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Subject : Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment

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1. At its meeting on 4 April 2008 the Working Party completed the first reading of the above proposal, and addressed in particular Articles 15-26.

The results of the discussions are set out in the Annex to this Note, with delegations' comments in the footnotes.

2. This Note contains a consolidated version of the entire first reading, which includes the outcomes of proceedings already issued (5255/08 MIGR 1 SOC 19, 6051/08 MIGR 6 SOC 73 and 7642/08 MIGR 19 SOC 173)

Moreover, it takes into account additional remarks and observations subsequently sent by delegations.

Proposal for a  
**COUNCIL DIRECTIVE**  
**on the conditions of entry and residence of third-country nationals for the purposes of highly  
qualified employment<sup>1</sup>**

**Chapter I**

**GENERAL PROVISIONS**

**Article 1**

*Subject matter*

The purpose of this Directive is to determine:

- (a) the conditions of entry and residence for more than three months in the territory of the Member States of third-country nationals and of their family members for the purpose of highly qualified employment<sup>2</sup>,
- (b) the conditions for <sup>3</sup>residence of third-country nationals and of their family members under point (a) in Member States other than the first Member State<sup>4</sup>.

**Article 2**

Definitions

For the purposes of this Directive:

- (a) "third-country national" means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty;

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<sup>1</sup> A large number of delegations (**CZ, DE, EE, EL, ES, FI, HU, IT, LV, MT, RO, AT, PL** and **SE**) entered general scrutiny reservations on the proposal.

**CZ, HU, MT, LT** and **NL** entered Parliamentary reservations.

<sup>2</sup> **SE** entered a reservation on Article 1.

In order to clarify the objective of the proposal, **DE**, supported by **EL**, suggested the following new draft of point a):

*(a) the conditions under which a Member State may grant a Blue Card to a third-country national.*

<sup>3</sup> **NL** suggested inserting the words *entry and*, before *residence*, in point (b).

<sup>4</sup> **AT** suggested adding at the end of point (b) the following wording: *, provided that the requirements for the issuance of the EU Blue Card are fulfilled.*

- (b) "highly qualified employment"<sup>5</sup> means the exercise of genuine and effective work<sup>6</sup> under the direction of someone else for which a person is paid and for which higher education qualifications or at least three years of equivalent professional experience is required<sup>7</sup>;

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<sup>5</sup> With respect to a suggestion from **BG**, according to which the definition should be reviewed and refer to *employment of highly qualified persons*, the **Cion** underlined that point (b) has to be regarded in the context of employment, insofar as it aims at defining the job and not the third-country nationals concerned. In this context, **PT** suggested a new wording for point (b) along these lines: *'highly qualified employment' means the exercise of work for which a person is paid and for which specific technical competence and, accordingly, adequate qualifications, resulting from higher education qualifications or at least [three] years of relevant professional experience, are required*. The **Cion** felt that this suggestion could constitute a good basis for redrafting this definition.

<sup>6</sup> **EL** and **LU** wondered what is meant by the expression *genuine and effective work*. According to **IT** *genuine and effective work* seems to refer to employed work. It drew attention to the need to ensure that it is in line with the already established definition of employed work which exists in the Community *acquis*.

<sup>7</sup> It was generally felt that the drafting of point (b) requires further consideration. A large number of delegations (**BG**, **CZ**, **DE**, **EE**, **EL**, **ES**, **FR**, **HU**, **IT**, **LT**, **LV**, **MT**, **NL**, **PL**, **AT**, **PT** and **SK**) entered scrutiny reservations on this provision, in particular on the criterion of *at least three years of equivalent professional experience*. **DE**, **LV** and **AT** drew attention to the risk of abuse in the assessment of the equivalent professional experience. In this context, **EE**, **EL**, **LT** and **SK** wondered which body(ies) would assess the equivalence and on the basis of which criteria. **EL**, which drew attention to the link between point (b) and Article 6(c), suggested deleting *or at least three years of equivalent professional experience*.... **DE** suggested the following draft: *"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 higher education qualifications are required*. **AT** suggested amending the wording of this provision as follows:... *and for which either higher education qualifications or both equivalent qualifications and ~~or~~ at least three years of equivalent professional experience ~~is~~ are required*.

**PT** suggested amending the wording of this provision as follows: *"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 adequate and specific technical competence, resulting from higher education qualifications or at least five years of relevant professional experience is required*

**MT** suggested the following draft: *'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 higher education qualifications and or at least three years of relevant equivalent professional experience at an equivalent level is required*. **HU** expressed doubts on the fact that the professional experience could be considered equivalent to higher education qualifications. According to **EE** and **LV** the focus of this definition should be on education. **SE** suggested deleting the word *equivalent* and introducing two different profiles of highly skilled workers, the first relating to third-country nationals who possess higher education qualifications, and the second concerning those who have acquired the required professional experience. According to **BG**, the word *equivalent* should be replaced by the reference to evidence of work accomplished in a similar area. Finally, **IT** and **SK** expressed some concerns about the number of years (*at least three years*) of equivalent professional experience required in point (b). **Some delegations** also felt that there are some elements missing in this definition. According to **ES**, this definition should also concern the employer: the job should be considered as an highly qualified one by the firm for which the person concerned will work. **RO** felt that some additional criteria should be introduced, such as past work experience or the salary threshold. It also suggested envisaging a list of priority works. **IE** felt that a reference to the salary threshold should be inserted here or in point (h). According to **LU**, this definition should also contain the requirement that the person concerned should be admitted to fill a vacancy for a job of management (*poste de responsabilité*).

- (c) <sup>8</sup>"EU Blue Card" means the authorisation<sup>9</sup> 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;
- (d) "first Member State" means the Member State which first granted a third country national the "EU Blue Card"<sup>10</sup>;
- (e) "second Member State" means any Member State other than the first Member State.
- (f) "family members" means third-country nationals as defined in Article 4(1) of Directive 2003/86/EC;

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<sup>8</sup> According to **DE**, the draft of this definition should be looked at, with a view to either not focusing on the rights granted by the EU Blue Card or adapting the wording of this provision to the rights conferred by this proposal.

<sup>9</sup> In reply to a query by **ES**, the **Cion** - which made reference to Article 8(3), concerning the issue of the Blue Card - clarified that the expression *authorisations* has the same meaning as residence permits.

<sup>10</sup> In relation with points (d) and (e), **PL** and **BG** raised the issue of parallel applications for obtaining a Blue Card submitted in different Member States.

The **Cion** pointed out that this situation evoked was not envisaged when drafting the proposal and that this question needs to be further considered. It also evoked the possibility of establishing a database, which could help to solve these types of cases.

- (g) "higher education qualification" 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<sup>11</sup>;
- (h) "higher professional qualifications" means qualifications attested by evidence of higher education qualifications or<sup>12</sup> of at least three years of equivalent professional experience<sup>13</sup>;

<sup>11</sup> MT entered a reservation and CZ, EE, EL, ES, FR, IT, LT, LV, NL, AT and SK entered scrutiny reservations on point (g), linked with the reservations entered in relation to point (b). EL and IT queried the meaning of the notion of *certificate*. EL also queried the meaning of the notion of *competent authorities* to which this definition refers.

The Cion underlined the difficulties of defining what the *competent authorities* are.

MT suggested the following draft for point (g):

*(g) 'higher education qualification' stands for any higher education qualification, 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 recognized as a higher education institution by the State in which it is situated and as verified by the first Member State. These qualifications are taken into account, for the purposes of this directive, on condition that the qualifications are equivalent to levels 6, 7 and 8 on the European Qualifications Framework and / or ISCED[1] levels 5a and 6 studies needed to acquire them lasted at least three years.*

AT suggested amending this provision as follows:

*"higher education qualification" 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 **regular** courses provided by **a university or equivalent institution** ~~an educational establishment~~ recognised ~~as a higher education institution~~ by the State in which **the admission is intended** ~~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*

According to RO, the duration of the studies should be at least five years.

With respect to a query from AT concerning the expression *recognised as a higher education institution by the State in which it is situated*, the Cion pointed out that this definition aims at covering all the post-secondary education, in accordance with the Bologna classification.

In relation with a remark from PT, which considers that this definition does not address the issue of the recognition of certificates or diplomas by a Member State, the Cion underlined that its objective is exclusively to refer to the documents which are required for the admission procedure

<sup>12</sup> AT suggested replacing *or* with *and*.

<sup>13</sup> CZ, EE, EL, ES, FR, HU, IT, MT, LT, LV, NL and AT entered scrutiny reservations on point (h), linked in particular with the concerns expressed in relation to point (b) with regard to the period of professional experience.

DE suggested deleting the words *or of at least three years of equivalent professional experience*.

According to PL, the duration of the period of professional experience should be at least five years.

MT suggested the following draft for point (h):

*(h) 'higher professional qualifications' means qualifications attested by evidence of higher education qualifications and/ or of at least 3 years of relevant equivalent professional experience.*

In reply to a question from EL, the Cion pointed out that the professional experience should be assessed by the Member States, taking into account the standards and requirements set by the employer for the relevant job.

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

### Article 3

#### *Scope*<sup>14</sup>

1. This Directive shall apply to third-country nationals who apply to be admitted to the territory of a Member State for the purpose of highly qualified employment<sup>15</sup>.
2. This Directive shall not apply to third-country nationals:
  - (a) staying in a Member State as applicants for international protection or under temporary protection schemes;
  - (b) who are refugees or have applied for recognition as refugees and whose application has not yet given rise to a final decision<sup>16</sup>;
  - (c) applying to reside in a Member State as researchers within the meaning of Directive 2005/71/EC in order to carry out a research project<sup>17</sup>;

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<sup>14</sup> **AT** entered a scrutiny reservation on this provision.

<sup>15</sup> **SE** entered a reservation on paragraph 1.

According to **DE**, paragraph 1 should be re-drafted, in order to clarify that the person concerned has been admitted for the purpose of obtaining a Blue Card.

<sup>16</sup> **CZ** wondered if point (b) is needed. **LV** queried why persons who have obtained subsidiary protection are not excluded, like refugees, from the scope of the Directive.

With respect to the **LV** remark, the **Cion** clarified that its intention was to exclude all forms of international protection (temporary and subsidiary protection, refugee status). In a previous draft of the proposal the reference to subsidiary protection was included, but it disappeared in the final text. It pointed out that it would support re-introducing this category of international protection in point (b). **SE**, supported by **HU**, wondered why beneficiaries of international protection should be excluded from the scope of the Directive, if they fulfil the relevant requirements. The **Cion** underlined that the question of enlarging the scope of the Directive with a view to including beneficiaries of international protection needs to be discussed at political level.

<sup>17</sup> **EL** wondered why only researchers, as defined in the relevant EC Directive, are mentioned in Article 3, while in the Preamble reference is made to both the researchers and students Directives (see recital 9).

According to the **Cion**, it was not considered necessary to expressly exclude students in this provision, as defined in the relevant EC Directive, insofar as they do not fulfil the conditions provided for in the proposal to become a holder of a Blue Card.

**EL** also wondered why other forms of temporary stay (seasonal workers, tourists, etc.) are not expressly excluded from the scope of the proposal.

In relation to the seasonal workers, the **Cion** drew attention to the fact that they do not comply with the requirement of a work contract with a duration of at least one year.

- (d) who are family members of Union citizens who have exercised, or are exercising, their right to free movement within the Community;
- (e) who enjoy long-term resident status in a Member State in accordance with Directive 2003/109/EC and exercise their right to reside in another Member State in order to carry out an economic activity in an employed or self-employed capacity<sup>18</sup>;
- (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<sup>19</sup>;
- (g) whose expulsion has been suspended for reasons of fact or law.

