Conditions of entry and residence of third-country nationals for the purposes of highly qualified employment

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The Committee on Civil Liberties, Justice and Home Affairs adopted a report drafted by Ewa **KLAMT** (EPP-ED, DE), and amended the proposal for a Council directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (European Blue Card Directive.) Members sought to clarify blue card eligibility requirements 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. They consider that Member States should be able to decide how many blue cards they wish to grant each year. The card should not be viewed as a "right" for migrants, and may be refused even where they meet the criteria. National authorities must also be able to reject holders of blue cards granted by other Member States in favour of a national or Community solution.

The main amendments – adopted in the framework of the consultation procedure – are as follows :

Definitions: Members stress that higher education qualifications or higher professional qualifications are required to qualify. It deleted the Commission's reference to 'higher education qualifications or at least 3 years of equivalent professional experience.' It stated instead that "higher professional qualifications" means qualifications attested by evidence of at least 5 years of professional experience of a level comparable to higher education qualifications, including at least 2 years in a senior position.

Scope: the Directive will apply to third-country nationals who apply to be admitted to the territory of a Member State for the purpose of highly qualified employment, but the committee stated that it would also apply to third-country nationals already legally resident under other schemes in a Member State who apply for an EU Blue Card. It will not, however, apply to those 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. Nor will it apply to the following: those who have who have applied for recognition as refugees; 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).

Members stipulate that an EU Blue Card shall be granted only to highly qualified immigrants from third countries with which the EU has previously concluded cooperation and partnership agreements, including in the areas of mobility and immigration.

Other admission conditions : the committee stated that the following conditions will also apply :

- level of pay: the gross monthly wage must not be inferior to a national level defined by the Member States which shall be at least 1.7 times of the gross monthly or annual average wages in the Member State concerned and shall not be inferior to the wages which apply or would apply to a comparable worker in the host country;

- health insurance: Blue Card holders must prove that entitlement to health insurance benefits are provided in connection with, or resulting from, the work contract;

- public policy: they must show that they do not, for reasons which can be objectively demonstrated, constitute a threat to public policy, public security or public health.

Members deleted the derogation in the Commission's proposal relating to a third-country national of less than 30 years of age and holding higher education qualifications.

Validity of the Blue Card: the initial validity of an EU Blue Card shall be of 3 years (rather than 2) and shall be renewed for at least another two. If the work contract covers a period of less than 3 years (rather than 2), the EU Blue Card shall be issued for the duration of the work contract plus 6 months (rather than 3).

Brain drain: a new clause states that Member States shall not actively seek to attract highly qualified workers in sectors that are already subject, or are expected to be subject, to a shortage of highly qualified workers in the third country. This applies to the health and education sectors in particular. Members note that the derogations to Directive 2003/109/EC will encourage the circular mobility of these professionals, as well as the subsequent involvement of the same migrant workers in training, research and technical activities in their countries of origin. Member States should establish cooperation agreements with third countries with a view to safeguarding both the Union's needs and the development of the third countries from which highly qualified immigrants come. Member States may reject an application for an EU Blue Card in order to avoid a brain drain in sectors suffering from a lack of qualified personnel in the countries of origin.

Making the EU more attractive: 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). Members stipulated that, by issuing an EU Blue Card a Member State commits itself to issuing relevant documentation and visas, where applicable, as speedily as possible, but at least a reasonable period of time before the applicant is due to commence the employment on the basis of which the EU Blue Card was issued, unless the Member State cannot reasonably be expected to do so because of late application for the EU Blue Card by either the employer or the third-country national concerned.

Establishment in a 2nd Member State : after 36 months of legal residence in a Member State as holder of a Blue Card, the person concerned shall be allowed to carry out highly qualified employment in another Member State while residing in the first Member State. Further details on cross-border commuting are drawn up in Council Directive .../.../EC [on a single application procedure for a single permit for third-country nationals).

Long-term resident's EC residence permit: Members state that the applicant must have had legal residence as holder of an EU Blue Card for 3 years (rather than 2) immediately prior to the submission of the relevant application.