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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

During the German Presidency, and over the past two months of the Portuguese Presidency, many aspects of the Blue Card Directive proposal have been revisited in JHA Counsellors' meetings, in order to discuss various solutions to reach a workable compromise with the European Parliament which would satisfy the interests of the Council. The Presidency now aims at building up a compromise package on this basis, to be discussed in upcoming meetings over the next few weeks.

However, before such a package can be prepared, three issues still need to be discussed during our meeting of JHA Counsellors of 11 March: long-term mobility, labour market access and equal treatment.

For this purpose, the Presidency is setting out hereafter as an Annex, for the consideration of the delegations, a set of possible solutions.

The changes to the relevant provisions are identified in ~~strikethrough~~ and **bold**.

1. Intra-EU mobility of the Blue Card holder and his/her family members

1.1 Mobility of the Blue Card holder (Article 20, [Lines 244 to 266])

Facilitated intra-EU mobility of EU Blue Card holders is one of the key elements for an agreement between both institutions for the revision of the directive. The EP rapporteur stressed this during the political trilogue of 11 February 2020. He indicated that in order to reach an agreement, mobility of EU Blue Card holders needed to be facilitated, with more effective procedures and more favourable conditions than the ones currently provided for in the existing directive.

The EP showed flexibility by indicating its readiness to drop its request that long-term mobility should be done on the basis of a notification. It showed acceptance for the Council's (and Commission's) arguments related to the increased legal security brought by an application procedure and the issuance of a new EU Blue Card by the second Member State.

However, the EP wishes to ensure that the authorisation procedure is as simple as possible, with shorter deadlines (an issue we already discussed at the JHA Counsellors' meeting of 8 February 2021), with the possibility for the Blue Card holder to start working immediately and with a more limited number of documents to be presented in support of the application, as compared to an initial application.

The co-legislators share the view that the application procedure in cases of mobility should not be equivalent to the application in case of first entry. Without effective provisions on intra-EU mobility, the revised Directive would offer little added value.

In order to proceed with the discussions with the Parliament, the Presidency would request Member States' support for an approach that would include the following five aspects:

1.1.1 - A shortened time for processing of the applications for intra-EU mobility

At the JHA Counsellors' meeting of 8 February, a majority of delegations supported the Presidency's proposal for a procedure of 30 days, although several delegations signalled that they could accept this only if it would be possible to prolong this deadline in specific cases.

The Presidency is aware that this proposal is still difficult for some delegations. However, it considers that this would be a fundamental element to facilitate the mobility of Blue Card holders. It would therefore ask delegations to accept the compromise solution of a processing time for the application for mobility of 30 days, with an optional clause to extend this period by an additional period of 30 days (60 days in total), in cases justified by the complexity of the application (Article 20(8), [Line 262]).

In return, the Parliament would have to drop its other proposals aimed at shortening procedural deadlines, namely: for the first application for an EU Blue Card (90 days), for family reunification (30 days) and for the cases of recognised employers (30 days). In all these cases, the Council position would be maintained.

Can delegations support this proposal?

1.1.2 - The possibility to start working after a reasonable delay

Last December, we debated proposals on the right to start working immediately. A majority of delegations approved the proposals in principle, but some nevertheless raised concerns with this option.

In order to move towards an agreement with the EP, without including the possibility for the Blue Card holder to “work immediately”, the Presidency suggests to interlink the processing time of the application with the possibility of the Blue Card holder to start working after a reasonable delay. According to the Presidency's proposal, Blue Card holders would not be allowed to start working immediately but would only have the possibility to do so 30 days after submitting their complete application.

Following the Presidency's compromise suggestions in points 1.1.1 and 1.1.2 outlined above, Article 20 would read as follows:

- a) Article 20(2) 2nd paragraph [Line 247]: *~~“The second Member State may allow the EU Blue Card holder [...] to start working immediately after submitting the application. The EU Blue Card holder shall be allowed to work in the second Member State at the latest 30 days after the submission of the complete application.”~~*
- b) Article 20(8) [Line 263]: *“The second Member State shall adopt a decision on an application for an EU Blue Card and notify the applicant and the first Member State in writing as soon as possible, but at the latest within [...] 30 days of the date of submission of the complete application of its decision to either: [...]”*

- c) An additional subparagraph of under 8 [Line 263] ***“In duly justified circumstances linked to the complexity of the application and without prejudice to paragraph 2, Member States may extend the maximum period by 30 days. They shall inform the applicant of the extension before that maximum period has expired.***

Can Member States support this proposal?