3. This Directive should be without prejudice to any future agreement between the Community or between the Community and its Member States on the one hand and one or more third countries on the other, that would list the professions which should not fall under this directive in order to assure ethical recruitment, in sectors suffering from a lack of personnel, by protecting human resources in the developing countries, signatories to these agreements.

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<sup>18</sup> In reply to a query from **EL**, the **Cion** pointed out that third-country nationals who have acquired long-term resident status are excluded insofar as they enjoy a treatment which is more favourable than that granted to Blue Card holders.

<sup>19</sup> With respect to this category of persons, **DE** suggested using the definition contained in Article 3(2)(c) of the proposal for a Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (*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 to intra-corporate transferees, contractual service suppliers and graduate trainees under the European Community's GATS commitments*)

#### *Article 4*

##### **More favourable provisions**

1. This Directive shall be without prejudice to more favourable provisions of:
  - (a) Community legislation, including bilateral or multilateral agreements concluded between the Community or between the Community and its Member States on the one hand and one or more third countries on the other<sup>20</sup>;
  - (b) bilateral or multilateral agreements concluded between one or more Member States and one or more third countries.

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<sup>20</sup> In reply to a query from **DE**, the **Cion** clarified that agreements already applicable and future agreements, not yet concluded, would be covered by this provision.



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<sup>21</sup>.

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<sup>21</sup> It was generally felt that the text of this provision needs to be clarified. As underlined by **FR**, two different issues arose from the discussions, which need to be addressed separately. **The first issue**, to which **EL** and **SE** in particular drew attention, concerns the scope of this provision. According to **DE** and **NL**, supported by **FI**, Member States should be allowed to maintain national schemes, resulting in the issue of a national residence permit/card for highly skilled third-country nationals. In this context, **NL** suggested adding the following new paragraph: *Member States may issue residence permits for the purpose of highly qualified employment on terms that are more favourable than those laid down by this Directive. Such residence permits shall not confer the right of residence in the other Member States as provided by Chapter V of this Directive.* **PL** drew attention to the fact that, if the **DE** suggestion for Article 1 (a) is taken on board (see 5255/08, page 3, footnote 2) the scope of this provision would become clearer. The **Cion** noted that Article 4 addresses the issue of more favourable provisions in the framework of the implementation of the rules introduced by the proposal. This means that the Member States could continue to admit, under national schemes, applicants who do not fulfil all the entry criteria as set out by Articles 5 and 6 and accordingly issue them with national permits. On the issue raised by **DE**, **FI** and **NL**, it pointed out that the co-existence of national arrangements with the Blue Card scheme set is not excluded by the proposal. However, it stressed that only applicants who meet the requirements set out by the proposal should be entitled to obtain an EU Blue Card. Finally, it drew attention to the fact the applicants of an EU Blue Card who meet all the relevant requirements could only be admitted on the basis of the proposal, not under national schemes. **The second issue** results from the concerns expressed in particular by **CZ**, **EL**, **FR**, **IE** and **PT**, with respect to possible derogations to the system established by this proposal which could be applied by individual Member States, as a consequence of the implementation of this provision. **PT** drew attention to the possibility, by means of the combined application of Articles 4(2), 17(2) and 19(1), of waiving the requirement of at least two years of legal residence in the first Member State as a Blue Card holder before moving to another Member State. In this respect, it suggested adding the following words at the end of paragraph 2: *and for the requirement of at least two years as a EU Blue Card holder in this Member State before moving to another Member State under Article 19 (1).* **EL** added that the application of Article 4(2) could have similar consequences for other provisions of the proposal as well. It also drew attention to the link between paragraphs 1 and 2 of Article 2, referring to the case of an agreement signed by a Member State with a third-country, which contain more favourable provisions vis-à-vis the proposal. In this context, it also wondered if the more favourable provisions could apply to the first entry of the third-country concerned and/or also to the case when he/she, as a Blue Card holder, moves to a second Member State. The **Cion** acknowledged that the text of paragraph 2 is not entirely clear. In its view the first entry, as well as the issuing of the Blue Card, should take place on the basis of rules as uniform as possible. More favourable provisions could then be granted for residence conditions and intra EU-mobility. However, certain criteria, such as the two years of legal residence in the first Member State evoked by **PT**, are essential requirements that should not fall within the scope of this provision. For this reason it suggested to revise the draft of this provision, by means of inserting, in paragraph 2, a list of provisions for which Article 4 could not apply and/or by introducing appropriate clarifications in the Preamble.

## Chapter II

### CONDITIONS OF ADMISSION

#### Article 5

##### *Criteria for admission*

1. A third-country national who applies to be admitted for the purposes set out in this Directive shall<sup>22</sup>:
  - (a) present a valid work contract or a binding job offer of at least one year in the Member State concerned<sup>23</sup>;
  - (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<sup>24</sup>;

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<sup>22</sup> **CY, HU** and **AT** entered reservations on Article 5.

In reply to a query from **DE**, the **Cion** pointed out that the list of conditions contained in Article 5 to be met by a third-country national in order to obtain a Blue Card is an exhaustive one. According to **SK**, supported by **HU** and **AT**, this list should also contain the requirement of providing evidence of appropriate accommodation (as in the case of the sponsor under Article 7 (a) of the Directive on the right to family reunification). **HU** felt that the person concerned should also provide evidence of sufficient resources.

The **Cion** took the view that it would not be justified to introduce this new requirement, as the situation is quite different (the sponsor already lives in the territory of the Member State concerned, while under this proposal the applicant will, in most cases, not yet be resident there).

With respect to the issue of providing evidence of resources (as requested in the Directive on family reunification (Article 7(1) (c) and in the Directive on the status of third-country nationals who are long-term residents (Article 5(1) (a)), the **Cion** underlined that this condition would not be appropriate in the framework of this proposal, since the person concerned, in order to be admitted, should meet the requirement of the salary threshold, which is in itself an indication of resources.

<sup>23</sup> **EL** entered a scrutiny reservation on point a). In reply to a query from **EL, FR** and **AT** – this delegation suggested adding the words *of both* after *binding job offer* and before *at least one year* - the **Cion** clarified that the deadline of one year applies to both alternative criteria (*valid work contract* and *binding job offer*) mentioned in point a). Noting that the Blue Card is issued for an initial period of two years, **AT** wondered why this provision requests evidence of a *valid work contract* or *binding job offer* for a period of one year. Both **EL** and **PL** drew attention to the fact that the notion of *binding job offer* is not acknowledged in their legal system. **EL** preferred to refer to a system of *letter of guarantees*.

In reply to a query from **PL**, which wondered if periods shorter than year could be taken into account (examples: part-time contracts or contracts with different employers), the **Cion** noted that persons in such situations could not qualify for a Blue Card. It also added that in case of *trial or adaptation periods*, the residence of a person who does not yet fulfil the requirements of the proposal should be authorised on the basis of a national permit. In this context, it noted that according to Article 11 it is possible to submit an application for an EU Blue Card in the Member State where the person concerned is already legally residing

<sup>24</sup> **AT** suggested adding at the end of point b) the words *including the higher professional qualifications*.

- (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<sup>25</sup>;
- (d) present a valid travel document, as determined by national law and, if appropriate, evidence of valid residence permit. Member States may<sup>26</sup> require the period of the validity of the travel document to cover at least the initial duration of the residence permit<sup>27</sup>;

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<sup>25</sup> **IE** suggested deleting this provision. **NL** entered a reservation on point c), pointing out that the criterion of the salary should be considered as sufficient. Moreover, it raised the question of who will assess the qualifications. It took the view, supported by **SE**, that the authorities should not take the role of the employer.

**PL** felt that a system providing for a double check of the qualifications could have the consequence of making the admission of the person concerned more complicated.

**CY**, **EE**, **EL** and **RO** entered reservations on this provision for the same reasons referred to in relation with Article 2(b) (see 5255/08, page 4, footnote 6).

In this respect and also in relation to Article 2 (b), **FR** suggested considering two possibilities: either envisaging a regular updating of the two criteria (*higher qualifications* and *equivalent professional experience*) or providing for a system which would combine them.

<sup>26</sup> **EE** suggested replacing *may* with *shall*. The **Cion** felt that this suggestion could be accepted.

<sup>27</sup> **BE**, **EL** and **HU** raised the issue of the relation between this provision and Article 11 (2), as they considered that the application could also be submitted when the person concerned is residing outside the territory of the Member State where he/she should be admitted to work. Drawing attention to the fact that, in such cases, the person concerned will need a visa to enter the territory of that Member State, they noted that point d) does not contain any reference to visas.

The **Pres.** felt that this concern could be addressed by inserting a reference to *visas* in this provision.

**BE** suggested adding the words *Without prejudice to Article 11* at the beginning of this provision.

With respect to the possibility, which is also envisaged in Article 11 (2), of submitting the application when the person is already residing in the territory of a Member State, the **Cion** underlined that such a situation may occur, for example, in the case of a student who has completed his/her studies and subsequently qualifies to obtain a Blue Card, or in the case of a trial period.

- (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<sup>28</sup>;
- (f) not be considered to pose a threat to public policy, public security or public health<sup>29</sup>  
<sup>30</sup>

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<sup>28</sup> **NL** suggested amending the beginning of point e) as follows: *present evidence of having, or that he/she will have, a sickness insurance for the applicant...* [rest unchanged].

**DE** felt that the person concerned should not only provide evidence of a sickness insurance, but also, in more general terms, that he/she fulfils the requirement of appropriate means of subsistence.

The **Cion** considered that the scope of this provision could be enlarged on the basis of the **DE** suggestion.

In relation to a remark from **EL**, the **Cion** underlined that this provision is to be interpreted in the sense of avoiding possible double insurance, making sure that the person concerned is covered under sickness insurance in case the employment alone does not offer such a protection. It noted that such a situation occurs when national law provides for some waiting periods before the person concerned is entitled to sickness benefits. Finally, in reply to a query from **CZ**, the **Cion** took the view that family members of a Blue Card holder should be covered under sickness insurance, as provided for under the family reunification Directive.

<sup>29</sup> **NL**, supported by **DE**, suggested adding *as defined by national law* in point f).

The **Cion**, which drew attention to the fact that the same clause is used in the Directives on students and researchers (see respectively Articles 6(1) (d) and 7 (1) (d)), opposed this suggestion.

<sup>30</sup> **AT** suggested including a new point providing for the following additional requirement, identical to that contained in Article 7 of the Directive on the right to family reunification:

*accommodation regarded as normal in the same region and which meets the general health and safety standards in force in the Member State concerned.*

2. <sup>31</sup>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.

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<sup>31</sup> **DE, HU and AT** entered scrutiny reservations on this provision.

**AT** suggested amending the first sub-paragraph as follows:

*In addition to the conditions stipulated in paragraph 1, the gross ~~monthly~~ **annual** salary specified in the work contract or binding job offer must not be inferior to a national salary threshold defined by the Member State which shall be three times the minimum gross annual wage as set by national law. In Member States where minimum wages are not set by national law the national salary threshold must not be inferior to five times the guaranteed minimum income for persons covered by the retirement schemes or to the double amount of the median gross annual income of all employees in the Member State where the admission is intended 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.*

**HU** suggested amending the text of paragraph 2 as follows:

*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 an amount defined for this purpose by the Member States.***

**DE** suggested amending the text of paragraph 2 as follows:

*In addition to the conditions stipulated in paragraph 1, the gross monthly salary specified in the work contract or binding job offer **shall at least be twice the average gross monthly salary of the Member State concerned.***

Pointing out that their national legislation does not provide for the criterion of a *national salary threshold* **ES** and **IT** entered reservations on paragraph 2. **SE** - which is still considering how this provision could be implemented in its legal system - and **EE** also entered scrutiny reservations on paragraph 2, and, in particular, on its second sub-paragraph. **ES** suggested deleting the entire paragraph 2, while **EL**, suggested using a different, job-based criterion, such as the salary earned for the specific category of job concerned. **LT**, supported by **PT**, suggested referring to the average wage in the sector where the person concerned will be employed. **BE** and **NL** supported the criterion adopted in the proposal and opposed deleting paragraph 2. However, **BE** stressed that the criterion of a *national salary threshold* should appropriately reflect the fact that the persons concerned are highly qualified third-country nationals. With respect to the **EL** and **LT** suggestions, **NL** felt that it would be difficult to define a specific or an average wage for a particular category of job. In its view, an important issue is to avoid fraud, in the sense that the Blue Card holder should effectively receive the required salary. **CZ**, which made reference to Article 15 (1) (a), pointed out that the Blue Card holder should be treated as a national also with respect to wages. **IE** pointed out that it would not favour removing a minimum salary threshold.

