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WORKING PAPER

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From:	Presidency
To:	JHA Counsellors (Migration, Integration, Expulsion)
Subject:	Possible compromise suggestions on specific topics of the revision of the Blue Card Directive

With a view to the meeting of JHA Counsellors of 22 February, the Presidency is submitting, in an Annex, for the consideration of Member States, a set of possible compromise suggestions on specific topics of the revision of the Blue Card Directive that have not been discussed recently: scope, skills and unemployment. The proposals and the positions of the Member States aim at preparing the next technical meetings with the European Parliament.

1. Scope

The European Parliament (EP) proposed a wide scope of application of the Directive. According to the EP, the scope of the Directive should include applicants of international protection and temporary protection, beneficiaries of international protection (without time restrictions) and seasonal workers (see EP amendments 59 to 62).

Compared to the current Blue Card directive, the Council mandate extends the scope (to beneficiaries of international protection subject to certain limitations, referred to in paragraph 2a of Article 3 of the Council mandate.

Previous exchanges with the Member States have indicated that there is a wide opposition from the Council to include applicants of international protection in the scope of the Blue Card Directive.

The Presidency proposes to maintain this position.

However, in order to move the discussion forward and possibly close the issue of scope, the Presidency asks Member States for their assessment on the possibility to show flexibility and enlarge the Blue Card scheme to other categories of third-country nationals.

1.1 As concerns beneficiaries of international protection, the EP argues that a highly qualified person for which a Member State has established that it fulfils all criteria for international protection and has obtained the international protection, should be able to apply and obtain a Blue Card for highly qualified employment, the reasoning being that this is in his/her interest but also in the interest of the Member States in terms of integration in the labour market and contribution to the economy.

Having in mind that the Council will not accept the proposal to include applicants of international protection in the scope of the Blue Card Directive, the Presidency asks Member States for flexibility regarding the right of beneficiaries of international protection that fulfil the criteria to access a Blue Card in the Member State that granted protection, as a trade off in the overall compromise.

This could concern one or more out of three following possibilities (see line 99a):

- (i) To waive the time needed for a beneficiary of international protection to be able to apply for a Blue Card in a second Member State.
- (ii) To ensure the right of the beneficiary of international protection to apply for a Blue Card in the Member State of its residence, if the conditions for the attribution of the Blue Card are fulfilled, as a "shall clause".
- (iii) To waive the time (12 months) required for a beneficiary of international protection to be able to apply for a Blue Card in the Member State that granted the protection.

Could Member States agree to one or more of the three compromise suggestions outlined above?

1.2 Regarding the exclusion of seasonal workers from the scope of the directive, the Presidency considers this exclusion rather challenging bearing in mind that other categories of third country nationals with residence rights linked to a specific purpose (such as volunteers, trainees, au pair) are not excluded.

Could Member States be flexible and accept the deletion of the exclusion from the scope of application of the Directive of seasonal workers (line 96)?

2. Skills

The German Presidency (document 13407/20) presented a compromise proposal envisaging an opening of the scope of the Directive to TCNs with higher professional skills in the ICT sector, limited to the following 'higher' positions: Information and Communications Technology Services Managers (ISCO-08 classification 133) and Information and Communications Technology Professionals (ISCO-08 classification 25).

Furthermore, Member States were asked about (i) their position on the minimum necessary length of professional experience for attaining 'higher professional skills' (3 or 5 years), (ii) whether the proposal should contain specific provisions on how higher professional skills are to be assessed and (iii) how should a future extension of the list of professions accessible with 'higher professional skills' be adopted.

Based on the written replies and the discussions held on the JHA Counsellors meeting of 7 December 2020, the Presidency's understanding is that a large majority of Member States could support the opening of the directive to the aforementioned professionals, based on their high professional skills. However, most Member States consider that 5 years is the minimum length of experience required for attaining higher professional skills and that the Blue Card Directive should not contain any specifications as to how higher professional skills are to be assessed. Such assessment should be made by the Member States or, where the national legislation so provides, by the employer.

In the inter-institutional discussions, the EP welcomed the possibility of a partial extension of the scope of application of the Directive to third-country nationals with high professional skills in the ICT sector, but signalled that this was still too far from its own position to accept it.

In order to have clear position for the future negotiations, the Presidency would like to hear Member States views on the following possible compromise solutions:

2.1 The Presidency understands that, as a general rule, 5 years of professional experience is the minimum length of time required for attaining higher professional skills. However, in the ICT sector, notably due to the fast pace of technological evolution, a shorter period of 3 (or 4) years might be sufficient to acquire such skills.

In a spirit of compromise, could Member States agree to lower the length of the required professional experience to 3 years or 4 years (instead of 5 years) just for highly skilled workers from the ICT sector?

In the event that, at some point in the future, the co-legislators decided to also include highly-skilled workers from other sectors in the scope of the directive, they could then of course require a higher length of professional experience (5 years or more).

2.2 The Presidency also committed to the European Parliament to explore with Member States their flexibility regarding the possibility to extend the mandatory acceptance of TCN with high professional skills to other sectors. Do Member States accept such an extension?

2.3 Regarding the question as to how the list of professions accessible with 'higher professional skills' could be revised in the future, Member States expressed their preference for the use of the ordinary legislative procedure (rather than through an implementing or delegated act).

The EP expressed its readiness to accept a more limited list of sectors, but requested a simplified and flexible mechanism to adapt it to the changing needs of the labour market.

Bearing in mind a possible compromise with the EP, the Presidency proposes to include in the Directive a specific review clause. It would require the Commission to prepare a report on the operation of the mechanism and the needs of the labour markets, three years after the implementation of the Directive, and consider the need to propose a revision of the list of professions accessible with 'higher professional skills', via the ordinary legislative procedure.

Could Member States agree with this approach?

3. Unemployment

The Council accepted the proposal of the European Parliament to delete Article 14 and, thus, its provisions were moved to other provisions of the proposal: paragraph 1 (impact of unemployment in the withdrawal of the permit) was moved to Article 7 (2) (fa) [L146a], paragraphs 2 (allowing seeking employment) and 3 (communication to the competent authorities) to Article 13 (1c) [L187a] and paragraph 4 to a new subparagraph 2 of Article 13(1b) [Line 186f].

During the trilogue of 11 February 2021, the rapporteur stated that a key element of an overall compromise lies on how the subject of unemployment is addressed.

Besides a longer period of temporary unemployment (6 months instead of the 3 months in the Council mandate) until a EU Blue Card is withdrawn, the Parliament's position is that unemployment as the result of illness or disability, should not be a reason for withdrawal (Amendment 97 in L 146a).

In light of previous discussions on this subject, Member States' rejection of the Parliament's proposal were related to concerns regarding the excessive burden that such a period of time (6 months) could place on the social security systems of the Member States.

The Presidency would like Member States to reconsider the proposal of the German Presidency (document 13407/20), according to which the maximum period of temporary unemployment shall remain three consecutive months in cases where the TCN has held the EU Blue Card for less than two years. However, in cases where the TCN has been an EU Blue Card holder for two years or more, the maximum period of temporary unemployment shall be six consecutive months. The reasoning is that after a significant period of insertion on the labour market and of corresponding contributions to the relevant social protection system the Blue Card holder should benefit from more favourable conditions.

If Member States can agree, the Presidency would, in exchange, ask the Parliament to drop its amendment 97, referred to above.