1.1.3 - A simplification of the procedure, namely the documents to be presented

Currently, the European Parliament and the Council have significantly different positions regarding the supporting documents to be submitted with the application for mobility. In the Council mandate, the mobility procedure entails a mandatory submission of all relevant documents. For the EP (and the Commission) the Blue Card holders exercising mobility should not be obliged to present evidence of having, or having applied for sickness insurance and should not have to resubmit documents attesting their higher professional qualifications for unregulated professions. In essence, for the EP and the Commission, this should not be a full authorisation *bis*.

The Parliament has already shown flexibility regarding the evidence of sickness insurance, accepting the Council's compromise proposal to move the submission of the evidence of having applied for sickness insurance to a “may clause”.

Recent discussions with the Parliament have shown that the application procedure would still need to be simplified further in order to be agreed. In particular, the Parliament still cannot accept that, as a general rule, Blue Card holders exercising mobility must resubmit in the second Member State documents attesting their higher professional qualifications.

The Presidency agrees that a proper balance between a simplified procedure for mobility, as one of the main elements to make the Blue Card attractive, and the need to ensure that Member States keep the possibility to ask for documents attesting higher professional qualifications concerning non-regulated professions, to tackle misuse of the mobility provisions, is fundamental.

To that end, bearing in mind that an agreement on the mobility provisions is a condition to reach an overall compromise, the Presidency asks Member States to consider the following proposal (indeed, already presented by the Germany Presidency at the JHA Counsellors meeting of 22 February), waving the possibility to ask for documents concerning **non-regulated professions**, where the EU Blue Card holder has already worked for at least 2 years in one Member State before applying for mobility.

This proposal would therefore entail that Blue Card holders with a proven track record of two years' work experience as a Blue Card holder in a first Member State would not have to resubmit documents attesting their higher qualifications. On the other hand, Blue Card

holders having worked for less than 2 years in the first Member State would still have to submit such documents.

Accordingly, paragraph 3a of Article 20 [Lines 254c-254e] would read as follows:

“3a. For the purposes of the application referred to in paragraph 2, the Member State concerned may require the EU Blue Card holder:

- (a) **where the EU Blue Card holder worked for less than two years in the first Member State**, to present the documents attesting higher professional qualifications in relation to the work to be carried out as provided for in national law*
- (b) to provide evidence of having, or if provided for by national law, applied for a sickness insurance for all the risks normally covered for nationals of the Member States concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or resulting from, the work contract.”*

The Presidency also proposes a level of simplification **for regulated professions**, in line with the proposal tabled by the German Presidency.

According to this proposal, Member States would accept that, for the purpose of applying for an EU Blue Card in a 2nd Member State, EU Blue Card holders would enjoy equal treatment with Union citizens with regard to the recognition of professional qualifications.

As set out in the proposal (in WK 14263/2020), a Blue Card holder exercising a regulated profession based on a diploma obtained in a third country would have access to the recognition procedure in a 2nd Member State in the same terms as a Union citizen who obtained the same diploma in a third-country. This rule would only apply if the Blue Card holder has worked at least 3 years in the respective profession in the 1st Member State (as foreseen by Directive 2005/26/EC).

Where more generous domestic law exists for Union citizens holding diplomas from third countries (e.g. no requirement to have worked three years in one Member State), then this domestic law should not only apply to Union citizens but also apply to third-country nationals.