Finally, **FR** said that it is open to consider all solutions which are consistent with three principles: the salary criterion is an essential one, it has to be selective and practicable.

The **Cion** underlined that this provision is a compromise resulting from extensive debates with the Member States in the framework of the preparatory works, where a relative salary threshold was considered to be the minimum criterion necessary for admission by the vast majority of Member States. It reaffirmed that, in its view, a salary-based approach needs to be used, the level of which should be sufficient high. In this context, it drew attention to the fact that, under this proposal, Member States remain free to set the national threshold at a higher level (but not at a lower one). It concluded that the solution found is both pragmatic and functional.

In reply to a query from **HU**, the **Cion** pointed out that the salary threshold is an admission requirement. If the threshold is not reached, the person concerned could be admitted on the basis of national schemes.

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<sup>32</sup>.

## Article 6

### *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<sup>33</sup> apply:

- (a) Member States shall<sup>34</sup> 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<sup>35</sup> 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

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<sup>32</sup> **DE**, **HU** and **AT** suggested deleting this provision. **AT** also suggested introducing a new paragraph providing for the following additional requirement, identical to that contained in Article 5(2) of the long-term residents Directive:

***Member States may require third-country nationals to comply with integration conditions, in accordance with national law.***

<sup>33</sup> **AT** entered a reservation and **CY**, **ES**, **FI**, **FR**, as well as **SE**, entered scrutiny reservations on this provision. In particular, **FI**, **FR** and **SE** considered that this provision might raise concerns in terms of the principle of non-discrimination. **AT** suggested deleting Article 6.

**MT**, which took the view that the derogations listed in this provision should not be compulsory, suggested replacing *shall* with *may* in point a). **FI**, which also preferred to replace *shall* with *may*, suggested adding the following words at the end of point a): *if the principle of equal treatment is guaranteed as provided for in Article 13 and as far as the wage level is not inferior to the level of applicable collective agreements*. In reply to a query from **BG**, the **Cion** noted that the choice of the exact age of a person who is entitled to enjoy the derogations contained in this provision (less than 30 years old) resulted from a political decision. On the question of non-discrimination, the **Cion** pointed out that this rule is to be interpreted as a positive discrimination, which is therefore consistent with the EU acquis. With respect to a query from **PL**, it noted that, if the person turns 30 after, for example, one year from the beginning of the work contract, he/she could still benefit from this provision. However, in case of renewal of his/her EU Blue Card, the general rule will apply.

<sup>34</sup> **EE**, supported by **AT**, suggested replacing *shall* with *may*. **HU** and **IT** entered a scrutiny reservations on point a).

<sup>35</sup> **NL** suggested replacing *shall* with *may*. Moreover **NL**, as well as **FR**, felt that, instead of waiving the salary requirement, it would more appropriate to soften it. **FR** also expressed concerns on the consequences that this provision might have vis-à-vis the promotion of circular migration. **IT** entered a scrutiny reservation on point b).

In reply to a query from **DE**, which wondered about the consistency between point b) and Article 2 g), the **Cion** underlined that this provision is stricter than the relevant definition in order to compensate the softening of the criteria.

Bachelor's 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<sup>36</sup>.

### Article 7

#### *Volumes of admission*

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<sup>37</sup>.

## Chapter III

### EU BLUE CARD, PROCEDURE AND TRANSPARENCY

### Article 8

#### *EU blue card*

1. A person fulfilling the requirements set out in Articles 5 and 6 and for whom a positive decision has been issued<sup>38</sup> by the competent authorities shall be issued an EU Blue Card.

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<sup>36</sup> **IT** entered a scrutiny reservation on point b). The **Cion**, supported by **PT**, took the view that point c) could be deleted. The **Pres.** also considered that it would be appropriate to delete point b).

<sup>37</sup> **A number of delegations** indicated that the word *volumes* has been wrongly translated in different language versions as *quotas* and needs therefore to be corrected.

**HU** suggested deleting the words *for highly qualified employment*.

In reply to a query from **PL**, with respect to the conditions for residence in other Member States, the **Cion** pointed out that the relevant provision, Article 19, refers in its paragraph 5 to *volumes of admission as specified in Article 7*.

Finally, in relation to a remark from **NL**, the **Cion** pointed out that the admission of third-country nationals falls within the responsibility of the Member States, who could therefore not admit, on their territory, certain categories of professionals.

<sup>38</sup> **CZ**, supported by **AT**, felt that the text of paragraph 1 is not clear and should be revised. In particular **CZ** expressed concerns on the use of the word *issued* in relation with *positive decision*. In order to cover this concern, the **Pres.** suggested replacing *issued* with *taken*. The **Cion** supported this suggestion.

According to **DE**, the draft of this provision needs to be revised with a view to clarifying that Member States maintain a certain discretion in relation with the grounds for refusal set out in Article 9.

The **Cion** underlined that paragraph 1 refers to the entire provision. In this context, it drew attention to

2. <sup>39</sup>The initial validity of an EU Blue Card shall be of two years<sup>40</sup> 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<sup>41</sup>.
3. The EU Blue Card shall be issued by the competent authorities of the Member State using the uniform format as laid down in Regulation (EC) No 1030/2002. In accordance with its Annex a, 7.5-9, Member States shall indicate on the EU Blue Card the conditions for access to the labour market as set out in Article 13(1) or (2) of this Directive, whichever is applicable. Under the heading "type of permit", Member States shall enter "EU Blue Card".

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the fact that the purpose of the expression *a positive decision has been issued* is to underline that there is not an automatic right of admission.

<sup>39</sup> **IT** entered a scrutiny reservation on paragraph 2. **FR** and **PL** that paragraph 3 is a complex provision, the structure of which needs to be revised, namely by dividing it in various sub-paragraphs.

The **Cion** agreed that the structure of this provision needs to be further considered.

<sup>40</sup> **AT** entered a scrutiny reservation on the period of validity of the Blue Card (two years).

According to **NL**, the period of validity of the Blue Card should not be set at two years, but linked to the duration of the work contract. **EL** preferred sticking to a period of validity of two years, which will allow Member States to carry out checks when the Blue Card is renewed. **ES** took the view that the initial period of validity should be of at least one year. The Blue Card would then be renewed until the person is entitled to acquire long-term resident status. **SK** expressed some concerns in relation with this provision, insofar as in its legal system the duration of the residence permit is linked with the purpose of the stay. If the work contract is no longer running, the person concerned would then be in an illegal situation. **PL** suggested adding the word *at least* before *two years*. In its view the Blue Card should be renewed only if the work contract has a duration which is longer than its period of validity. **CZ** felt that, when renewing the Blue Card, its period of validity should correspond to the duration of the work contract. **HU** pointed out that the period of validity of the Blue Card should allow to the person concerned an appropriate time to move to another Member State and submit there an application for an EU Blue Card there, while taking into account the procedural deadlines for the competent authorities for adopting a decision.

With respect to the duration of the period of the validity, the **Cion** noted that its intention, in providing for a deadline of two years, was to allow possibilities of control and to ensure a gradual access of the person concerned to the labour market.

In reply to a query from **EE**, the **Cion** noted that, if the person concerned loses his/her job before the expected end of contract, he/she should be given a period of grace, as provided for under Article 14.

<sup>41</sup> The **Cion** clarified that the second sentence of paragraph 2 covers both the initial period of validity of the Blue Card and its renewal.



4. During the period of its validity, the EU Blue Card shall entitle its holder to:
  - (a) <sup>42</sup>enter, re-enter<sup>43</sup> and stay<sup>44</sup> in the territory of the Member State issuing the EU Blue Card;
  - (b) passage through other Member States in order to exercise the rights under point (a).
5. Holders of the EU Blue Card shall be entitled to the rights recognised to them and their family members by Articles 8, 10(2), 12, 13-19 and 21 of this Directive<sup>45</sup>.

## Article 9

### *Grounds for refusal*

1. Member States shall reject an application for a EU Blue Card whenever the applicant does not meet the conditions set out in Articles 5 and 6 or whenever the documents presented have been fraudulently acquired, or falsified or tampered with<sup>46</sup>.
2. 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<sup>47</sup>.

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<sup>42</sup> **ES** entered a scrutiny reservation on paragraph 4.

**DE** queried the relationship between this provision and the visa requirement for the person concerned. The **Pres.**, supported by the **Cion**, took the view that the word *enter* already covers the **DE** concern.

<sup>43</sup> Pointing out that there is no definition of 're-entry' in the EU legal framework in the area of admission, **PT** suggested deleting *re-enter* in this provision.

<sup>44</sup> **CZ** drew attention to the fact that paragraph 2 provides for an entitlement to reside and work, while a reference to work is missing in paragraph 4.

<sup>45</sup> **PL**, which found the scope of paragraph 5 quite unclear and expressed doubts about its added value, suggested deleting it.

The **Cion** pointed out that it is necessary to maintain this provision, insofar as it lists a series of derogations to the Directive on the right to family reunification granted to family members of highly skilled workers, as well as to the Directive on the status of third-country nationals who are long-term residents.

<sup>46</sup> According to **EE**, supported by **AT**, the fact that the employer has been convicted for illegal employment should also be a reason for rejecting an application. **HU** felt that this provision should clearly state if the list of grounds for refusal that it contains is or not exhaustive.

<sup>47</sup> Considering the relationship between paragraphs 1 and 2, **BE** took the view that they address two different issues. The first refers to the rejection of an application, while the second addresses the question of the availability of a specific quota.

In reply to a query from **SE**, the **Cion** noted that the assessment of the situation of the labour market will be made by the Member State. Once the Blue Card is issued, the Member State will be allowed to check the situation of the labour market after two years, at the time of its renewal.

With respect to a remark from **BE**, the **Cion** pointed out that a Member State could reject an application on the basis of the fact that there is no quota foreseen for a specific category of job or that the number of available places within the quota had already been reached.

For reasons of labour market policy, Member States may<sup>48</sup> 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<sup>49</sup>.

## Article 10

### *Withdrawal or non-renewal of the EU Blue Card*

1. Member States shall withdraw or refuse to renew an EU Blue Card issued on the basis of this Directive in the following cases:
  - (a) when it has been fraudulently acquired, or has been falsified or tampered with, or
  - (b) wherever it appears that the holder did not meet or no longer meets the conditions for entry and residence laid down in Articles 5 and 6 or is residing for purposes other than that for which he/she was authorised to reside.

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It also added that such a rejection could be the subject of a legal challenge.

In this respect **BE**, supported by **EL**, expressed concerns on the fact that the European Court of Justice could, in the framework of a preliminary ruling, have the possibility of making an assessment in an area of exclusive competence of the Member States.

<sup>48</sup> **BG, CZ, EE, HU, LT, LV, AT** and **PL** wanted *may* to be replaced with *shall*, insofar as the principle of the 'Community preference' should be a compulsory one. In this context, **LV** suggested moving the second-subparagraph of paragraph 2 to Article 5, as one of the conditions to be met for being entitled to obtaining a Blue Card.

