State. It is to be discussed if an express provision governing an information obligation about the ground for refusal from the second Member State to the first Member State is necessary. Currently the proposal has been included as an additional sentence in Article 20(8)(b) (line 264) that reads as follows: "In case of a refusal, in its notification to the first MS, the second MS shall specify the reasons for the decision". However, it may be necessary to clarify which information is to be transmitted and it must be ensured that this does not lead to a duplication of information obligations with the agreement on the VIS revision which also includes residence permits.

- This list not being exhaustive, Member States are invited to share any potential concerns that may arise from the proposals listed in the four-column table

- Slovakia supports the harmonization of the mobility conditions with the conditions already set in other legal migration directives.

5. Salary threshold - Article 5(2):

If time allows, the Presidency would like to re-open the discussion on the salary thresholds for the admission of highly skilled workers. The Bulgarian Presidency, in early 2019, proposed some elements for a compromise. We consider that i is now time for Member States to exchange views on some of the elements, notably:

• The range of 1.0 to 1.6 of the average gross annual salary in the Member State as a criterion for admission. SK supports the Council position as regards the fork of the salary threshold to be 1,1-1,7 of the average gross annual salary in the Member state as a criterion for admission.

• **Derogation 1:** the possible application of a factor of 2.0 by those Member States (a) where the average gross annual salary is lower than half the EU average; and (b) where there are significant differences between regions in a Member State. As well as the possible implications of this approach notably in terms of clarity and predictability of the EU Blue Card scheme for its users (and the national administrations). OK

• **Derogation 2:** the possible application of a factor of 0.8 of the salary threshold in professions where there are shortages. Slovakia cannot support the application of 0.8 of the salary threshold in professions where there are shortages (groups 1 and 2 of ISCO classification). We believe that the performance of highly qualified employment should correspond to a salary that is at least at the level of the average salary in the economy, respectively in the sector. The proposed compromise would lead to the abuse of labour force coming from third-countries by employers, as well as to the demotivation of Slovak highly-qualified workers to remain in the domestic labour market due to the wage dumping and subsequent economic migration from the Slovak Republic.

• Derogation 3: the possible application of a factor of 0.8 of the salary threshold for young professionals. OK, only in case of graduates who acquire their higher professional qualification within three years before applying for a blue card.

After the explanation of the PRES and Commission, Slovakia can support the deletion of the Article 7 para. 2 ba) considering this provision being redundant.

Line (WK 14956/2021)	**The Slovak position should be in red and where possible highlighted in yellow.**
31	The term „minor misconduct of the employer“ should be defined. What is considered a minor misconduct of the employer?
73	Slovakia reiterates its position that it dose not agree with the highly skills recoginition being included in this directive. Among the EU Member States there is not unified method to recognise highly skilled individuals.
76	Slovakia reiterates its position that it dose not agree with the highly skills recoginition being included in this directive
82	Slovakia reiterates its position that it dose not agree with the highly skills recoginition being included in this directive.
83	Slovakia reiterates its position that it dose not agree with the highly skills recoginition being included in this directive.
91	*Slovakia is against inclusion of international protection seekrs as well as holders of international protection into the scope of this Directive.*
92	*Slovakia is against inclusion of international protection seekrs as well as holders of international protection into the scope of this Directive*
95	***Although in green and deemed to be agreed, the text of the recital 11 mentions that the ICT are out of scope of this Directive. Slovakia wishes to reiterate its redline that the ICT shall not be included into the scope of thi***