In practice this would mean that, for example, a Blue Card holder of Canadian nationality, with a Canadian medical degree and working in France as a doctor would enjoy equal treatment with a French national holding the same Canadian degree in medicine and working in France as a doctor, when exercising mobility. If, after having worked in France as a doctor, the Canadian Blue Card holder exercised mobility and moved to Poland to work as a doctor, he would benefit from certain equal treatment rights with regard to the recognition of his qualifications. In the current legal framework, the recognition procedure would need to be fully done in Poland, given that equal treatment applies only to third-country nationals already residing in the Member State, and not at the moment of application for mobility to a 2nd Member State.

Accordingly, paragraph 3(c) [Line 252] of Article 20 would read as follows:

*(c) for regulated professions, present a document attesting fulfilment of the conditions set out under national law for the exercise by Union citizens of the regulated profession specified in the work contract or binding job offer as provided for in national law. **For the purpose of applying for an EU Blue Card in a second Member State, EU Blue Card holders shall enjoy equal treatment with Union citizens as regards recognition of professional qualifications, in accordance with applicable EU and national law.***

1.1.4 - Procedural safeguards

Under this point, the Presidency proposes the following compromise proposals:

- a) Article 20(4) [Lines 255 to 258b]: the only open issue which remains in this paragraph concerns point a) [line 257], namely the requirement that an application for mobility should be rejected if “*the documents were fraudulently acquired, or falsified or tampered with*”. The EP wishes to restrict this to situations where the fraud or falsification was done with the knowledge of the Blue Card holder. The Presidency proposes to maintain the Council text and reject the EP amendment.
- b) Article 20(4a) [Line 258c]: The EP wishes to align the text concerning decisions of refusal of applications for mobility with the (agreed) text used for the decision of refusal to grant the Blue Card in Article 6(5) [Line 135], by including an obligation to take into account the circumstances of the case and the principle of proportionality.

The compromise proposal would be the following:

*“4a. In respect of any ~~application/notification~~ procedure for the purpose of long-term mobility, the procedural safeguards set out in Article 10 (3) and (4) shall apply accordingly. **A decision to reject an application for long term mobility shall take account of the specific circumstances of the case and respect the principle of proportionality.**”*

The added sentence recalls the applicability of the general principle of proportionality, which applies anyway to the legislative and regulatory authorities of the Member States when they apply Union law, and can even be considered to offer Member State a level of flexibility when examining an application for mobility.

- c) Article 20(5) [Line 259]: The EP had introduced an amendment 152, concerning the procedure in case of a rejection of an application for mobility, with specific safeguards. The Presidency proposes to reject this amendment, as the safeguard contained therein are covered by Article 10 and line 264. The text of the Commission proposal has been moved to line 258a (mandatory rejection in case of threat to public policy, public security or public health), which has been agreed in 2017.

1.1.5 - Rejection of the application and notification to the first Member State

The Presidency asks delegations to express their views on additional issues regarding the grounds for rejection.

- Article 20 uses different terminologies concerning negative decisions on mobility in different paragraphs, which could lead to difficulties in interpretation : (i) rejection of the application (on the grounds provided for in paragraphs 4, 6 and 7), and a (ii) refusal to issue an EU Blue Card [paragraph 8 lit (b)], where the conditions laid down in the article are not fulfilled.

With a view to avoid misunderstandings, the Presidency proposes the following amendment to paragraph 8 lit (b) [Line 264]:

*“where the conditions laid down in this Article are not fulfilled, ~~refuse to issue an EU Blue Card and~~ **reject the application** and oblige the applicant and his family members, in accordance with the procedures provided for in national law, to leave its territory. In case of a refusal, in its notification to the first Member State, the second Member State shall specify the reasons for the decision.”*

- The proposed change clarifies the text and ensures that the grounds for rejection of the application include, not only the “conditions set out in paragraph 3” (as referred in lit (a) of paragraph 4) [Line 256], but also the conditions set out in paragraphs 1, 1a, 2 and 6, covered by the more generic reference in paragraph 8 (a) (“*where the conditions laid down in this article...*”) [Line 263].

This would make redundant the use of the concept of “exercise the mobility rights in an abusive manner”, which raises two main difficulties: it is, on the one hand, a vague and undetermined concept and, on the other hand, inconsistent with a similar provision adopted in the ICT directive (see Article 8(5)(d) of the ICT Directive¹).