In particular, **HU** suggested amending this provision as follows:

*For reasons of labour market policy, Member States ~~may~~ shall give preference to Union citizens and their family members. For reasons of labour market policy, Member States 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* **SE** preferred maintaining *may*.

In reply to a query from various Member States concerning the relationship between Article 9 (2), second sub-paragraph and Article 13 (6), the **Cion** clarified that the first provision is based on the *Council Resolution of 20 June 1994 on limitation on admission of third-country nationals to the territory of the Member States for employment* (see OJ C 274, page 3), which is not legally binding, but represents a political commitment. This provision is of optional nature, since it is intended to allow some flexibility, for example if there are recognized gaps in certain professions. However, the provision contained in Article 13 (6) (*The provisions set out in this Article shall be applied without prejudice to the principle of Community preference as expressed in the relevant provisions of the Act of Accessions of 16 April 2003 and 25 April 2005, in particular in respect to the rights of nationals of these Member States in terms of the access to the labour market*) restates the obligation contained in the Acts of Accession concerned. It also added that the idea of merging the two provisions into a single Article was envisaged in the framework of the preparation of the proposal, but it was found preferable to keep them separate, insofar as they apply to different situations. It concluded that the proposal does not intend to define how the Community preference should be implemented in practice.

<sup>49</sup> In reply to a query from **PL**, the **Cion** clarified that the list of cases contained in this provision should be considered as exhaustive.

- (c) when the holder has not respected the limitations set out in Articles 13(1)<sup>50</sup> and (2)<sup>51</sup> and 14.
2. The lack of notification<sup>52</sup> pursuant to Article 13(2) shall not be considered to be a sufficient reason for withdrawing or not renewing the EU Blue Card<sup>53</sup>.
3. Member States may<sup>54</sup> withdraw or refuse to renew an EU Blue Card for reasons of public policy, public security or public health<sup>55</sup>.

## Article 11

### *Applications for admission*

1. Member States shall determine whether applications for an EU Blue Card are to be made by the third-country national or by his/her employer<sup>56</sup>.

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<sup>50</sup> **PL** expressed doubts about the reference to Article 13 (1) in this provision.

<sup>51</sup> **NL** queried the reference to Article 13 (2) in paragraphs 1 c) and 2. In this respect **PT** drew attention to the fact that Article 13 (2) refers to a set of rights and does not provide for any limitation.

The **Cion** pointed out that the first provision refers to the first sentence of Article 13 (2), while the second refers to the second sentence of Article 13 (2).

It added that this issue will need to be clarified.

**BE** suggested inserting the second sentence of Article 13 (2) either into Article 5 or into Article 8.

<sup>52</sup> **PT** suggested replacing *notification* with *communication*.

<sup>53</sup> **FR**, supported by **EL**, felt that the provision in paragraph 2 is too strict, insofar in its view as a lack of notification could be considered to be a sufficient reason for withdrawing or not renewing the EU Blue Card.

According to the **Cion**, which took note of this concern, a lack of notification should not automatically imply a withdrawal or a non-renewal of the Blue Card.

<sup>54</sup> **EE** suggested replacing *may* with *shall*.

The **Pres.** felt that making this provision compulsory could have the effect of limiting the discretion of the Member States.

The **Cion**, which recalled that paragraph 3 is a standard clause contained in a number of legislative instruments, preferred maintaining the current text.

<sup>55</sup> **DE**, which wondered why paragraph 4 (*reasons of public policy, public security or public health*) is different from that contained in Article 5 (1) f) (*threat to public policy, public security or public health*), suggested aligning the two provisions.

The **Cion** said that this issue needs to be further considered.

<sup>56</sup> **PT** entered a reservation on Article 11. **HU** suggested deleting paragraph 1. **EL** felt that paragraph 1 could not be consistent with the provisions of Regulation 1030/2002, in particular with respect to the biometrics requirements.

The **Cion** acknowledged that in practice, even if the application is made by the employer, in the framework of the admission procedure the two parties concerned (the employer and the highly skilled worker) will need to cooperate in order to successfully complete it.

In relation with this provision, **BE** suggested adding at the beginning of Article 5 the following words *Without prejudice to Article 11(1)*.

**AT** suggested adding the word (*sponsor*) at the end of paragraph 1.

2. The application shall be considered and examined either when the third-country national concerned is residing outside the territory of the Member State<sup>57</sup> to which he/she wishes to be admitted or when he/she is already legally resident in the territory of the Member State concerned<sup>58</sup>.
3. The Member State concerned shall grant the third-country national whose application has been accepted<sup>59</sup> every facility to obtain the requisite visas<sup>60</sup>.
4. By way of derogation from paragraph 2, Member States may accept, in accordance with their national legislation, an application submitted when the third-country national concerned is not in possession of a residence permit but is legally present in its territory<sup>61</sup>.

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<sup>57</sup> **CZ** suggested redrafting the beginning of paragraph 2 as follows: *The third-country national concerned is entitled to submit the application when he/she is residing outside the territory of the Member State to which...* [rest unchanged]

<sup>58</sup> **ES** suggested inserting a new sub-paragraph in Article 12 (1) along these lines: *Once received, the Member State shall consider and immediately process the application in accordance with its national law.* **EL** entered a reservation and **IT** a scrutiny reservation on this provision, linked in particular with the possibility of submitting the application when the person is already legally resident in the territory of the Member State concerned.

**HU** suggested replacing the words *already legally resident in the territory of the Member State concerned* with the words *already holds a residence permit issued by the Member State concerned*. In reply to a query from **NL**, which wondered why paragraph 2 uses the expression *legally resident*, while paragraph 4 refers to *legally present*, the **Cion** underlined that the distinction is deliberate.

<sup>59</sup> **IT** entered a scrutiny reservation on paragraph 3.

In reply to a query from **DE** concerning the word *accepted*, the **Cion** pointed out that it has to be interpreted in the sense that the competent national administration has taken a decision.

<sup>60</sup> **CZ** suggested using for this provision a wording identical to that of Article 14 (4) of the Directive on researchers (*The Member State concerned shall grant the third-country national who has submitted an application and who fulfils the conditions of Articles 5 and 6 every facility to obtain the requisite visas*).

<sup>61</sup> **IT** entered a reservation on paragraph 4. **IT**, as well as **PL**, expressed the fear that this provision could give illegally present persons the possibility of regularizing their situation.

The **Cion** felt that these concern are not founded. It drew attention to the fact that this provision was envisaged following the indications of some Member States which accept applications submitted by persons who are already on their territory. In its view it is preferable to leave this possibility open.

## Article 12

### *Procedural safeguards*<sup>62</sup>

1. <sup>63</sup>The competent authorities of the Member States shall adopt a decision on the complete application and notify the applicant in writing, in accordance with the notification procedures laid down in the national legislation of the concerned Member State, at the latest within 30 days of the date on which the application was lodged. In exceptional cases involving complex applications, the deadline may be extended for a maximum of another 60 days.
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<sup>64</sup>.

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<sup>62</sup> **NL, AT, PT, SE** and **SK** entered reservations on Article 12. **PT** considered that it is difficult to grant procedural guarantees to a person who is not yet on its territory. It felt that this provision does not clearly indicate that there are two different procedures involved: the first, which concerns the granting of the required visa, and the second which relates to the application for obtaining the Blue Card. A clear distinction should be introduced between the two procedures.

Recalling that there is no obligation for the Member State to issue a visa, **EL**, along with **ES**, supported the **PT** position. Also **DE** drew attention to the fact that the possibility of challenging decisions rejecting visa applications could have the consequence of creating an additional burden for the consular authorities.

Pointing out that paragraph 1 only refers to the application for obtaining a Blue Card, the **Cion** noted that the procedure for issuing visas falls outside the scope of this provision.

The **Cion** considered that this addition would not be justified.

Finally, **AT** suggested adding the following new sub-paragraph to paragraph 1, with a wording similar to that of Article 20, paragraph 1, last sentence of the long-term residents Directive:

*Any consequences of no decision being taken by the end of the period provided for in this provision shall be determined by the national legislation of the Member State concerned.*

<sup>63</sup> **CY, HU, IT** and **LT** entered scrutiny reservations on paragraph 1.

**EE, FI, HU, LT, LV, NL, PL, SE** and **SK** expressed concerns about the deadline of 30 days, which was considered too short. **LV** suggested extending it to 90 days. **SE**, supported by **NL**, made reference to the Directive on researchers, which does not set any specific deadline for the adoption of the decision on the application by the national authorities (see Article 15 (1): *The competent authorities of the Member State shall adopt a decision on the complete application as soon as possible and, where appropriate, provide for accelerated procedures*).

The **Cion** - which underlined that the choice of a short deadline aims at responding quickly to concrete needs of the labour market, taking also into account the relatively limited number of beneficiaries of the proposal - pointed out that it intended to be more ambitious vis-à-vis the approach adopted for the Directive on researchers.

<sup>64</sup> **LV** suggested revising the draft of this provision. In its view the authorities should inform the person concerned that additional information is required and set a deadline to provide it. If the information is not communicated within the deadline, the application will not be deemed complete.

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<sup>65</sup>. The notification shall specify the reasons for the decision<sup>66</sup>, the possible redress procedures available and the time limit for taking action.

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<sup>65</sup> Drawing attention to the fact that in their legal systems specific administrative bodies are competent to examine these kinds of legal challenges, **HU** and **MT** suggested also introducing this reference in this provision.

**AT** suggested amending paragraph 3 as follows, in line with Article 18 of the long-term residents Directive and Article 10 (2) of the Directive on the right to family reunification:

*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~~ **have the right to mount a legal** ~~open to challenge before the courts of the Member State concerned~~. **The procedure and the competence according to which the right referred to is exercised is established by 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.*

**MT** suggested replacing the words *before the courts of the Member State concerned* with the words *before the competent authorities of the Member States appointed in accordance with national law*.

**SE** wondered if there is a Community competence in this area.

<sup>66</sup> **DE** felt that the extent of the procedural guarantees should be further considered. In particular it wondered why the competent authorities should provide reasons for rejecting applications.

## Article 13

### *Labour market access*

1. <sup>67</sup>For the first two years<sup>68</sup> of legal residence in the Member State concerned as holder of an EU Blue Card, access to the labour market for the person concerned shall be restricted to the exercise of paid employment activities which meet the conditions for admission set out in Articles 5 and 6. Modifications of the terms of the work contract that affect the conditions for admission or changes in the work relationship shall be subject to the prior authorization in writing of the competent authorities of the Member State of residence<sup>69</sup>, according to national procedures and within the time limits set out in Article 12(1)<sup>70</sup>.

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<sup>67</sup> **CY, EE and IT** entered scrutiny reservations on paragraph 1.

<sup>68</sup> **ES** suggested providing for a deadline of one year, rather than two years, in paragraphs 1 and 2, while **MT** preferred a time-period of three years in both provisions.

<sup>69</sup> **NL**, supported by **FR**, felt that it should not be necessary to require a prior authorisation, as long as the person concerned continues to fulfil the conditions set by the proposal. For this reason it suggested the following wording: *either subject to a prior authorisation or to a notification in writing to the competent authorities of the Member State of residence.*

**FI** also felt that the system for changing the job should be made more flexible.

**EL** expressed concerns on the possibility of authorising a change of job.

In relation to the requirement of a prior authorisation, the **Cion** underlined that it has been introduced in order to avoid abuse. In reply to a query from **CZ** and **EL**, it also pointed out that, if no authorisation is granted, Member States shall withdraw the Blue Card, under Article 10 (1) (c), and, under national legislation, decide either to return the person concerned or to grant him/her a national residence permit.