Line (WK 14956/2021)	The Slovak position should be in red and where possible highlighted in yellow.
	Directive.
96	Slovakia agrees not to apply this Directive on Seasonal Workers.
99	*EP: scope remains to be discussed at political level* Slovakia does not agree with the proposal.
101	Súhlasíme.
110	Slovakia supports the EP´s proposal.
115	Slovakia supports the Council position.
115a	Slovakia agrees.
116a	Slovakia does not see the added value of this proposal.
117	Slovakia does not agree with the proposal. The proposed compromise would lead to the abuse of labour force coming from third-countries by employers, as well as to the demotivation of Slovak highly-qualified workers to remain in the domestic labour market due to the wage dumping and subsequent economic migration from the Slovak Republic
118	Slovakia agrees with the facultative transposition.
119	The salary cannot fall below the salary threshold during the validity of the EU Blue Card.
120	Slovakia dose not agree with the skills inclusion.
120a	Slovakia dose not agree with the skills inclusion
123b	Slovakia agrees with the Council text.
128	Labour market test possibility should be retained for every Member State.
131	Slovakia suggests to add from the EP´s position: „during a period of five years prior to the date of the application“
139a	Slovakia agrees.
142a	After the explanations by the Commission and the Presidency, the Slovakia can accept the deletion of article 7 para. 2 ba)
146a	Slovakia agrees.
177	Slovakia agrees with the text: „Member States **may** decide“.
186a	Slovakia agrees.
187	Slovakia agrees.
194	Slovakia agrees.
223	As regards the Romanian PResidency, we opposed.
245a	**Slovakia suggest the unified 9 month period in line 110 as well as 251.**
247	Súhlasíme s textom „**The second Member State may allow** the EU Blue Card holder **[…] to start working“ (ak tu bude zachovaná klauzula „may“).** Navrhujeme ponechať právo jednotlivým členským štátom rozhodnúť, či držiteľ modrej karty môže začať pracovať ihneď po podaní žiadosti Držiteľ modrej karty má počas svojho pobytu na území prvého členského štátu dostatočný časový priestor na predloženie žiadosti o modrú kartu príslušným orgánom v druhom členskom štáte.
251	Nesúhlas so zručnosťami Viď stanovisko MŠVVaŠ

Comments on WK 1040/2021:

The Slovak position regarding the compromise suggestions as follows the meeting of the JHA counsellors held on 27 January 2021

Long-term residence status

Slovakia can agree with the proposed possibilities under the condition that the granting of the LTR status after 3 years of residence will be a „May“clause (a facultative provision). At the same time, the third-country national cannot become a burden for the social security system during the subsequent 5 years and the possibility to withdraw the LTR status should exist in case he/she becomes a burden for the social security systems during this (5-year) period.

Document 1040/21:

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

(i) salary threshold limits

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

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

  The Slovakia supports the fork of 1,1-1,7 of the average gross annual salary.

(ii) Involvement of social partners

Proposals for Article 5(2) and (3)

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

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

As previously, Slovakia does not see added value in consultations with social partners regarding the salary threshold. The government has enough statistics on wages in Slovak economy split according to the education, jobs in particular sectors. The proposed text could lead to a higher administrative burden therefore; we can support consultations, however, not an obligation.

"In addition to the conditions laid down in paragraph 1 **and 2**, the gross annual salary resulting from the monthly or annual salary specified in the work contract or binding job offer shall not be inferior to the salary threshold set and published for that purpose by the Member States. The salary threshold **shall be** set by the Member States**, after consultation with the social partners, and** be at least […] ~~1.1~~ [**1.0**] times but not higher than […] ~~1.7~~ [**1.6**] times the average gross annual salary in the Member State concerned."

How often the salary threshold will be changed.

<u>(iii) Derogations</u>

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

The Slovakia does not agree with the abuse of workforce stemming from third countries while demotivating Slovak highly qualified workers to stay in national labour market due to the wage dumping.

The Slovakia can agree with the facultative transposition.

Criteria for admission, refusal and withdrawal

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

Article 6

In paragraph 1:

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

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

The Slovakia supports the Council´s position that this ground for refusal should stay under „shall "clause.

In paragraph 3:

(a) where the competent authorities of the Member State, after checking the labour market situation, conclude that the concerned vacancy may be filled by national or Union workforce, by third-country nationals lawfully resident in that Member State and already forming part of its labour market by virtue of Union or national law, or by EU long-term residents wishing to move to that Member State for highly […] qualified employment in accordance with Chapter III of Directive 2003/109/EC. [L130]

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

(a) where the competent authorities of the Member State, after checking the labour market situation, **in particular where there is a high level of unemployment**, conclude that the concerned vacancy may be filled by national or Union workforce, by third-country nationals lawfully resident in that Member State and already forming part of its labour market by virtue of Union or national law, or by EU long-term residents wishing to move to that Member State for highly […] qualified employment in accordance with Chapter III of Directive 2003/109/EC.

