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DRAFT REPORT

on the proposal for a Council directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (COM(2007)0637 – C6-0011/2007 – 2007/0228(CNS))

Committee on Civil Liberties, Justice and Home Affairs

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Draftsman(*):
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(*) Procedure with associated committees - Rule 47 of the Rules of Procedure

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT.....	28

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a Council directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment
(COM(2007)0637 – C6-0011/2007 – 2007/0228(CNS))**

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM (2007)0637),
 - having regard to Article 63(3)(a) and (4) of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0011/2007),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Employment and Social Affairs and the Committee on Development (A6-0000/2008),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Calls for initiation of the conciliation procedure under the Joint Declaration of 4 March 1975 if the Council intends to depart from the text approved by Parliament;
 5. Calls on the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 6. Instructs its President to forward its position to the Council and Commission.

Amendment 1

Proposal for a directive Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) At its special meeting in Tampere on 15 and 16 October 1999, the European Council noted the need for approximation of national legislation on the conditions for admission and residence of third-country nationals. In that connection, it declared in particular that the European Union should ensure fair treatment of third-country nationals who reside legally on Member States' territory and that a more vigorous integration policy should aim to grant them rights and obligations comparable to those of Union citizens.

Or. de

Amendment 2

Proposal for a directive Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) In an increasingly global labour market, the European Union should increase its attractiveness to workers, in particular highly qualified workers, from third countries. That objective can be more effectively achieved by granting privileges, e.g. particular derogations, and by making it possible to have easier access to relevant information.

Or. de

Amendment 3

Proposal for a directive Recital 10

Text proposed by the Commission

(10) This Directive should provide for a flexible ***demand-driven*** entry system, based on objective criteria such as a minimum salary threshold comparable with the wage levels in the Member States and on professional qualifications. The definition of a common minimum denominator for the national wage threshold is necessary to ensure a minimum level of harmonisation in the admission conditions throughout the EU. Member States should fix their national threshold accordingly to the situation of their respective labour markets and their general immigration policies.

Amendment

(10) This Directive should provide for a flexible demand-driven entry system ***driven by Member State demand***, based on objective criteria such as a minimum salary threshold comparable with the wage levels in the Member States and on professional qualifications. The definition of a common minimum denominator for the national wage threshold is necessary to ensure a minimum level of harmonisation in the admission conditions throughout the EU. Member States should fix their national threshold accordingly to the situation of their respective labour markets and their general immigration policies.

Or. de

Amendment 4

Proposal for a regulation Recital 11

Text proposed by the Commission

(11) Derogations from the main scheme in terms of the salary threshold should be laid down for highly qualified applicants under 30 years of age who, due to their relatively limited professional experience and their position on the labour market, may not be in a position to fulfil the salary requirements of the main scheme or, for those who have acquired their higher education qualifications in the European Union.

Amendment

deleted

Or. de

Amendment 5

Proposal for a directive

Recital 24

Text proposed by the Commission

(24) Member States should give effect to the provisions of 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, disabilities, **age** or sexual orientation in particular in accordance with Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

Amendment

(24) Member States should give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities or sexual orientation in particular in accordance with Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

Or. de

Justification

Criteria such as language or age must not lead to discrimination in the process of selecting third-country nationals. For successful integration into the labour market, language knowledge in particular is an essential prerequisite and, hence, a necessary selection criterion under a points system. Accordingly, this anti-discrimination requirement must not apply to the rules governing third-country nationals' entry and residence.

Amendment 6

Proposal for a directive

Article 2 – letter b

Text proposed by the Commission

(b) 'highly qualified employment' means the exercise of **genuine and effective** work **under the direction of someone else for which a person is paid and** for which

Amendment

(b) 'highly qualified employment' means the exercise of work **as a worker** for which higher education qualifications or **higher**

higher education qualifications or **at least three years of equivalent professional experience is** required;

professional **competences are** required;

Or. de

Justification

The proposal for a directive is to apply to employed persons only, and it is proposed that the term 'worker' be used: it has already been defined in European Court of Justice case law and encompasses the previous definition (exercise of genuine and effective work under the direction of someone else for which a person is paid). The reference to 'equivalent professional experience' has been deleted and replaced by the term 'higher professional competences, which is defined in Article 2(h).