<sup>70</sup> **BE** queried how this provision could apply in Member States that do not have a specific category of highly qualified employment.

In order to clarify the wording of this provision, **CZ** suggested stating that the access to the labour market is restricted to the exercise of the employment for which the Blue Card has been issued. In relation with paragraph 1, and in reply to queries from **CY, DE and HU**, the **Cion** clarified that this provision does not prevent Member States from carrying out a labour market check. In answer to a remark from **CY**, which suggested introducing the wording *in accordance with national legislation* into this paragraph, the **Cion** proposed to clarify, in the proposal, the possibility of running a labour market test prior to issuing the authorisation.

In respect to a remark from **SE**, it noted that this provision aims at creating a link with a specific job and employer, with a view, in particular, to protecting the small and medium-sized enterprises.

<sup>71</sup>After the first two years of legal residence<sup>72</sup> in the Member state concerned as holder of an EU Blue Card, the person concerned shall enjoy equal treatment with nationals as regards access to highly qualified employment. The holder of the EU Blue Card shall notify<sup>73</sup> changes in his/her work relationship to the competent authorities of the Member State of residence, according to national procedures.

2. Holders of the EU Blue Card who have been granted EC long-term resident status shall enjoy equal treatment with nationals as regards access to employment and self-employed activities<sup>74</sup>.

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<sup>71</sup> **CY, EE, HU, LV** and **SE** entered scrutiny reservations on this provision. **CZ** asked if this provision should be interpreted in the sense of allowing unlimited access to the labour market of the Member State concerned. Also, **EL** requested some clarifications on this provision, relating in particular to the fact of granting equal treatment with nationals with regard to access to highly qualified employment.

**HU** and **NL** pointed out that Member States should continue to monitor the salary criterion. The **Cion** underlined that this provision aims at setting out an attractive scheme for highly skilled workers. For this reason, it was felt appropriate not to impose excessive requirements on the employee or to continue to apply the salary threshold, whilst still allowing Member States to carry out the necessary checks. It also clarified that the objective of this provision is to allow either a change of functions or a change of enterprise, but in the framework of the same kind of job. This provision by no means allows unlimited access to the labour market of the Member State concerned, since the qualification level of the person continues to be the benchmark. In this context and in reply to a query from **LV**, it pointed out that Article 13 (2) sets out two requirements for the person concerned: he/she must continue to exercise a highly qualified employment and he/she must notify any relevant changes to the competent authorities of the Member States. In answer to a remark from **FR** and **LV**, it stressed that, if the person concerned no longer exercises a highly qualified employment, his/her Blue Card shall be withdrawn by the Member States under Article 10 (1)(c). In reply to a query from **EE**, it noted that, in case of lack of notification, Member States may withdraw his/her Blue Card under Article 10 (2) and the person concerned will not be entitled to unemployment benefits.

<sup>72</sup> Pointing out that, under Article 14, the persons concerned are allowed to legally reside in the territory of a Member State in a situation of temporary unemployment for a period not exceeding three months, **DE**, supported by **AT**, suggested replacing the word *residence* with *employment* both in paragraph 2 and in the first sentence of paragraph 1. The **Cion** felt that this suggestion could be favourably considered.

<sup>73</sup> In relation to a remark from **FR** - which pointed out that in its version the word *inform* is used and suggested replacing it with *notify* - it was underlined that the English version contains the word *notify*, which has been incorrectly translated in the French version.

However, **IT** suggested replacing the word *notify* with the word *communicate*.

<sup>74</sup> **NL**, which felt that this provision is superfluous, and **CZ**, supported by **BE**, who consider that this is not very clear, suggested deleting paragraph 3. **CZ** in particular asked why it contains a reference to self-employed activities (which are also mentioned in the following paragraphs 4 and 5), while paragraphs 1 and 2 only address employed activities.

The **Cion** underlined that this provision does not aim at creating a new status and is simply recalling the situation of Blue Card holders who have acquired long-term resident status. Its objective is to list, in a coherent and systematic way, all the rights to which these persons are initially entitled as EU Blue Card Holder and subsequently, where relevant, as EC long-term residents. However, in case it is felt that this provision might give rise to confusion or misunderstanding, the question of its deletion could be considered.



3. Member States may retain restrictions on access to employment and self-employed activities, provided such activities entail even occasional involvement in the exercise of public authority and responsibility for safeguarding the general interest of the States in cases where, in accordance with existing national or Community legislation, these activities are reserved to nationals<sup>75</sup>.
4. Member States may retain restrictions to access to employment and self-employed activities where, in accordance with existing national or Community legislation, these activities are reserved to nationals, EU or EEA citizens<sup>76</sup>.
5. The provisions set out in this Article shall be applied without prejudice to the principle of Community preference as expressed in the relevant provisions of the Acts of Accession of 16 April 2003 and 23 April 2005, in particular in respect to the rights of these Member States in terms of access to the labour market.<sup>77</sup>

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<sup>75</sup> **HU** felt that paragraph 3 is not necessary, insofar as long-term residents are entitled to equal treatment with EU nationals as regards access to employment and self-employed activities. For this reason it suggested deleting this provision.

<sup>76</sup> **EL** suggested introducing in paragraph 4 a reference to paragraph 3 (*pursuant to paragraph 3*).

<sup>77</sup> **CZ, BG and RO** raised the question of the relationship between paragraphs 1 and 2 and the principle of Community preference evoked in paragraph 6. In this respect, the **Cion** noted that, even if they allow some transitional restrictions to the access to the labour market, the Accession Treaties - which are primary law prevailing over secondary Community law - provide at the same time for safeguards regarding the first access to a Member State's labour market: most importantly, the principle of Community preference ensures that a Member State that restricts access to its labour market must always give preference to nationals of the Member States that have acceded in 2004 and 2007 over third-country nationals. The Accession Treaty also ensures that Member States must give the same access to employment to nationals of the Member States that have acceded in 2004 and 2007 and who are already residing and working in that Member State as they give to third-country nationals. With respect to the question that the access of nationals of the Member States who have acceded in 2004 and 2007 is limited to the labour market of a single Member State, the **Cion** recalled that, under this proposal and the long-term residents Directive, the mobility of third-country nationals from one Member State to another is not a right but a possibility. In this context, it drew attention to the fact that, also under the long-term residents Directive, the mobility of the third-country nationals concerned is subject to specific rules (see its Chapter III).

## Article 14

### *Temporary unemployment*<sup>78</sup>

1. <sup>79</sup>Unemployment<sup>80</sup> in itself shall<sup>81</sup> not constitute a reason for revoking<sup>82</sup> an EU Blue Card, unless the period of unemployment exceeds three consecutive months<sup>83</sup>
  
2. During this period<sup>84</sup>, the holder of the EU Blue Card shall be allowed to seek and take up employment<sup>85</sup> under the conditions set out in Article 13(1) or (2) whichever is applicable.

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<sup>78</sup> **FR** entered a reservation and **SE** a scrutiny reservation on this provision.

<sup>79</sup> Noting that, on the basis of Article 4, the person needs to have a contract of at least one year, **CY** suggested stating in the text of this provision that the three months period starts to run from the moment when the contract comes to an end. According to **EL**, it would be appropriate to provide in this paragraph for a system of notification, similar to that evoked under Article 13 (2). **BE**, which noted that the unemployment constitutes a major change in the work relationship, as well as **FR** and **AT**, supported the **EL** suggestion.

The **Cion** noted that both the **CY** and **EL** suggestions could be further considered. It drew attention to the fact that its intention was not to provide for too stringent procedural requirements during the period of unemployment, but some mechanisms of control, such as a system of notification, which could be introduced, if Member States deem it appropriate.

<sup>80</sup> **NL**, which expressed concerns about the potential impact on the budget of this provision, suggested adding the following wording at the end of paragraph 1: *and/or during the period of unemployment an appeal is made to the social assistance system of the host Member State*. **IE** wondered if this provision would entitle the person concerned to unemployment benefits in cases when they have not paid the relevant contributions. The **Cion** confirmed that EU Blue Card holders can only be eligible to such benefits if the national conditions are met.

<sup>81</sup> According to **ES**, *shall* should be replaced by *may*, insofar as some discretion should be allowed to Member States in this area. The **Cion** recalled that the logic of this provision is not to lose professionals which may still be needed in the labour market and underlined that three months is a relatively short period of time.

<sup>82</sup> **HU** suggested replacing the word *revoking* with the word *withdrawing*.

<sup>83</sup> According to **EE**, the persons concerned who become unemployed should not be allowed to hold their Blue Card for a period of three months to look for a new job. According to **CZ**, the three months period should be reduced to two months.

Noting that in its own system a worker is entitled to a period of six months to look for a new job, **IT** suggested replacing the deadline of three months with a deadline of six months.

<sup>84</sup> **NL** suggested replacing the words *during this period* with the words *during the period of three months referred to in paragraph 1*

<sup>85</sup> **RO** suggested referring in this provision to *highly qualified employment*, rather than to *employment*. The **Cion** felt that this suggestion could be supported.

3. Member States shall allow the holder of the EU Blue Card to remain on their territory until the necessary authorisation pursuant to Article 13(1) has been granted or denied<sup>86</sup>. The notification under Article 13(2) shall automatically end the period of unemployment<sup>87</sup>.

### Article 15

#### *Equal treatment*<sup>88</sup>

1. Holders of an EU Blue Card shall enjoy equal treatment with nationals at least as regards<sup>89</sup>:
- (a) working conditions, including pay and dismissal, as well as health and safety at the workplace<sup>90</sup>;
  - (b) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security<sup>91</sup>;

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<sup>86</sup> In reply to a remark from **DE**, the **Cion** clarified that, as long as the person concerned has not been granted the relevant authorisation, he/she cannot work.

<sup>87</sup> **NL** suggested adding the following words at the end of the second sentence: , *when this notification refers to the start of an employment with a new employer*.

**AT** suggested adding a new paragraph to Article 14, which would read as follows:

*The holder of the EU Blue Card shall notify any unemployment to the competent authorities of the Member State of residence, according to national procedures.*

<sup>88</sup> **CZ, ES, HU** and **IT** entered reservations, and **BE, CY, EL, AT** and **SK** entered a scrutiny reservation on Article 15.

**NL** suggested introducing a new paragraph, at the end of Article 15, along the following lines:

*The exercise of the right to equal treatment cannot lead to an extension of the right of residence for the holder of a EU Blue Card.*

**DE, LT** and **AT** supported the **NL** suggestion.

The **Cion** said that this suggestion needs to be further considered.

<sup>89</sup> **FI** and **LI** entered scrutiny reservations on paragraph 1.

<sup>90</sup> **FI** entered a reservation on point a). **PL** wondered why this provision refers to equal treatment in case of dismissal for persons who have a temporary right to stay.

With respect to an issue raised by **FI** - according to which the fact of granting equal treatment with respect to pay is not in line with the derogations set out in Article 6 - the **Cion** pointed out that Article 6 does not make reference to the salary, but to the salary threshold. The salary threshold represents an immigration criterion. It also added that, in case the salary threshold is fixed by collective agreements, it will not be possible to go below this level.

<sup>91</sup> According to **ES**, which entered a scrutiny reservation on point b), this provision should contain a reference to the right to strike.

- (c) education and vocational training, including study grants in accordance with national law<sup>92</sup>;
- (d) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures<sup>93</sup>;

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<sup>92</sup> **DE** entered a scrutiny reservation on this provision. **Several delegations** felt that the notion of *study grants* to which this provision refers should be clarified. According to **IE**, education, vocational training and study grants should only be awarded to third-country nationals who have been granted long-term resident status.