¹ (...) “where the intra-corporate transferee has not complied with the mobility rules set out in Articles 21 and 22.”

Recital 21 [line 30] which specifies that exercising mobility rights in an abusive manner can lead to the rejection or refusal of renewal of a Blue Card application would nevertheless be kept in the directive.

The Presidency proposes, thus, the deletion of paragraph 7 of Article 20 [Line 261]. Its last sentence *“The second Member State shall notify the first Member State of the rejection for the purpose of point (f) of Article 7(2)”* would be a new subparagraph after paragraph 8 (b).

The proposed changes would likely also make redundant the provision in lit (a) of paragraph 4 [Line 256] as this provision only refers to the “conditions set out in paragraph 3” rather than to all the conditions laid down in Article 20 [as in Line 263]. The possibility of deleting the provision in line 256 could then be discussed with the Parliament and the Commission at a future meeting.

To sum up, the Presidency proposes the following changes for Article 20(8):

“Article 20 (8).

{see above 1.1.2(b) - The second Member State shall adopt a decision on an application for an EU Blue Card and notify the applicant and the first Member State in writing as soon as possible, but at the latest within [...] 30 days of the date of submission of the complete application of its decision to either}:

(a) where the conditions laid down in this Article are fulfilled, issue an EU Blue Card and allow the third-country national to reside on its territory for the purpose of highly [...] qualified employment; or [L 263]

*(b) where the conditions laid down in this Article are not fulfilled, **reject the application** and oblige the applicant and his family members, in accordance with the procedures provided for in national law, to leave its territory. ~~In case of a refusal, in its notification to the first MS, the second MS shall specify the reasons for the decision.~~*

The second Member State shall notify the first Member State of the rejection of the application, for the purposes of point (f) of Article 7(2) specifying the reasons where the rejecting decision was due to the grounds referred to in (b) and (d) of paragraph 4. [L 264]”

1.2. Mobility of the family members of the Blue Card holder (Article 21, lines 267 to 278)

Regarding mobility, favourable conditions for intra-EU mobility of the family members accompanying the Blue Card holder is essential.

The objective of Article 21 of the proposal is to ensure that the Family Reunification Directive is applied in cases of mobility of already constituted families in the 1st Member State with specific derogations aimed at ensuring that the persons can apply from the 1st MS and that there is a level of simplification of the procedure, while fully maintaining the possibility for Member States to verify the conditions for mobility.

Where the Blue Card holder constitutes a family after moving to the 2nd Member State, Article 16 applies, i.e. the normal Blue Card regime for family reunification, and not Article 21, which only applies where the Blue Card moves from one Member State to another with his already constituted family.

This aspect of the intra-EU mobility is still being discussed with the Parliament and the Commission. In the context of these discussions a few compromise proposals were put forward to make the provisions on intra-EU mobility more attractive, on which the Presidency would like to hear delegations' views.

The proposed changes build upon discussions that took place in 2017 and mainly consist of clarifications of the relevant legal aspects rather than changes to the substance, with the exception of two issues. The two proposals that concern the substance of the provision relate to (i) the documents to be presented; and (ii) the time for processing, which would be aligned with the provisions on mobility of the BC holder.

The changes proposed to Article 21 are as follows (new wording in bold):

“1. Where the EU Blue Card holder moves to a second Member State in accordance with Article 20 and where the family was already constituted in the first Member State, ~~[...] Article 16 shall apply with the derogations provided for in paragraphs 1a to 8~~ the members of his or her family shall be entitled to accompany or join the EU Blue Card holder. Directive 2003/86/EC and Article 16 shall apply, subject to the derogations provided for in paragraphs 1a to 8.

Where the family was not already constituted in the first Member State, Article 16 shall apply.” [L 268]

Explanation: this revision clarifies that the Family Reunification Directive is the legal instrument applied, the derogations to this directive being listed in the following paragraphs.