Amendment 7

Proposal for a directive

Article 2 – letter c

Text proposed by the Commission

(c) 'EU Blue Card' means the authorisation bearing the term “EU Blue Card” entitling its holder to reside and work legally in its territory and to move to another Member State for highly qualified employment under the terms of this Directive;

Amendment

(c) 'EU Blue Card' means the authorisation bearing the term “EU Blue Card” entitling its holder to reside and work legally in its territory and, **in accordance with Chapter V**, to move to another Member State for highly qualified employment under the terms of this Directive;

Or. de

Justification

Moving to another Member State is possible only under the conditions referred to in Chapter V.

Amendment 8

Proposal for a directive

Article 2 – letter g

Text proposed by the Commission

(g) 'higher education **qualification**' stands

Amendment

(g) 'higher education **qualifications**' stands

for any degree, diploma or other certificate issued by a competent authority attesting the successful completion of a higher education programme, namely a set of courses provided by an educational establishment recognised as a higher education institution by the State in which it is situated. These qualifications are taken into account, for the purposes of this directive, on condition that the studies needed to acquire them lasted at least three years;

for any degree, diploma or other certificate issued by a competent authority attesting the successful completion of a higher education programme, namely a set of courses provided by an educational establishment recognised as a higher education institution by the State in which it is situated. These qualifications are taken into account, for the purposes of this directive, on condition that the studies needed to acquire them lasted at least three years;

Or. de

Amendment 9

Proposal for a directive Article 2 – letter h

Text proposed by the Commission

(h) 'higher professional **qualifications**' means **qualifications attested by evidence of higher education qualifications or of at least three years of equivalent professional experience;**

Amendment

(h) 'higher professional **aptitude**' means **at least six years' professional experience, including at least two years in a senior position, which is equivalent to higher education qualifications;**

Or. de

Justification

The term 'qualifications' is misleading in this context, since qualifications cannot be acquired through professional experience. It has therefore been replaced by the term 'aptitude', with a view to a clearer distinction between that and the definition of 'higher education qualifications'. The requirement of at least six years' equivalent professional experience is modelled on Directive 2005/36/EC (Article 16 et seq), under which professional experience usually has to total much more three years in order to be recognised.

Amendment 10

Proposal for a directive Article 2 – letter i

Text proposed by the Commission

(i) 'professional experience' means the actual and lawful pursuit of the profession concerned.

Amendment

(i) 'professional experience' means the actual and lawful pursuit of the profession concerned, ***attested by any document issued by the public authorities, e.g. certificate of employment, social insurance certificate or tax certificate.***

Or. en

Amendment 11

Proposal for a directive Article 2 – letter i a (new)

Text proposed by the Commission

Amendment

(ia) 'regulated profession' means a professional activity or group of professional activities access to which, the pursuit of which or one of the modes of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions limited to the possession of specific professional qualifications; in particular, the use of a professional title limited by legislative, regulatory or administrative provisions to holders of given professional qualifications shall constitute a mode of pursuit.

Or. de

Amendment 12

Proposal for a directive

Article 3 – paragraph 2 – letter a

Text proposed by the Commission

(a) staying in a Member State as applicants for international protection or under temporary protection schemes;

Amendment

(a) staying in a Member State as applicants for international protection or under temporary protection schemes ***or who, in either instance, have applied for a residence permit and on whose legal status no decision has yet been taken;***

Or. de

Amendment 13

Proposal for a directive

Article 3 – paragraph 2 – letter f

Text proposed by the Commission

(f) entering a Member State under commitments contained in an international agreement facilitating the entry and temporary stay of certain categories of trade and investment-related natural persons;