According to **DE**, which made reference to the possibility of restricting the rights conferred under paragraphs 1(c) and (1) evoked in paragraph 2, Member States should be allowed to limit access to education, vocational training and study grants in accordance with national law.

**SE** entered a reservation on point c).

**HU** suggested inserting in the Preamble of this proposal an explanatory recital similar to recital 15 of the long-term resident Directive (*The notion of study grants in the field of vocational training does not cover measures which are financed under social assistance schemes. Moreover, access to study grants may be dependent on the fact that the person who applies for such grants fulfils, on his/her own, the conditions for acquiring long-term resident status. As regards the issuing of study grants, Member States may take into account the fact that Union citizens may benefit from this same advantage in the country of origin*)

<sup>93</sup> According to **DE**, which entered a scrutiny reservation on point d), this provision should apply only for the period of duration of the Blue Card, in accordance with Article 8(2).

The **Cion** drew attention to the fact that all the rights granted on the basis of equal treatment can only be exercised during the period of validity of the Blue Card.

- (e) branches of social security as defined in Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community. Council Regulation (EC) No 859/2003 of 14 May 2003 which extends the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by these provisions solely on the ground of their nationality shall apply accordingly<sup>94</sup>;

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<sup>94</sup> **CZ**, **DE**, and **SE** entered scrutiny reservations on this provision.

**IE**, which felt that this provision could be open to challenges, suggested the following wording for point e):

*Provisions in national legislation regarding the branches of social security as listed in Article 4 of Council Regulation (EC) 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community.*

**CZ** took the view that point e) should be entirely deleted, insofar as it represents a potential interference with national systems, contrary to the principle of subsidiarity.

**DE** and **FI** suggested listing all the benefits to which the Blue Card holders may be eligible, rather than making reference to Regulation 1408/71 and deleting the second sentence of point e). **HU** also supported the deletion of the second sentence. It also suggested replacing the words *branches of social security* with *social security benefits covered by Council Regulation...* at the beginning of the first sentence

**AT** suggested mending the beginning of the second sentence as follows: ***The special provisions in the Annex to the Council Regulation (EC) No 859/2003 of 14 May 2003 which extends the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by these provisions solely on the ground of their nationality shall apply accordingly.***

Drawing attention to risks of possible inconsistency between points e) and f), **BG** suggested either deleting point f) (*social assistance as defined by national law*), or revising its wording as follows: *without prejudice to point e), the social assistance as defined by national law.*

Moreover, with respect to point e), **BG** suggested deleting the reference to Regulation 859/2003, which is contained in its second sentence, and inserting a reference to Council Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of the social security systems.

With respect to this provision, the **Cion** underlined that Regulation 1408/71 is mentioned in order to clarify the material scope of the benefits in the areas of social security to which the third-country nationals concerned are eligible on the basis of equal treatment. In this context it drew attention to the fact that the explanatory memorandum, of the proposal on a single procedure and on a common set of rights for third-country workers, in relation with Article 12 on equal treatment expressly refers to Article 4 of Regulation 1408/71, which lists all the security branches in question.

It also pointed out, for the sake of legal certainty, that it did not support the suggestion of listing all the relevant benefits without referring to the Regulation.

However, the **Cion** did not oppose the suggestion of deleting the second sentence of point e). It explained that the reference to Regulations 859/2003 and 574/72 was found useful, insofar as both are consolidated texts.

Finally, it took the view that the issue of the coordination of the security systems of the Member States, as raised by **BG** in particular, falls outside the scope of point e). **SK** drew attention to the fact that a new Regulation containing new provisions in this respect will replace Regulations 1408/71 and 859/2003. The **Cion** confirmed that in the event that Regulation 1408/71 is replaced by the new Regulation prior to the adoption of this proposal, then the reference will be changed. If not, the new Regulation will succeed Regulation 1408/71, from a legal point of view, so it should not create a problem as regards the other Regulation.

- (f) social assistance as defined by national law<sup>95</sup>;
- (g) payment of acquired pensions when moving to a third country<sup>96</sup>;
- (h) tax benefits<sup>97</sup>;

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<sup>95</sup> **ES** and **DE** entered scrutiny reservations on this provision. **SE** wondered about the scope of this provision, having regard to the correct translation in its linguistic version. **CZ** suggested deleting this provision, for reasons of subsidiarity. **HU** suggested deleting point f). With respect to the **BG** position, which links points e) and f), see footnote 92 on page 35. **EL** wondered why point f) does not include a reference to *social protection*, along with *social assistance*, as in Article 11(1)(b) of the long-term resident Directive.

<sup>96</sup> **ES** and **DE** entered scrutiny reservations on point g). According to **ES**, it should be clarified that this provisions should only refer to pensions based on work. Along the same lines, **FI** suggested revising the wording of point g) as follows: *payment of acquired pensions based on work when moving to a third country*; while **SE** suggested the following addition: *payment of income-based acquired pensions when moving to a third country*. **CZ**, which evoked the principle of subsidiarity, as well as **HU** and **AT**, suggested deleting point g). **EL** drew attention to the fact that, in principle, for the cases evoked in point g) specific bilateral agreements concluded by the Member States with the third-countries concerned apply. **FR** suggested using the wording used in the Association Treaties concluded between the European Communities and their Member States, of the one part, and the third-countries of the other part. In relation to remarks made by several delegations concerning what kind of pensions would fall under of point g), the **Cion** said that the wording of this provision could be further clarified.

<sup>97</sup> **DE** entered a scrutiny reservation on this point. **Several delegations** asked for clarification on the benefits which would fall under this provision and on the link between tax benefits and agreements on double taxation. The **Cion** explained that, in respect of EU citizens, there is a strict case-law of the Court of Justice in the area of tax benefits, insofar as the equal treatment needs to be assessed, having regard to situations which are fully comparable, on the basis of the fiscal residence of the person concerned. In reply to **DE**, the **Cion** clarified that the scope of this provision covers those benefits directly linked with the professional activity of the person concerned, and not VAT or excise duties. It finally noted that the agreements on double taxation usually contain a provision on non-discrimination in comparable situations.

- (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<sup>98</sup>;
  - (j) free access to the entire territory of the Member State concerned, within the limits provided for by national legislation for reasons of security<sup>99</sup>.
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<sup>100</sup>.

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<sup>98</sup> **SI** entered a reservation and **DE** entered a scrutiny reservation on point i). **Several delegations** asked for clarifications with respect to this provision. **IE** expressed concerns about giving a substantial state subsidy, such as an affordable housing, to people who do not have a long-term residence. **DE** and **FI**, supported by **AT**, suggested limiting the assistance to be provided by employment offices to information and counselling services. The **Cion** agreed to clarify the scope of this provision in such a way. **CZ** wondered why it is necessary to explicitly refer to access and goods and services intended for the public. As concerns public housing, the **Cion** clarified that the scope of point i) is the same of the identical provision contained in the proposal on a single procedure and on a common set of rights for third-country workers (Article 7 (1) (h)). It pointed out that the only reason why public housing is mentioned here is to ensure coherence and parallelism with the above proposal, although in principle Blue Card holders as highly qualified professionals, should not be eligible for public housing. As concerns the whole point i) the **Cion** recalled that an identical provision is contained, not only in the long-term residents Directive, but also in the researchers Directive.

<sup>99</sup> **SE** signalled some inaccuracies in its linguistic version. **RO** pointed out this issue falls under the competence of the Member States.

**DE** suggested deleting the words *for reasons of security*. The **Cion** said that it could support the **DE** suggestion.

<sup>100</sup> **SE** and **SI** entered reservations on paragraph 2. **SI** pointed out that, according to its legislation, only EU citizens may have access to public housing.

**AT** suggested amending paragraph 2 as follows:

*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.*

**MT** suggested amending paragraph 2 as follows:

*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~~ **granted long-term resident status in accordance with Article 17.***

**EL** wondered how the restrictions provided for in paragraph 2 can be applied in practice.

With respect to the query why paragraph 2 provides for a deadline of three years, the **Cion** explained that it has set this time-period in order to be consistent with the proposal on a single procedure and a common set of rights for third-country workers.

3. Member States may restrict equal treatment as regards social assistance to cases where the holder of the EU Blue Card has been granted EC long-term resident status in accordance with Article 17<sup>101</sup>.

## Article 16

### *Family members*<sup>102</sup>

1. Council Directive 2003/86/EC shall apply with the derogations laid down in this Article.
2. By way of derogation from Articles 3(1) and 8 of Directive 2003/86/EC, family reunification shall not be made dependent on the requirement of the holder of the EU Blue Card having reasonable prospects of obtaining the right of permanent residence and of he/she having a minimum period of residence.
3. By way of derogation from Article 5(4), first subparagraph, of Directive 2003/86/EC, residence permits for family members shall be granted at the latest within six months from the date on which the application was lodged<sup>103</sup>.

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<sup>101</sup> SE entered a linguistic reservation on paragraph 3.  
HU felt that paragraph 3 should be deleted along with point (f) in paragraph 1.  
AT suggested amending paragraph 3 as follows, in order to ensure consistency with Article 11 (*Equal treatment*) of the long-term residents Directive:  
*Member States may restrict equal treatment as regards social assistance as well as study grants to cases where the holder of the EU Blue Card has been granted EC long-term resident status in accordance with Article 17. In respect of social assistance, Member States may limit equal treatment to core benefits. Access to university may be subject to the fulfilment of specific prerequisites according to national law.*

<sup>102</sup> DE entered a reservation and BE, EL and AT scrutiny reservations on this provision.  
According to DE, EL, FR and AT in particular, the question of the facilitations to be granted to the family members of Blue Card holders should be more appropriately addressed once the issue of the scope of the proposal has been further considered.  
IE queried the possibility of implementing both Articles 16 and 17, insofar as it did not opt-in and therefore is not bound by the Directive on the right to family reunification and by the long-term residents Directive.

<sup>103</sup> BE, DE, EE, EL, FI, AT and SE expressed concerns on the deadline provided for in this provision.  
DE, supported by SE, preferred not to set any deadline at all and to simply state that the residence permits of the family members should be issued as soon as possible. According to FI, the residence permits for Blue Card holders and their family members should be issued in the same timeframe. BE, which considers that Article 16 should be placed after Article 18, found that it would not be coherent to provide for specific deadlines for family members, insofar as the proposal should set an uniform system of deadlines. CZ felt that there is no reason why the deadlines for being granted a residence permit are shorter for family members vis-à-vis Blue Card holders  
HU suggested amending the text of paragraph 3 as follows:  
*By way of derogation from Article 5(4), first subparagraph, of Directive 2003/86/EC, the competent authorities of the Member States shall give written notification of the decision as soon as possible and in any event no later than ~~residence permits for family members shall be granted at the latest~~ within six months from the date on which the application was lodged.*  
In reply to the remarks from the delegations, the Cion noted that the choice of setting a short deadline from the lodging of the application to the residence permit being issued for family members is a political one, based on the intention to attract highly skilled third-country nationals.



4. By way of derogation from Articles 4(1), last subparagraph, and 7(2) of Directive 2003/86/EC, the integration measures referred to therein may only be applied after the persons concerned have been granted family reunification<sup>104</sup>.
5. By way of derogation from Article 14(2) of Directive 2003/86/EC and in respect of access to the labour market, Member States shall not apply the time limit of 12 months<sup>105</sup>.
6. By way of derogation to Article 15(1) of Directive 2003/86/EC, for the purposes of calculation of the five years of residence required for the acquisition of an autonomous residence permit, residence in different Member States may be cumulated.
7. If Member States have recourse to the option provided for in paragraph 6, the provisions set out in Article 17 in respect of accumulation of periods of residence in different Member States by the holder of an EU Blue Card shall apply *mutatis mutandis*<sup>106</sup>.
8. By way of derogation from Article 13(2) and (3) of Directive 2003/86/EC, the duration of validity of the residence permits of family members shall be the same as that of the residence permits issued to the holder of the EU Blue Card insofar as the period of validity of their travel documents allows it.