The Slovakia does not agree with the insertion of the following text "**in particular where there is a high level of unemployment" since it does not have any added value.**

The labour market test is an important tool of the migration policy of the SR as a matter a fact; Slovakia does not use any system of quotas in this respect.

As previously, the need to clarify/defined the scope of the high-level of unemployment.

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

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

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

The Slovakia can agree with the compromise proposal under the condition that the Article 6 para. 1 letter b) will be kept in the text as proposed by the Council.

Article 7

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

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

The Slovakia can agree with the proposed deletion.

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

The Slovakia can agree with the proposal to delete paragraph 2 (ba) based on explanations of the Commission and Presidency rendered during the previous meeting.

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

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

The Slovakia sticks to the Council´s text.

Article 20

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

If agreed, paragraph 8a would read as follows:

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

No comments.

Harmonization

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

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

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

The Slovakia can agree.

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

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

POLAND

Comments on WK 1040/2021:

Poland's position on the LTR status. Please find below the position I have received from my capital to be presented today:

1. **LTR after 3 years of continuous residence**: We cannot agree to this proposal. In our view, 3 years is not enough to ensure that a TCN integrates well with the society, especially that the level of integration should be a prerequisite to consider a TCN eligible for obtaining a LTR status. We opt for keeping it as a "may" clause.
2. **Access to LTR in cases of intra-EU mobility**: we can support this proposal under the condition that:
   - the 2 year period of stay prior the submission of an application for a LTR status is kept unchanged AND
   - that this 2 year stay is taking place in a MS where a TCN is applying for a LTR status AND
   - that the TCN is applying for a LTR as a Blue Card holder.
3. Withdrawal of the LTR status: We cannot agree to the EP suggestion. In case when a TCN (a BC holder) makes use of the 3 year period to be granted a LTR status, he/she should have sufficient financial means to be able to support himself/herself for the standard period for LTR (namely 5 years).

SWEDEN

Comments on WK 1040/2021:

As a follow up to the JHA Counsellors meeting last week, Sweden has the following written comments.

Harmonisation

- The possibility to develop and keep parallel national schemes is one of the most important issues for Sweden. We have analysed the PRES proposal and could, in order to move forward in the negotiations, accept harmonisation of certain aspects (focusing on rights, procedures and access to information). However, we will only accept this level of harmonisation if the Blue Card remains a directive for highly-skilled labour migration. The overall picture will therefore be important for us, making sure that requirements etc. are not set so low that the Blue Card Directive no longer is a directive for highly-skilled labour migration.

Salary threshold

- In order to move forward in the negotiations, Sweden can accept the PRES proposal. We would however prefer a possible compromise on 1.1-1.6. The threshold is an important factor in order to make sure this is a directive for the highly-skilled and in our view, highly-skilled workers should have higher wages than the average annual salary in the MS. Consulting social partners is ok with us. The different derogations are not important for Sweden. We can accept the derogations as long as they are optional but can also support removing the them from the directive.

Long-term residence status

- Sweden can accept LTR status after 3 years for Blue Card-holders.
- Sweden cannot accept the proposal regarding LTR status in case of intra-EU mobility. Time with a national permit should not be taken into account when it comes to long-term resident status. Facilitating LTR status should be reserved for highly-skilled workers, i.e. Blue Card-holders, since attracting such labour migrants is the purpose of the new directive.

Long-term Mobility

- The proposal about sending notifications to the first Member State regarding some refusal decisions should be analyzed further. Is this provision necessary when it does not exist in other directives? Information about third country nationals who are considered a threat to public policy etc. can perhaps be shared through existing channels, like SIS?

Article 6 and 7

- It is important to have cohesive directives on legal migration. When possible, the same rules should apply for Blue card-holders as for ICT's. According to the ICT-Directive, an application *shall* be rejected if the documents are falsified etc. The same should therefore apply in the Blue Card Directive. Member States cannot grant residence permits based on false information.
- Regarding Line 142a: We agree that most EU Blue Card-holders can support themselves given the level of the salary threshold. However, if a Blue Card-holder work part-time, he/she might not be able to support him/herself or, where applicable, family members. Article 5.5 of the ICT-Directive states that ICT's should be able to support themselves and their family members. We think that the Blue Card should include a similar provision. It is important for Sweden that we can require that Blue card-holders can support accompanying family members, for example through a maintenance requirement. What is the purpose of removing this line?