Amendment

(f) entering a Member State under commitments contained in an international agreement facilitating the entry and temporary stay of certain categories of trade and investment-related natural persons, ***in particular intra-corporate transferees, providers of contractual services and trainees with higher-education qualifications who are covered by the European Community's obligations under the General Agreement on Trade in Services (GATS);***

Or. de

Amendment 14

Proposal for a directive Article 4 – paragraph 2

Text proposed by the Commission

2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions concerning **conditions of entry and residence for persons to whom it applies, except for entry into the first Member State.**

Amendment

2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions concerning persons to whom **the Directive applies than the following provisions of the Directive:**

(a) Article 5(2) in the event of residence in the second Member State;

(b) Articles 12, 13(1) and (2), 14, 16, 17(4) and 20.

Or. de

Justification

The aim of the proposal for a directive is to standardise access conditions for high-skilled third-country nationals in all Member States. Any departure from the basic admission criteria referred to in Article 5(1) should be avoided. It would appear justifiable, however, to give Member States the possibility, in the event of a move to another Member State, to adopt a positive derogation from the salary threshold in Article 5(2).

Amendment 15

Proposal for a directive Article 5 – paragraph 1 – letter a

Text proposed by the Commission

(a) present a **valid** work contract or a binding job offer of at least one year in the Member State concerned;

Amendment

(a) present a work contract **for highly qualified employment which is valid under national law** or a binding job offer of at least one year in the Member State concerned;

Or. de

Justification

With a view to a proper hierarchy of classification in keeping with the directive's goal, it is essential to set out the most important condition - pursuit of highly qualified employment - as the first admission criterion in Article 5. (The term is already included in Article 19 as the condition for moving to another Member State.)

Amendment 16

Proposal for a directive

Article 5 – paragraph 1 – letter b

Text proposed by the Commission

Amendment

(b) fulfil the conditions set out under national legislation for the exercise by EU citizens of the regulated profession specified in the work contract or binding job offer of work;

(b) for exercising an unregulated profession, comply with the rules for EU citizens under national legislation;

Or. de

Justification

Text has been transposed to make additional requirements for exercising regulated professions clear.

Amendment 17

Proposal for a directive

Article 5 – paragraph 1 – letter c

Text proposed by the Commission

Amendment

(c) for unregulated professions, present the documents attesting the relevant higher professional qualifications in the occupation or sector specified in the work contract or in the binding offer of work;

deleted

Or. de

Justification

This clause is no longer necessary, since proof of highly qualified employment, which, under

the amended definition in Article 2(b), also includes recognition of professional experience in unregulated professions, is now already required in Article 5(1)(a). Further distinction between regulated and unregulated professions is not necessary.

Amendment 18

Proposal for a directive

Article 5 – paragraph 1 – letter e

Text proposed by the Commission

(e) present evidence of having a sickness insurance for the applicant and his/her family members for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or resulting from, the work contract;

Amendment

(e) present evidence of having a sickness insurance for the applicant and his/her family members for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to **health insurance** benefits are provided in connection with, or resulting from, the work contract;

Or. de

Justification

The addition has been made to make it clear that this relates to health insurance benefits in connection with, or resulting from the employment contract, otherwise it would be possible to take the provision to mean that other benefits in connection with, or resulting from, the contract obviated the need for mandatory insurance.

Amendment 19

Proposal for a directive

Article 5 – letter f

Text proposed by the Commission

(f) not be considered to pose a threat to public policy, public security or public health.

Amendment

(f) not be considered to pose a threat to public policy, public security or public health; **Member States may require third-country nationals to furnish supporting documents accordingly.**

Or. de

Amendment 20

Proposal for a directive

Article 5 – paragraph 2 – subparagraph 1

Text proposed by the Commission

In addition to the conditions stipulated in paragraph 1, the gross monthly salary specified in the work contract or binding job offer must not be inferior to a national **salary** threshold defined and published for the purpose by the Member States which shall be at least **three** times **the minimum** gross **monthly wage as set by** national law.