“1a. By way of derogation from 13(1) of Directive 2003/86/EC, the members of the EU Blue Card holder's family shall be [...] entitled [...] ~~entitled to accompany or join him or her and~~ to enter and stay in the second Member State based on the valid residence permits obtained as family members of an EU Blue Card holder in the first Member State [...].

Where the EU Blue Card is issued by a Member State not applying the Schengen acquis in full and the family members of an EU Blue Card holder join him or her, when crossing an internal border where controls have not yet been lifted for the purpose of moving to a second Member State, the second Member State applying the Schengen Acquis in full may require that family members present their residence permits in the first Member State as family members of the EU Blue Card holder.” [L 268 continued]

Explanation: Clarification of the text reflecting the new drafting in Paragraph 2.

{Paragraph 2: agreed by Council and EP : 2. By way of derogation from Article 5(3) of Directive 2003/86/EC, no later than one month after entering the territory of the second Member State, the family members concerned or the EU Blue Card holder, in accordance with national law, shall submit an application for a residence permit as a family member to the competent authorities of that Member State.}}

3. By way of derogation from Articles 5(2) and 7(1) of Directive 2003/86/EC, the second Member State may [...] require the family members concerned to present with their application for a residence permit:

(a) their residence permit in the first Member State and a valid travel document, or certified copies thereof;

(b) evidence that they have resided as members of the family of the EU Blue Card holder in the first Member State;

(c) evidence referred to in points (b) ~~and (c)~~ of Article 7(1) of Directive 2003/86/EC.

[L 271; L 272, 273 – to be deleted]

Explanation: The Presidency proposes to generally maintain the current compromise suggestion, which allows Member States to request evidence of sickness insurance. However, bearing in mind the relatively high salary level of the sponsor (EU Blue Card holder), the Presidency considers that the check on the stable resources could be waived in this framework.

“4. Where the conditions set out in this Article are fulfilled and the applications were submitted simultaneously, the second Member State shall issue the residence permits for family members at the same time as the EU Blue Card.

By way of derogation from Article 16(4)], where the conditions set out in this Article are fulfilled and the family members join the EU Blue Card holder after the EU Blue Card has been granted to him or her, residence permits for family members shall be granted at the latest within 30 days from the date on which the application was submitted. In duly justified circumstances linked to the complexity of the application, Member States may extend period by a maximum of 30 days.” [L 274].

Explanation: In the cases where the application would not be submitted/treated simultaneously, the Presidency considers that an effort by the Member States could be envisaged, as discussed in the Counsellors’ meeting of 8 February, and the time for processing reduced to 30 days (+30 days for complex cases), taking into consideration that the family links were already checked by the first Member State. The only evidence which will need to be examined in the second Member State is that of having resided as members of the family of the EU Blue Card holder in the first Member State, of having a sickness insurance and (possibly) of having stable resources needs to be assessed.

[Paragraph (5) on L275 to be deleted]

(Paragraph 6: deletion agreed by Council and EP)

7. This Article shall apply to family members of ~~those~~ EU Blue Card holders who are beneficiaries of international protection only when [...] those EU Blue Card holders move to reside in a Member State other than the Member State which granted them international protection. [L 277]

Explanation: no change of contents, just linguistic adaptation.

(Paragraph 8: agreed by Council and EP)

2. Mobility and long-term residence (Article 17)

Following our meeting of 27 January 2021, which included a discussion among Member States on the proposals regarding the access of Blue Card holders to long-term resident status, the Presidency concluded that there was not sufficient support for the EP proposal for a derogation of the Long Term Residents Directive (2003/109/EC) that would require Member States to grant such status to Blue Card holders after 3 years of residence (instead of 5 years) (Article 17(2) [Line 223]).

Currently, the Council position is to retain the derogation mentioned above (long-term residence status after 3 years) as a “may clause” [L 223], but with a differentiated treatment to be given to long-term residents who were Blue Card holders during the first 2 years of their new status, to allow the withdrawal of their long-residents status should they not have sufficient resources to maintain themselves and their family members [L 224]. The Presidency considers that such an approach would entail an unnecessarily high level of legal unpredictability and administrative complexity, as was raised by some delegations, without providing a real advantage to the Blue Card holder. Member States can already offer a more favourable treatment to long-term residence in their national legislation, so the efficiency and added-value of this approach are debatable.