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<sup>104</sup> **AT** suggested deleting paragraph 4.

In reply to a remark from **EL**, which queried how this provision had been applied in respect of Directive 2003/86, the **Cion** drew attention to the fact that the evaluation of the implementation of the above-mentioned Directive is still underway.

<sup>105</sup> **Several delegations** queried the interpretation of this provision, which could result – as underlined in particular by **CZ** and **DE** – in granting a more favourable access to the labour market to family members vis-à-vis Blue Card holders (who may be subject, for instance, to a labour market test). **NL** pointed out that, if the intention of the provision is that family members should be granted access to the labour market without any waiting period, this should be stated more clearly in paragraph 3. For this reason it suggested deleting the words *of 12 months*.

The **Cion** drew attention to the fact that Member States are allowed to require family members to comply with a labour market test. It also clarified that, if Member States intend to follow a more restrictive approach, they can require the family members to comply with the same conditions as the sponsor, as set out in Directive 2003/86/EC. However, if they wish to be more attractive, they may grant to them full labour market access from the first day of the stay.

<sup>106</sup> **BE** found the provisions of paragraphs 6 and 7 not coherent with Article 17 (2).

In reply to **EL**, which queried the calculation of periods of residence in Article 16 (2), in cases where the person concerned has legally stayed in different Member States, the **Cion** drew attention to the fact that paragraph 6, to which paragraph 7 makes reference is an optional provision. While acknowledging that in practice the implementation of this provision might not be simple, it drew attention to Article 21 (3) (a), according to which the second Member states may require the family member to present the residence permit issued in the first Member State. The **Cion** also recalled that the purpose of this optional provision is not to penalise family members of EU Blue Card holders who exercise mobility in respect of the time needed to obtain an autonomous residence permit (and not the EC-long term resident permit, for which no facilitation is foreseen).

## Article 17

### *EC long-term resident status for EU Blue Card holders<sup>107</sup>*

1. Directive 2003/109/EC shall apply with the derogations laid down in this Article.
2. By way of derogation from Article 4(1) of Directive 2003/109/EC, the holder of an EU Blue Card having made use of the possibility provided for in Article 19 is allowed to cumulate periods of residence in different Member States in order to fulfil the requirement concerning the duration of residence, if the following conditions are met:
  - (a) five years of legal and continuous residence<sup>108</sup> within the territory of the Community as holder of an EU Blue Card;
  - (b) legal and continuous residence as holder of an EU Blue Card within the territory of the Member State where the application for the long-term resident's EC residence permit is lodged for two years<sup>109</sup> immediately prior to the submission of the relevant application.

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<sup>107</sup> **BE, EL, DE** and **EE** entered reservations, and **HU**, as well as **AT**, entered scrutiny reservations on this provision.

**Several delegations** underlined that the implementation of this provision, which introduces a series of derogations to Directive 2003/109/EC, could give rise to quite a complex system, difficult to be managed by the national administrations, in particular with respect to the issue of absences (paragraph 3). In this respect **EL** drew attention to the fact that the implementation of the long-term resident Directive has started quite recently and it might be risky at this stage to introduce further complications. **CZ**, which felt that introducing these kinds of exceptions does not contribute to the clarity and simplicity of the system in general, considers that once they fulfil the conditions of Directive 2003/109/EC, Blue Card holders should enjoy the same treatment of long-term residents, with respect also to absences. **CZ** suggested either entirely deleting Article 17 or maintaining paragraphs 1 and 2, while deleting the rest of the provision (and in particular paragraph 5). **AT** also suggested deleting the entire provision. **BE**, which queried what the added value would be for a third-country national to being granted long-term resident status, vis-à-vis the treatment afforded by this proposal, suggested deleting paragraphs 3, 4 and 5. Moreover, as it did in the framework of the consideration of Article 16, it called for the use of uniform deadlines. According to **HU**, rather than targeting Blue Card holders who have acquired long-term resident status, the provisions of paragraphs 3 and 4 should apply all long-term residents, having regard to the objective of fostering circular migration and also on the basis of the principle of non-discrimination.

<sup>108</sup> **DE** suggested a deadline of six years instead of five years.

<sup>109</sup> Pointing out that two years is too short a period, **LV**, supported by **BE**, suggested providing for a three year deadline. In relation to a query from **RO**, the **Pres.** and the **Cion** pointed out that points a) and b) are cumulative.

3. For the purpose of calculating the period of legal and continuous residence in the Community and by way of derogation from Article 4(3), first subparagraph, of Directive 2003/109/EC, periods of absence from the territory of the Community shall not interrupt the period referred to in paragraph 2(a) and shall be taken into account for its calculation if they are shorter than 12 consecutive months and do not exceed in total 16 months within the period referred to in paragraph 2(a). This paragraph shall apply also in cases where the holder of an EU Blue Card has not made use of the possibility provided for in Article 19<sup>110</sup>.
4. By way of derogation from Article 9(1)(c) of Directive 2003/109/EC, Member States shall extend the period of absence allowed to an EU Blue Card holder and of his/her family members having been granted the EC long-term residence status from the territory of the Community to 24 consecutive months<sup>111</sup>.

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<sup>110</sup> While supporting the objective of fostering circular migration, **DE** preferred not to derogate to the provisions of Article 4 (3) of the long-term residents Directive, according to which periods of absence from the territory of the Member State concerned should be shorter than six consecutive months and not exceed in total 10 months.

<sup>111</sup> Making reference to Article 9 (2) of the long-term residents Directive - according to which Member States may provide that absences exceeding 12 consecutive months or for specific or exceptional reasons shall not entail withdrawal or loss of status – **ES**, supported by **BE**, suggested deleting paragraph 4.

The **Cion** noted that Article 9 (2) of the long-term residents Directive is an optional provision, while paragraph 4 is a compulsory one and for this reason it preferred maintaining it.

5. The derogations to Directive 2003/109/EC set out in paragraphs 3 and 4 shall apply only in cases where the third-country national concerned can present evidence that he/she has been absent from the territory of the Community to exercise an economic activity in an employed or self-employed capacity, or to perform a voluntary service<sup>112</sup>, or to study in his/her own country of origin<sup>113</sup>.
6. Articles 13, 15 and 16 shall continue to apply, where applicable<sup>114</sup>, after the holder of the EU Blue Card has been issued a residence permit pursuant to Article 18.

### Article 18

#### *Residence permit "Long-term resident – EC / EU Blue Card holder"*<sup>115</sup>

1. Holders of the EU Blue Card who fulfil the conditions set out in Article 17 for the acquisition of the EC long term resident status shall be issued a residence permit in accordance with Article 1(2)(a) of Council Regulation (EC) No 1030/2002.

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<sup>112</sup> In relation to a remark from **NL**, which found the notion of *voluntary service* too broad, the **Cion** made reference to this category as defined in Article 2 (f) of the students Directive . In all circumstances it said that it could be open to limit it, if it is deemed appropriate.

<sup>113</sup> **EL** wondered if, apart from the cases expressly mentioned in paragraph 5, other absences, based on other reasons, could be allowed under this provision (for instance military service, pregnancy, etc). In this context, **PL** wondered if for courses aimed at improving the qualifications, such as an MBA, which take place in a country other than the country of origin of the person concerned, paragraph 5 might apply.

In reply to the **PL** query the **Cion** stated that, in such cases, Member States could make use of the optional provisions of the long-term residents Directive (Articles 4 (3), second paragraph and 9 (2)). **NL** drew attention to the fact that paragraph 5 refers to a series of activities to be carried out in the country of origin of the person concerned, while recital 20 contains specific reference to developing countries. In this respect the **Cion** pointed out that not limiting circular migration to developing countries will avoid conflict with the non-discrimination principle.

With respect to the issue of how it will be possible to check the absences and their duration the **Cion** referred to the proposal on the establishment of an entry/exit system, which could constitute, once in place, a useful tool in this respect. Moreover, in its view the presence of the person concerned outside the territory of the Member States can be checked by requesting appropriate documents, such as flight tickets and other evidence (work contracts, etc.).

<sup>114</sup> **EL** wondered on which basis it will be decided if Articles 13, 15 and 16 will be applicable.

<sup>115</sup> **BE, EE, EL, FR** and **LV** expressed doubts about the added value of introducing this new residence permit. **DE**, which entered a reservation, also drew attention to the practical problems that will arise from the implementation of this provision (the title is too long and it might not fit with the format currently used).

Taking note of the **DE** concern, the **Pres.** noted that, if considered appropriate, the Visa Working Party may be consulted in this respect.

In reply to a query from **EL**, which wondered about the relationship between Article 18 and Article 15, the **Cion** underlined that Member States should apply the long-term residents Directive plus all the derogations and additional rights provided for under this proposal.

2. Under the heading "type of permit", Member States shall enter "long-term resident – EC / EU Blue Card holder".
3. Holders of the residence permit "long-term resident – EC / EU Blue Card holder" shall be subject to the provisions relating to them and their family members set out in this Directive and in Directive 2003/109/EC<sup>116</sup>.

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<sup>116</sup> The **Pres.** wondered whether it was necessary to maintain paragraph 3. Noting that this provision simply contains a clarification, the **Cion** pointed out that it could consider its deletion.

# Chapter V

## RESIDENCE IN OTHER MEMBER STATES

### Article 19<sup>117</sup>

#### *Conditions*

1. <sup>118</sup>After two years<sup>119</sup> of legal residence in the first Member State as holder of an EU Blue Card, the person concerned and his/her family members<sup>120</sup> shall be allowed<sup>121</sup> to move to a Member State other than the first Member State for the purpose of highly qualified employment under the conditions set out in this Article<sup>122</sup>.

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<sup>117</sup> **BE** and **PL**, which drew attention to the fact that Blue Card holders have to comply with the same conditions in the second Member as they are required to fulfil in the first Member State, queried the added value of this provision.

The **Cion** pointed out that in fact the conditions to be complied with for the first entry are also applicable in case of mobility. However, it interprets Article 20 as an evolving provision, allowing a high level of flexibility to respond to present and/or future needs: Member States would be allowed to grant more favourable treatment in terms of admission to a second Member State (intra-EU mobility) than that provided for the issue of the first EU Blue Card.

<sup>118</sup> **EE**, **ES**, **AT** and **SE** entered scrutiny reservations on paragraph 1.

<sup>119</sup> **SE** suggested reducing the deadline to one year. **NL**, which noted that the objective of this provision is to hinder as little as possible the internal mobility, did not support the requirement of a period of two years of legal residence. In its view, if the non compliance of the condition of two years of legal residence constitutes a reason for the withdrawal of the residence permit, this should be expressly stated in Article 9. The **Cion**, which pointed out that this deadline is intended to avoid abuse, preferred to stick to a time period of two years. In reply to a query from **NL**, the **Cion** clarified that, in case the persons concerned moves before completing the period of two years of legal residence, they cannot make use of the provisions aimed at supporting intra-EU mobility, such as Articles 17 or 21. In practice, this would count as first entry into the EU, and not as intra-EU mobility.

<sup>120</sup> **HU** suggested deleting the reference to family members in this provision, since in its view it may cause confusion with Article 21.

<sup>121</sup> **HU** found that the words *shall be allowed* is misleading, insofar as it is not clear which Member State should allow or authorise the person concerned to move to another Member State. According to **HU**, the entry should take place according to the general rules concerning the crossing of borders (the Schengen Borders Code)

<sup>122</sup> According to **BG**, on the basis of this provision Blue Card holders will receive a more favourable treatment vis-à-vis the nationals of Member States which have acceded in 2004 and 2007. Noting that this provisions offers a possibility and does not grant the right to mobility, the **Cion** drew attention to the fact that the Member States who still apply the transitional arrangements will have to give preference to workers who are EU nationals (as for the provisions in Chapter III of the long-term residents Directive), insofar as the Accession Treaties prevail over secondary legislation.