Amendment

In addition to the conditions stipulated in paragraph 1, the gross monthly salary specified in the work contract or binding job offer must not be inferior to a national threshold defined and published for the purpose by the Member States which shall be at least **1.7** times **average** gross **pay under** national law.

Or. de

Justification

The present low minimum does not do justice to the purpose of the provision to the concept of 'highly qualified'. The criterion should not be linked to the degree of need of the individuals concerned. Nonetheless, level of pay is a significant indicator of 'highly qualified employment' and is therefore, in addition to the definition in Article 2, another effective tool for directing migration. This is important, in particular in view of the possibility of moving to another Member State after only two years.

Amendment 21

Proposal for a directive

Article 5 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Member States where minimum wages are not defined shall set the national salary threshold to be at least three times the minimum income under which citizens of the Member State concerned are entitled to social assistance in that Member State, or to be in line with applicable collective agreements or practices in the relevant occupation branches.

Amendment

deleted

Justification

The second subparagraph has been deleted because, to date, a minimum wage has not been set in some Member States, including Germany, and, in this form, really should not be used as a unit of reference.

Amendment 22**Proposal for a directive****Article 6**

Text proposed by the Commission

Amendment

Article 6

deleted

Derogation

If the application is submitted by a third-country national of less than 30 years of age and holding higher education qualifications, the following derogations shall apply:

(a) Member States shall consider fulfilled the condition set out in Article 5(2) if the gross monthly salary offered corresponds to at least two-thirds of the national salary threshold defined in accordance with Article 5(2);

(b) Member States may waive the salary requirement provided for in Article 5(2) on condition that the applicant has completed higher education on site studies and obtained a Bachelor and a Master's degree in a higher education institution situated on the territory of the Community;

(c) Member States shall not require proof of professional experience in addition to the higher education qualifications, unless this is necessary to fulfil the conditions set out under national legislation for the exercise by EU citizens of the regulated profession specified in the work contract or binding job offer of

work.

Or. de

Justification

The planned derogations for third-country nationals under 30 would lead to age-based discrimination.

Amendment 23

Proposal for a directive
Article 7

Text proposed by the Commission

Articles 5 and 6 shall be without prejudice to the competence of the Member States to determine volumes of admission of third-country nationals for highly qualified employment.

Amendment

1. The admission of third-country nationals in order to take up highly qualified employment shall be at the discretion of the Member State concerned. Even where the conditions under Articles 5 and 6 are met, there shall be no right to admission.

2. Articles 5 and 6 shall be without prejudice to the competence of the Member States to determine volumes of admission of third-country nationals for highly qualified employment. That shall also include Member States' right to opt for total or partial non-admission.

Or. de

Justification

The provision on the power of Member States themselves to regulate the volume of admissions of highly qualified individuals may have a prejudicial effect unless there is an option not to do so. In particular, the fundamental decision by Member States on access to their labour markets would be undermined without a waiver option. Express reference should be made to Member States' right to opt, in full or in part, not to determine the volume of admissions of highly qualified persons.

Amendment 24

Proposal for a directive

Article 8 – paragraph 2

Text proposed by the Commission

2. The initial validity of an EU Blue Card shall be of two years and shall be renewed for at least the same duration. If the work contract covers a period less than two years, the EU Blue Card shall be issued for the duration of the work contract plus **three** months.

Amendment

2. The initial validity of an EU Blue Card shall be of two years and shall be renewed for at least the same duration. If the work contract covers a period less than two years, the EU Blue Card shall be issued for the duration of the work contract plus **five** months.

Or. de

Amendment 25

Proposal for a directive

Article 9 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Before taking the decision on an application for an EU Blue Card, Member States may examine the situation of their labour market and apply their national procedures regarding the requirements for filling a vacancy.