Therefore, the Presidency proposes to delete the reference to this reduced period of residence for obtaining the long-term residence status and related provisions. This would entail deleting paragraph (2) of Article 17 [lines 223 to 288).

2.1 Cumulating residence periods

Given that the Parliament has stated that this is an important subject in the proposal for the new EU Blue Card, in a spirit of compromise, the Presidency would propose, in exchange from this deletion, to reinforce the current Council proposal on cumulating periods for obtaining long-term residence in a second Member State in case of mobility of the BC holder (Article 17 (3)(a), [Line 230]).

The Presidency proposes that, for this purpose, the following periods of residence of the Blue Card holder (before becoming a Blue Card holder) would be taken into account for the purpose of obtaining long-term residence in a second Member State: periods of residence as a holder of a national permit for highly qualified workers; periods of residence as higher education students or as researchers; and periods of residence as beneficiaries of international protection.

The two first proposals – regarding national schemes for highly skilled workers and authorisations as a higher education students or as researchers – would be an improvement compared to the situation in the current Directive where only periods as EU Blue Card holders are counted for long-term residence in case of mobility.

The Presidency notes the concerns of some Member States regarding the difficulty of assessing requests that entail the evaluation of the nature of the relevant national permits. However, it considers that this difficulty may be overcome with reinforced information sharing among Member States, via the channels already at their disposal (e.g. EU MOBIL). Regarding the authorisations for students and researchers, the Presidency expects that this would not be an obstacle given the current level of implementation of the Students and Researchers Directive, which harmonises such authorisations.

Regarding the third proposal, concerning periods of residence of the Blue Card holder as a beneficiary of international protection, the Presidency intends to respond to a legitimate concern of the EP that, for these persons, the need to restart counting the period of residence in case of mobility, in the 2nd MS, would be a deterrent for the person to use this possibility. He or she would be disadvantaged compared to a person in the same circumstances that would not opt to move to a 2nd MS.

The agreed safeguard provision in *lit.*(b) of paragraph (3) [line 231], requiring two years of legal and continuous residence immediately prior to the submission of the relevant application is maintained.

A reference to the exchange of information between Member States could be added to this paragraph if needed.

In summary, the Presidency proposes that the 2nd paragraph of Article 17 is deleted and the 3rd paragraph) [L 229 to 231] is amended as follows (proposals in bold/yellow; paragraphs in green agreed with the EP):

3. By way of derogation from Article 4(1) of Directive 2003/109/EC, the EU Blue Card holder having made use of the possibility provided for in Article 20 of this Directive is allowed to cumulate periods of residence in different Member States in order to fulfil the requirement concerning the duration of residence, if that holder has accumulated:

(a) five years of legal and continuous residence **as a holder of an EU Blue Card, of a national permit for highly skilled workers, an authorisation as a [student or] researcher in accordance with Directive (EU) 2016/801 or as a beneficiary of international protection** within the territory of the Member States; and

(b) two years of legal and continuous residence as an EU Blue Card holder immediately prior to the submission of the relevant application within the territory of the Member State where the application for the EU long-term resident status is submitted.

2.2 Absences from the territory:

The Presidency proposes to accept Amendment 136 of the Parliament and delete paragraph (6) [Line 234], which lists the restrictions to the derogations in paragraphs (4) and (5). This provision states that Member States may restrict the derogations to the Long-Term Residents Directive regarding the treatment of absences from the territory for long-term residents who were Blue Card holders to specific reasons: economic activity, voluntary service or studies. The Presidency considers that the checking of the respect of these – quite comprehensive – reasons of absence would entail a high level of administrative complexity for Member States without a clear practical purpose, possible delays in the process and a level of unpredictability for the concerned person that does not seem justified.