2. No later than one month after entering the territory of the second Member State, the holder of the EU Blue Card<sup>123</sup> shall notify<sup>124</sup> his/her presence to the competent authorities of that Member State and present all the documents proving that he/she fulfils the conditions set out in Articles 5 and 6<sup>125</sup> for the second Member State<sup>126 127 128</sup>.
3. In accordance with the procedures set out in Article 12, the second Member State shall process the notification and inform in writing<sup>129</sup> the applicant and the first Member State of its decision to:
  - (a) issue an EU Blue Card and allow the applicant to reside on its territory for highly qualified employment if the conditions set in this Article are fulfilled and under the conditions set out in Articles 8-15<sup>130</sup>;

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<sup>123</sup> NL suggested adding after *the holder of the EU Blue Card* the words *or the employer*.

<sup>124</sup> IT suggested replacing the word *notify* with *communicate*. DE, EL, AT and PT found that the words *notify* in paragraph 2 and *notification* in paragraph 3 are not correct and should be replaced with a more appropriate wording, in line with a similar provision of the long-term residents Directive (Article 15, *Conditions for residence in a second Member State*). In particular AT suggested replacing, in paragraph 1, the words *notify his/her presence to* with *lodge his/her application at* and, in paragraph 2, the word *notification* with *application*.

The Cion supported this suggestion.

PT suggested amending this provision as follows:

*As soon as possible, no later than one month after entering the territory of the second Member State, the holder of the EU Blue Card shall apply to the competent authorities of that Member State and present all the documents proving that he/she fulfils the conditions set out in Articles 5 and 6 for the second Member State*

In this context, DE and EE pointed out that the third-country nationals concerned should submit the application before entering the territory of the second Member State.

<sup>125</sup> NL suggested replacing the reference to *Articles 5 and 6* with a reference to *Articles 4 (2), 5 and 6*.

<sup>126</sup> According to EL, which referred to the visa requirements that the nationals of certain countries should fulfil, a new sentence should be added in paragraph 2, stating that the person concerned should have entered and should be legally residing in the second Member State.

In relation to the issue of visas, which was also raised by CZ, the Cion pointed out that, except in the case of mobility within Schengen countries, third-country nationals entering from non-Schengen countries should comply with the applicable visa requirements.

<sup>127</sup> NL suggested adding the following sentence at the end of paragraph 2:

*During the application procedure the applicant is not allowed to work.*

<sup>128</sup> EE, IT and AT entered reservations on this provision. According to DE, the second Member States should be allowed to proceed to the recognition of the professional qualifications of the person concerned, in accordance with Directive 2005/36/EC.

In this respect, the Cion took the view that this remains possible for the competent authorities of the second Member States, within the limits set out in Article 3(3) of the above Directive.

However, in relation to a DE remark, the Cion clarified that, in order to start working in the second Member State, the person concerned needs an authorisation from the competent authorities.

<sup>129</sup> EE, AT and PL entered reservations on this provision.

<sup>130</sup> Noting that a new Blue Card is issued in the second Member, ES wondered what happens with the Blue Card issued by the first Member State: in its view this provision should provide for the possibility for the second Member State of canceling it.

(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<sup>131</sup>.

4. The applicant<sup>132</sup> 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).
5. In application of this Article, Member States may continue to apply volumes of admission as specified in Article 7<sup>133</sup>.

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<sup>131</sup> In relation with the issue of readmission between the Member States, **EL** felt that it would be advisable to introduce in this proposal a system of information, similar to that provided for in the last sub-paragraph of Article 22 (3) (*When the second Member State adopts a decision to remove the third-country national concerned, it shall take all the appropriate measures to effectively implement it. In such cases the second Member State shall provide to the first Member State appropriate information with respect to the implementation of the removal decision*).

In relation to the issue, raised by **EL**, which wondered what will happen in case the person concerned moves to the second Member State and his/her residence permit is about to expire, the **Cion** said that this issue needs to be further considered.

<sup>132</sup> Noting that on the basis of this provision the Blue Card holder could be treated less favourably than other third-country workers, insofar as the removal is implemented by the competent authorities, **IT** entered a scrutiny reservation on paragraph 4. According to **NL** and **AT**, not only the applicant, but also the employer should be responsible for the costs related to the return and readmission. For this reason **AT** suggested adding *or the employer* after *the applicant*.

In relation to the remark made by **NL** and **AT**, the **Cion** noted that Article 11 may apply in this respect.

<sup>133</sup> **DE** indicated that the word *volumes* has been wrongly translated in its language version as *quotas* and needs therefore to be corrected. Moreover, **DE** suggested using in this context the same wording of Article 63 (3) a of the Lisbon Treaty (*This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed*).



## Article 20

*Access to the labour market of the second Member State for holders of the residence permit "long-term resident – EC / EU Blue Card holder"*<sup>134</sup>

1. Article 14(4) of Directive 2003/109/EC shall not apply to holders of the residence permit "long-term resident – EC / EU Blue Card holder".
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<sup>135</sup>.

## Article 21

*Residence in the second Member State for family members*<sup>136</sup>

1. When the holder of the EU Blue Card moves to a second Member State in accordance with the provisions of Article 19 and when the family was already constituted in the first Member State, the members of his/her family shall be authorised to accompany or join him/her<sup>137</sup>.
2. No later than one month after entering the territory of the second Member State, the family members concerned shall notify<sup>138</sup> their presence to the competent authorities of that Member State and present an application for a residence permit.

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<sup>134</sup> **DE** entered a reservation and **BE**, **LV** and **NL** entered scrutiny reservations on this provision. In relation with this provision **BG** raised the same issue developed in respect to Article 19 (1) (see footnote 114 on page 45). **CZ** suggested deleting this provision, as it did for Article 17.

<sup>135</sup> **NL** suggested deleting paragraph 2. In relation to the query from **DE**, **NL**, **AT** and **SE** concerning the interpretation of this provision and in particular the meaning of the expression *for the same purposes*, the **Cion** clarified that it refers to third-country nationals who have entered for work purposes and who are in a comparable situation.

<sup>136</sup> **DE** and **AT** entered reservations on this provision.

<sup>137</sup> **AT** suggested adding, at the end of paragraph 1, the words *if the family members have a residence permit in the first Member State*.

<sup>138</sup> **IT** suggested replacing *notify* with *communicate*. According to **DE** this notification should take place prior to the entry of the person into the territory of the second Member State.

3. The second Member State may require the family members concerned to present with their application for a residence permit<sup>139</sup>:
- (a) their residence permit in the first Member State and a valid travel document<sup>140</sup>;
  - (b) evidence that they have resided as members of the family of the holder of the EU Blue Card in the first Member State<sup>141</sup>;
  - (c) evidence that they have a sickness insurance covering all risks in the second Member State, or that the holder of the Blue Card has such insurance for them<sup>142</sup>.
4. Where the family was not already constituted in the first Member State, Article 16 shall apply<sup>143</sup>.

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<sup>139</sup> **ES** suggested deleting point b). **EL** suggested adding in paragraph 3 the following new point: *a visa, if required.*

**AT** suggested introducing the following new requirements, in order to ensure consistency with Article 15 of the Directive on the right to family reunification:

- d) *accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in force in the Member State concerned.*
- e) *stable and regular resources which are sufficient to maintain himself/herself and the members his/her families, without recourse to the social assistance of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members.*

In reply to a question from **AT** concerning the access of family members to the labour market, the **Cion** clarified that in this respect the provisions foreseen for the first Member State would also be applicable in the second Member State.

<sup>140</sup> Noting that paragraph 3 is an optional provision, **CZ** pointed out that the application must be accompanied at least by a valid travel document and health insurance certificate.

<sup>141</sup> **IT** wondered about the link between point a) and b), insofar as point a) already provides that the family members are required to submit the residence permit issued in the first Member State.

<sup>142</sup> **DE** took the view that, along with the evidence of a sickness insurance, Member States may require the persons concerned to prove that they have appropriate means of subsistence.

<sup>143</sup> **AT** entered a scrutiny reservation on paragraph 4.

# Chapter VI

## FINAL PROVISIONS

### Article 22

#### *Implementing measures*

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<sup>144</sup>.
2. The information pursuant to paragraph 1 shall include the detail of the measures concerned, translated into an official language of the Institutions of the European Union other than the language of the Member State concerned<sup>145</sup>.

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<sup>144</sup> **DE** entered a reservation on this provision. **EL** and **PT** felt that the kind of information that Member States are required to transmit through the network established by Decision 2006/688/EC goes outside the scope of this legal instrument. In particular, **EL** drew attention to the fact that this network was established for political purposes and not with a view to exchanging statistics. It also recalled that, since the functioning of the network is currently being evaluated, it would be premature, at this stage, to extend its scope.

<sup>145</sup> **IT** and **PT** entered a reservation on paragraph 2. **IT** suggested deleting this paragraph, whilst leaving the reference in paragraph 1 to Decision 2006/688/EC.

3. Annually, and for the first time no later than 1 April of [one year after the date of transposition of this Directive], Member States shall communicate to the Commission and the other Member States through the network established by Decision 2006/688/EC statistics on the volumes of third-country nationals who have been granted, renewed or withdrawn an EU Blue Card during the previous calendar year, indicating their nationality and their occupation. Statistics on admitted family members shall be communicated likewise. For holders of the EU Blue Card and members of their families admitted in accordance with the provisions of Articles 19 to 21, the information provided shall in addition specify the Member State of previous residence<sup>146</sup>.

### **Article 23**

#### *Reports*

Every three years, and for the first time no later than [three years after the date of transposition of this Directive], the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary.

### **Article 24**

#### *Contact points*

1. Member States shall appoint contact points which shall be responsible for receiving and transmitting the information referred to in Article 19.

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<sup>146</sup> **DE, LV, NL, AT** and **PL** entered scrutiny reservations on this provision. They expressed concerns on the fact that requesting these statistics to be elaborated and transmitted to the Member States will represent an excessive bureaucratic burden for their administrations. **NL** suggested adding the sentence *with the exception of information about the profession* after the words *shall be communicated likewise*. Concerning a remark from **LV**, the **Cion** noted that the data concerning the Member States of previous residence are intended to acquire a better understanding of the trends in intra-EU mobility and on the needs of the national labour markets. In the context of this discussion reference was also made to the establishment of a Community database on Blue Card holders, which would enable Member States to monitor their admission and mobility within the Union. The **Cion** said that this possibility had been foreseen in the Impact Assessment and will need to be further explored if this proposal is to be adopted.

2. Member States shall provide appropriate cooperation in the exchange of the information and documentation referred to in the first paragraph<sup>147</sup>.

## **Article 25**

### *Transposition*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [two years after the entry into force]<sup>148</sup> at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

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<sup>147</sup> **BE** entered a reservation on this provision. In its view, prior to the appointment of the contact points referred to in this provision, it would be advisable to make an evaluation of the functioning of the long-term residents Directive.

**SE** queried the relationship of the contact points established under this provision with similar bodies already existing on the basis of other legal instruments.

<sup>148</sup> **SE**, which entered a reservation on this provision, expressed concerns about the deadline of two years.

## **Article 26**

### *Entry into force*

This Directive shall enter into force on the [...] day following that of its publication in the *Official Journal of the European Union*.

## **Article 27**

### *Addressees*

This Directive is addressed to the Member States.

Done at Brussels, [...]

*For the Council*

*The President*