Amendment

Before taking the decision on an application for an EU Blue Card, Member States may examine the situation of their labour market and apply their national procedures regarding the requirements for filling a vacancy. ***Their discretionary decision shall take account of national and regional demand for labour.***

Or. de

Justification

For greater transparency vis-à-vis third-country nationals, and on principle, it needs to be made clear in the directive that, to issue an EU Blue Card, not only must the conditions under Articles 5 and 6 be met, but there must be no grounds for refusal under Article 9 (including in the light of an examination of the labour market situation). The provision should therefore be clearly identified as involving a discretionary decision.

Amendment 26

Proposal for a directive

Article 9 – paragraph 2 – subparagraph 2

Text proposed by the Commission

For reasons of labour market policy, Member States *may* give preference to Union citizens, to third-country nationals, when provided for by Community legislation, as well as to third-country nationals who reside legally and receive unemployment benefits in the Member States concerned.

Amendment

For reasons of labour market policy, Member States *shall* give preference to Union citizens *and may give preference* to third-country nationals, when provided for by Community legislation, as well as to third-country nationals who reside legally and receive unemployment benefits in the Member States concerned.

Or. de

Justification

It would not be fair to deny Union citizens jobs and employ workers from third countries.

Amendment 27

Proposal for a directive

Article 9 – paragraph 3 (new)

Text proposed by the Commission

Amendment

Member States may reject an application for an EU Blue Card if they have availed themselves of their right under Article 7(2) and the volumes determined have been attained or no such volumes have been determined.

Or. de

Justification

From the right of Member States to lay down how many third-country nationals may enter their territory, in order to look for work there, follows the right to reject EU Blue Card applications if the volumes determined by Member States have been exhausted or Member States have opted not to determine such volumes at all or in particular areas.

Amendment 28

Proposal for a directive Article 10 - paragraph 1 - letter c (new)

Text proposed by the Commission

Amendment

(ca) when the holder does not have sufficient resources to maintain himself/herself and, where applicable, the members of his/her family, without having recourse to the social assistance system of the Member State concerned. The authorities of the Member State inform the third country national about that condition at the moment of the application for an EU Blue Card.

Or. en

Amendment 29

Proposal for a directive Article 12 - paragraph 2

Text proposed by the Commission

Amendment

2. If the information supplied in support of the application is inadequate, the competent authorities shall notify the applicant of the additional information that is required. The period referred to in paragraph 1 shall be suspended until the authorities have received the additional information required.

2. If the information supplied in support of the application is inadequate, the competent authorities shall notify the applicant ***as soon as possible*** of the additional information that is required. The period referred to in paragraph 1 shall be suspended until the authorities have received the additional information required.

Or. en

Amendment 30

Proposal for a directive Article 12 – paragraph 3

Text proposed by the Commission

3. Any decision rejecting an application for an EU Blue Card, or non-renewing or withdrawing an EU Blue Card, shall be notified in writing to the third country national concerned and, where relevant, to his/her employer in accordance with the notification procedures under the relevant national legislation and shall be open to challenge before the courts of the Member State concerned. The notification shall specify the reasons for the decision, the possible redress procedures available and the time limit for taking action.

Amendment

3. Any decision rejecting an application for an EU Blue Card, or non-renewing or withdrawing an EU Blue Card, shall be notified in writing to the third country national concerned and, where relevant, to his/her employer in accordance with the notification procedures under the relevant national legislation and shall be open to challenge before the courts of the Member State concerned ***under national legislation***. The notification shall specify the reasons for the decision, the possible redress procedures available and the time limit for taking action.

Or. de

Amendment 31

Proposal for a directive Article 14 – paragraph 1

Text proposed by the Commission

1. Unemployment in itself shall not constitute a reason for revoking an EU Blue Card, unless the period of unemployment exceeds ***three*** consecutive months.

Amendment

1. Unemployment in itself shall not constitute a reason for revoking ***or not renewing*** an EU Blue Card, unless the period of unemployment exceeds ***five*** consecutive months.

Or. de

Amendment 32

Proposal for a directive Article 14 – paragraph 2

Text proposed by the Commission

2. During this period, the holder of the EU Blue Card shall be allowed to seek and take up employment under the conditions set out in Article 13(1) or (2) whichever is applicable.