2.3 Equal treatment and mobility of BC holders with long-term resident status:

Finally, regarding paragraphs (7) and (8), the Presidency considers that some suggestions in the Commission's proposal are relevant and could be considered positively by the Council, and suggests the following amendments to the Council position (proposals in bold):

Article 17 (7):

*“**Point (f) of Article 15(1), [...] Article 15(3), Article 19 and, where applicable, Articles 16 and 21 shall apply to holders of a long-term residence permit with the remark referred to in Article 18(2).**” [Line 235]*

Explanation: This provision lists the rights provided for in the Blue Card Directive which the ex-Blue Card Long Term Resident will keep, despite changing status and falling within the scope of the Long Term Residents Directive. Point (f) of Article 15(1) of the Blue Card proposal refers to equal access to the services of the public employment services in the Member State, which is an equal treatment access right not explicitly referred in the Long Term Residents Directive (Article 11 (1)(f)). The Presidency does not see a reason for this clarification not to be included in this paragraph.

Article 17 (8):

*“Where the EU long-term resident who holds a long-term residence permit with the remark referred to in Article 18(2) of this Directive is exercising his or her right to move to a second Member State pursuant to Chapter III of Directive 2003/109/EC, **Article 14(3) and (4) of that Directive shall not apply. The second Member State may apply measures in accordance with Article 20(6) of this Directive.**” [L236]*

Explanation: In case of mobility of a Blue Card holder with Long-Term Resident status, the 2nd Member State would not conduct a labour market test according to the Long Term Residents Directive (Article 14(3) of that Directive), but according to the specific procedure on labour market tests established by the current revision of the Blue Card Directive, as defined in Article 20(6) [L260, agreed in principle with the Parliament].

The Presidency asks Member States to consider the compromise proposals regarding Article 17 as explained above and inform of their views regarding these proposals.

3. Access to the labour market/change of employer (Article 13)

3.1 Change of employer

In previous discussions, Member States clearly stated they want to retain their competences regarding the access to the national labour market in the cases where the Blue Card holders wish to change their employer.

The Parliament can only accept that Member States perform a labour market test for a first entry in the territory (Article 6(3)), with the specification that this should be in cases when there is a high level of unemployment in a given occupation or sector, which may be limited to a certain part of the territory of a Member State (with conditions). Furthermore, the Parliament does not accept the application of a labour market test when the EU Blue Card holders change their employer (Article 13).

The Presidency understands that an EU Blue Card holder needs to be progressively integrated into the labour market, because it is important for Member States to have safeguards to ensure that persons admitted as highly qualified workers end up in corresponding occupations and the EU Blue Card scheme is not used for abusive purposes by either the employers or the third country nationals.

According to Article 13(1a) of the Council's mandate, Member States would be allowed to conduct a labour market test in cases where an EU Blue Card holder wishes to change the employer during the first two years of legal employment.

As a compromise proposal, the Presidency suggests reducing this period to 12 months in the framework of an overall compromise, where the Commission and the Parliament would drop their position as described above.

Regarding this aspect, the Parliament also signalled that it considers that the process for changing of employer should not be a full repetition of the application for the first entry of the Blue Card holder. If there is agreement by Member States to support the proposal, the Presidency suggests to clarify the procedure in a new Recital.

The Presidency compromise proposal for Article 13(1) is as follows:

{Revision of paragraph 1 - line 186 - as follows}

"1. EU Blue Card holders shall have [...] access to highly [...] [skilled/qualified] employment in the Member State concerned ~~provided that the criteria for admission laid down in Article 5 are fulfilled~~ under the conditions provided for in this Article."

{New text for paragraph 1a – lines 186a to 186f:}

“1a. During the first twelve months of legal employment as an EU Blue Card holder, Member States may:

(a) require that a change of employer or a change which may affect the fulfilment of the criteria for admission as set out in Article 5 be communicated by the EU Blue Card holder or his or her prospective employer in writing to the competent authorities in the Member State concerned, in accordance with procedures laid down in national law, and

(b) require that a change of employer be subject to the check of the labour market situation, where Member States carry out such a check in accordance with Article 6(3)(a).

The right of the Blue Card holder to pursue the employment may be suspended for a maximum of 30 days while the Member State concerned checks that the conditions for admission laid down in Article 5 are fulfilled.”

{Introduction of a new paragraph 1b – replacing lines 187:}

“1b. After these first twelve months, Member States may only require that a change of employer or a change affecting the fulfilment of the criteria for admission as set out in Article 5 be communicated in accordance with procedures laid down by national law. The communication procedure shall not suspend the right of the EU Blue Card holder to pursue the employment.”

{Paragraph 1c already agreed with the EP – line 187a:}

1c. During a period of unemployment, the EU Blue Card holder shall be allowed to seek and take up employment in accordance with the conditions set out in this Article. The EU Blue Card holder shall communicate the beginning and, where appropriate, the end of the period of unemployment to the competent authorities of the Member State of residence, in accordance with the relevant national procedures.

Could Member States support this approach?

3.2 Self-employed activities

In addition, concerning the access of Blue Card holders to the labour market, the Parliament defends the possibility for the EU Blue Card holder to pursue self-employed activities under the same conditions as nationals and other Union citizens in the Member State which issued the Blue Card.

The Presidency considers that there is no legal ground in EU law or precedent in the legal migration Directives to allow equal treatment of third country nationals with EU citizens with regard to self-employment and therefore proposes to maintain the Council position in this regard (paragraph 2 of Article 13, [line 188]):

“Without prejudice to the criteria for admission set out in Article 5, EU Blue Card holders may engage in self-employed activity, in accordance with the conditions laid down in national law, in parallel to the activity in highly [...] qualified employment. Any such activity shall be subsidiary to their employment under the EU Blue Card.”

Could Member States confirm their support for this approach?

4. Equal treatment (Article 15)

There is a general agreement on the approach to Article 15 on equal treatment of Blue Card holders with Member State nationals, very much in line with the current Blue Card Directive and the other legal migration directives. Following the agreement on how to deal with the references to discrimination suggested by the EP (as a recital instead of an article), there are just a few outstanding issues where compromises with the EP will need to be found.

The Presidency would like to request delegations' views regarding the following three aspects:

4.1 The first point that remains to be agreed concerns the recognition of qualifications (Article 15 (1)(d) [Line 200]). The Presidency considers that the equal treatment in the *“recognition of diplomas, certificates and other professional qualifications, in accordance with the relevant national procedures”* sufficiently responds to the concerns of the EP regarding skills. It is also in line with the other legal migration directives, including those where there is no condition of a degree for admission (e.g. Single Permit Directive, Seasonal Workers Directive, ICT Directive). Therefore, the Presidency proposes to maintain the Council's text.

4.2 The second point where there is no agreement refers to the Parliament's Amendment 126 [Line 202b], according to which EU Blue Card holders would get equal treatment as regards *“non-discrimination on the grounds of origin, gender, religion or belief, disability, age or sexual orientation”*. The Presidency considers that, in a spirit of compromise, the proposed Recital 5a could be slightly revised to refer the issue of redress that seems to be the central preoccupation of the Parliament. In exchange, the Council would request the Parliament to drop its Amendment 126 (as proposed in Line 202b). Recital 5a would therefore read as:

*“Member States should give effect to this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disability, age or sexual orientation in accordance, in particular, with Council Directive 2000/43/EC and Council Directive 2000/78/EC. **This includes ensuring access to legal redress and lodging complaints in case of discrimination, as provided for in these Directives.**”*

4.3 The third point refers to the Council's proposal to add, in Article 15 (2) (new 2nd subparagraph) [line 203a] the following provision: *"With respect to point (e) of paragraph 1, the Member State concerned may restrict equal treatment as regards family benefits in relation to family members who reside in a third country."*

The Presidency would like to have Member States' views about the rationale for adding such provision, noting that there is no similar restriction in the migration directives in force, including the Blue Card Directive and the Single Permit Directive.

This would mean that Blue Card holders would have a less favourable treatment than all other third country nationals legally residing in the EU.

The Presidency notes that nothing in this directive entails an obligation of export of family benefits but only equal treatment with nationals (which means that Member States only need to export family benefits if they do so for their own nationals).