Amendment

2. During this period, the holder of the EU Blue Card shall be allowed to seek and take up **highly qualified** employment under the conditions set out in Article 13(1) or (2) whichever is applicable.

Or. en

Amendment 33

Proposal for a directive Article 15 – paragraph 1 – letter f

Text proposed by the Commission

(f) social assistance as defined by national law;

Amendment

deleted

Or. de

Amendment 34

Proposal for a directive Article 15 – paragraph 1 – letter i

Text proposed by the Commission

(i) access to goods and services and the supply of goods and services made available to the public, including procedures for obtaining housing and the assistance afforded by employment offices;

Amendment

(i) access to goods and services and the supply of goods and services made available to the public, including procedures for obtaining housing, **with the exception of social housing**, and the assistance afforded by employment offices;

Or. de

Amendment 35

Proposal for a directive Article 15 – paragraph 2

Text proposed by the Commission

2. Member States may restrict the rights conferred under *paragraphs 1(c) and (i) in respect to study grants and procedures for obtaining public housing to cases where the holder of the EU Blue Card has been staying or has the right to stay in its territory for at least three years.*

Amendment

2. Member States may restrict the rights conferred under *paragraph 1.*

Or. de

Amendment 36

Proposal for a directive Article 16 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Article 8 shall be taken to mean that an EU Blue Card holder must have resided lawfully in the territory of the first Member State for the period laid down in this Article.

Or. de

Amendment 37

Proposal for a directive Article 19 – paragraph 3 – introduction

Text proposed by the Commission

3. In accordance with the procedures set out in Article 12, the second Member State shall process the *notification* and inform in writing the applicant and the first Member State of its decision to:

Amendment

3. In accordance with the procedures set out in Article 12, the second Member State shall process the *application and the documents referred to in paragraph 2* and inform in writing the applicant and the first

Member State of its decision to:

Or. de

Amendment 38

Proposal for a directive Article 19 – paragraph 3 – letter b

Text proposed by the Commission

(b) refuse to issue an EU Blue Card **and** oblige the applicant and his/her family members, in accordance with the procedures provided for by national law, including removal procedures, to leave its territory ***if the conditions set out in this Article are not fulfilled***. The first Member State shall immediately readmit without formalities the holder of the EU Blue Card and his/her family members. The provisions of Article 14 shall apply after readmission.

Amendment

(b) refuse to issue an EU Blue Card ***if the conditions set out in this Article are not fulfilled or there are grounds for refusal pursuant to Article 9. In that instance, the Member State shall*** oblige the applicant, ***if he/she is already in its territory***, and his/her family members, in accordance with the procedures provided for by national law, including removal procedures, to leave its territory. The first Member State shall immediately readmit without formalities the holder of the EU Blue Card and his/her family members. The provisions of Article 14 shall apply after readmission.

Or. de

Amendment 39

Proposal for a directive Article 19 – paragraph 4

Text proposed by the Commission

4. The applicant shall be responsible for the costs related to the return and readmission of him/her self and his/her family members, including by reimbursing costs incurred by public funds ***where applicable***, pursuant to paragraph 3(b).

Amendment

4. The applicant shall be responsible for the costs related to the return and readmission of him/her self and his/her family members, including by reimbursing costs incurred by public funds, pursuant to paragraph 3(b).

Or. de

Amendment 40

Proposal for a directive Article 19 – paragraph 5

Text proposed by the Commission

5. In application of this Article, Member States *may* continue to *apply* volumes of admission *as specified in Article 7*.

Amendment

5. In application of this Article, Member States *shall* continue *to have the right, as specified in Article 7(2), to determine* volumes of admission *of third-country nationals and to opt for total or partial non-admission*.

Or. de

Amendment 41

Proposal for a directive Article 20 – paragraph 2

Text proposed by the Commission

2. In cases where a Member State decides to apply the restrictions on access to the labour market provided for in Article 14(3) of Directive 2003/109/EC, it *shall* give preference to holders of the residence permit 'long-term resident – EC / EU Blue Card holder' over other third-country nationals applying to reside there for the same purposes.

Amendment

2. In cases where a Member State decides to apply the restrictions on access to the labour market provided for in Article 14(3) of Directive 2003/109/EC, it *may* give preference to holders of the residence permit 'long-term resident – EC / EU Blue Card holder' over other third-country nationals applying to reside there for the same purposes.

Or. de

Amendment 42

Proposal for a regulation

Article 22 – paragraph 1

Text proposed by the Commission

1. Member States shall communicate to the Commission and the other Member States if legislative or regulatory measures are enacted in respect of Articles 7, 9(2), 19(5) and 20 through the network established by Decision 2006/688/EC.

Amendment

1. Member States shall communicate to the Commission and the other Member States if legislative or regulatory measures are enacted in respect of Articles 7, 9(2), 19(5) and 20 through the network established by Decision 2006/688/EC ***and shall identify the specific measures concerned.***

Or. de

EXPLANATORY STATEMENT

Economic immigration is a challenge which the EU, in an increasingly globalised world and tougher competitive environment, will have to face up to. The EU is still not regarded as attractive by high-skilled workers, as is made clear by the figures. In the competition for the 'best and brightest', the EU comes off relatively badly by comparison with the traditional immigration countries such as the United States, Canada or Australia. Only 5.5% of highly qualified migrants from the Maghreb states come to the EU, while about 54% opt for the United States or Canada. By contrast, the EU has admitted the greatest number of unskilled Maghreb workers (87%). Highly qualified workers from all third countries account for 1.72% of the EU's total workforce, which is also well behind other important immigration countries such as Australia (9.9%), Canada (7.3%), the US (3.2%) and Switzerland (5.3%).

The 27 different admission regimes at present in the EU are the main reason for its low level of attractiveness as an immigration destination, making it considerably more difficult for potential migrant workers from third countries to move easily from one Member State to another. The different rules in the Member States lead to competition between them. Only 10 or so Member States have special regimes for admitting highly qualified migrant workers, while, in others, regimes are either non-existent or highly segmented. Only six Member States have specific programmes for the employment of highly qualified migrant workers.

The rapporteur therefore stresses the need for a comprehensive and coherent overall approach to European immigration policy which takes account of development policy, employment policy and integration policy aspects. Common European rules are required in order to direct migration flows to and within Europe and stem illegal migration. If there are prospects and scope for legal migration, countries of origin and transit countries will have an interest in jointly combating illegal immigration. The Commission proposal to make the EU more attractive to highly qualified third-country workers through fast-track and flexible admission procedures and favourable residence conditions is therefore expressly welcomed. Prompt admission procedures without red tape and common standard definitions for access to a total of 27 different labour markets in the EU are crucial. That is the only way for the EU to be able to keep up and compete. A system based on common criteria is a clear signal to highly qualified third-country workers that the EU has a serious interest in drawing on skilled workers from third countries on Member States' national labour markets and in employing them there in the longer term. By recruiting highly qualified skilled workers, the EU helps to boost its own competitiveness and economic growth. The rapporteur expressly stresses, however, that immigration for taking up highly qualified employment cannot be a long-term solution to economic problems or to the demographic problem. Admitting highly qualified workers can help to solve those problems in the short term only. In the medium and long term, Member States must take further employment, economic and family policy measures in order to deal with present and future developments in the EU.

The rapporteur underlines the fact that economic migration fundamentally influences Member States' national labour markets. Member States must therefore continue to have the right to determine the scale of immigration in terms of numbers. The subsidiarity principle must be maintained: at EU level, there is no European labour market, and there are no integrated social security schemes, no common arrangements for old-age provision and no harmonised health

insurance schemes. National labour market structures differ fundamentally, which is why economic migration must be geared to needs on the respective national labour markets. Decisions on the number of skilled workers from third countries and on their necessary qualifications can only be demand-driven and therefore taken locally.

Immigration by highly qualified third-country workers can only take place in strict compliance with the principle of Community preference, appropriately and usefully complementing national labour market strategies if demand for skilled workers for jobs cannot be met either by EU citizens or by any of the some 18 ½ million third-country nationals lawfully residing in the EU. It should be borne in mind that EU citizens from the new Member States, whose freedom of movement is still constrained by transitional arrangements, must not be disadvantaged, with regard to labour market access, vis-à-vis highly qualified workers from non-EU countries. It must continue to be a priority concern of Member States to train their own workers, and demand cannot be alternatively met through migration only; rather, a reasonable balance must be achieved between the two approaches.

Rapporteur's position

In her draft report, the rapporteur has added many details and clarifications so as to standardise EU entry conditions for third-country nationals as far as possible and define the rights of Member States and of third-country nationals clearly.

The rapporteur has broadened the scope of the directive to include both graduates, who should usually be assumed to have studied for four or, possibly, five years, and to individuals with six years' appropriate professional experience, including at least two years in a senior position. The increase in length of professional experience is appropriate and is modelled on the European Professional Qualifications Recognition Directive¹, which provides for periods of professional experience well in excess of three years, in order to place graduates and non-graduates on as equal a footing as possible.

In addition to the qualifications necessary, provision has been made for a minimum wage as a criterion for admitting third-country nationals. In this connection, the rapporteur is advocating that national gross average pay be used as the reference unit and is proposing a minimum pay threshold of 1.7 times gross average pay in the relevant Member State, thus enabling small and medium-sized enterprises and higher-education establishments, too, to recruit highly qualified individuals.

Member States must continue to have the right to lay down more favourable conditions in national legislation for access to highly qualified employment. For first-time entry into the EU, the rapporteur does stress the need for standard access arrangements deriving from the basic admission criteria referred to in Article 5(1). Member States should nonetheless be given the option, in the event of a move to a second Member State, of departing, in a positive way, from the minimum pay threshold provided for in Article 5(2). It should be borne in mind

¹ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (repealing Directives 77/452/EEC, 77/453/EEC, 78/686/EEC, 78/687/EEC, 78/1026/EEC, 78/1027/EEC, 80/154/EEC, 80/155/EEC, 85/384/EEC, 85/432/EEC; 85/433/EEC, 89/48/EEC, 92/51/EEC, 93/16/EEC and 1999/42/EC), OJ L 255, 30.9.2005.

that as regards the minimum pay requirement, for first-time entry, there are already differences because of Member States' differing pay levels taken as the calculation basis.

Determining the scale on which third-country nationals are admitted on to the national labour market is an expression of the sovereignty of each and every Member State. The rapporteur has made that right more specific by expressly allowing Member States to set a zero quota or not to set an admission volume for particular areas. In this connection, the rapporteur is proposing that the fact of not determining a volume or quota exhaustion be a ground for refusal to issue an EU Blue Card. Any application by an EU Blue Card holder for public assistance or possession of insufficient funds for a worker to support himself and his family would be further grounds for refusal.

It is made clear in the draft report that third-country nationals applying for an EU Blue Card who meet all admission conditions do not have the right to have such a card issued; rather, decisions would remain at the discretion of the Member State concerned. That would enable Member States to take account of national and regional demand for labour, too, by giving preference to Union citizens or to third-country nationals already resident in the EU, and, in so doing, to direct immigration on to the domestic labour market.

The rapporteur stresses that the directive's European added value lies principally in the fact that, after a waiting period, intra-European mobility would be ensured. After two years' lawful residence in the first Member State, highly-skilled third-country nationals would be able to move to any other Member State in order to take up highly qualified employment, provided that that Member State had not set a zero quota or had already exhausted its quota. The rapporteur would not like to place further constraints on the right of third-country nationals to move, since that is one of the directive's key benefits making European Union entry attractive to them.