

EUROPEAN PARLIAMENT

2004



2009

Session document

A6-0432/2008

10.11.2008

REPORT

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

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Ewa Klamt

Rapporteur for opinion (*):

Jan Tadeusz Masiel, Committee on Employment and Social Affairs

(*) Associated committees - Rule 47 of the Rules of Procedure

Symbols for procedures

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

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

Amendments to a legislative text

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

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(*) Associated committee - Rule 47 of the Rules of Procedure

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM (2007)0637),
 - having regard to Article 63(3)(a) and (4) of the EC Treaty,
 - having regard to Article 67 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0011/2007),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Employment and Social Affairs and the Committee on Development (A6-0432/2008),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Calls for initiation of the conciliation procedure under the Joint Declaration of 4 March 1975 if the Council intends to depart from the text approved by Parliament;
 5. Calls on the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 6. Instructs its President to forward its position to the Council and the Commission.

Amendment 1

Proposal for a directive Recital 2 a (new)

Text proposed by the Commission

Amendment

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

Amendment 2

Proposal for a directive Recital 3

Text proposed by the Commission

Amendment

(3) The Lisbon European Council in March 2000 set the Community the objective of becoming the most competitive and dynamic knowledge-based economy in the world by 2010.

(3) The Lisbon European Council in March 2000 set the Community the objective of becoming the most competitive and dynamic knowledge-based economy in the world, ***capable of sustainable economic growth with more and better jobs and greater social cohesion*** by 2010. ***Measures to attract and retain highly qualified third-country workers as part of an approach based on the needs of Member States should be seen in the broader context established by the Lisbon Strategy and by the Integrated Guidelines for Growth and Jobs.***

Amendment 3

Proposal for a directive Recital 5 a (new)

Text proposed by the Commission

Amendment

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

Amendment 4

Proposal for a directive Recital 6

Text proposed by the Commission

Amendment

(6) To achieve the objectives of the Lisbon Process it is also important to foster the mobility within the Union of highly qualified workers who are EU citizens, and in particular from the Member States which acceded in 2004 and 2007. In ***implementing*** this Directive, ***Member States are bound to respect*** the principle of Community preference as expressed in particular in the relevant provisions of the Acts of Accession of 16 April 2003 and 25 April 2005.

(6) To achieve the objectives of the Lisbon Process it is also important to foster the mobility within the Union of highly qualified workers who are EU citizens, and in particular from the Member States which acceded in 2004 and 2007. In ***the implementation of*** this Directive, the principle of Community preference as expressed in particular in the relevant provisions of the Acts of Accession of 16 April 2003 and 25 April 2005 ***should be respected.***

Amendment 5

Proposal for a directive Recital 10

Text proposed by the Commission

Amendment

(10) This Directive should provide for a flexible demand-driven entry system, based

(10) This Directive should provide for a flexible demand-driven entry system, based

on objective criteria such as *a minimum salary threshold comparable with the wage levels in the Member States and on professional qualifications. The definition of a common minimum denominator for the national wage threshold* is necessary to ensure *a minimum level of harmonisation in the admission conditions throughout the EU. Member States should fix their national threshold accordingly to the situation of their respective labour markets and their general immigration policies.*

on objective criteria such as professional qualifications. *Application of the principle of ‘equal pay for equal work’* is necessary to ensure *that nationals and third-country nationals are treated equally.*

Amendment 6

Proposal for a directive Recital 11

Text proposed by the Commission

Amendment

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

deleted

Justification

Easier access for highly qualified people under 30 is inconsistent with the EU’s principle of equal treatment, according to which there must be no discrimination on the grounds of age. In addition, easier access for highly qualified people under 30 brings with it the danger that investment in training young EU citizens will be neglected. This must not be allowed to happen, as the unemployment rate among young people under 30 throughout the EU is around 15% (Eurostat statistic for 2007) and as high as 20% in Greece, France, Italy, Poland, Romania and Slovakia.

Amendment 7

Proposal for a directive
Recital 15 bis (new)

Text proposed by the Commission

Amendment

(15) In the case of intra-EU mobility from one Member State to another after renewal of an EU Blue Card, cross-border commuting may be an option for the EU Blue Card holder. As the EU Blue Card combines a work and residence permit, it does not offer the option of commuting to another Member State for the purpose of work while residing in the Member State which issued the EU Blue Card. The possibility of cross-border commuting should be addressed by the Council Directive .../.../EC of..., of ..., 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.

Amendment 8

Proposal for a directive
Recital 17

Text proposed by the Commission

Amendment

(17) The mobility of highly qualified third-country workers between the Community and their countries of origin should be fostered and sustained. Derogations from Council Directive 2003/109/EC of 25 November 2003 on the status of third-country nationals who are long-term residents should be foreseen in order to extend the period of absence from the territory of the Community which is not taken into account for the calculation of the period of legal and continuous residence necessary to be eligible for the EC long-term residence status. Longer periods of

(17) The mobility of highly qualified third-country workers between the Community and their countries of origin should be fostered and sustained. Derogations from Council Directive 2003/109/EC of 25 November 2003 on the status of third-country nationals who are long-term residents should be foreseen in order to extend the period of absence from the territory of the Community which is not taken into account for the calculation of the period of legal and continuous residence necessary to be eligible for the EC long-term residence status. Longer periods of

absence than those provided for in Council Directive 2003/109/EC should also be allowed after highly qualified third-country workers have acquired EC long-term residence status. In particular, to encourage the circular migration of highly qualified third-country workers originating from developing countries, Member States should take into consideration making use of the possibilities offered in Article 4(3), second subparagraph, and Article 9(2) of Council Directive 2003/109/EC to allow for longer periods of absence than those provided for in this Directive. In order to ensure consistency in particular with the underlying development objectives, these derogations should only be applicable if it can be proven that the person concerned has returned to his/her country of origin **for work, study or volunteering activities**.

absence than those provided for in Council Directive 2003/109/EC should also be allowed after highly qualified third-country workers have acquired EC long-term residence status. In particular, to encourage the circular migration of highly qualified third-country workers originating from developing countries, Member States should take into consideration making use of the possibilities offered in Article 4(3), second subparagraph, and Article 9(2) of Council Directive 2003/109/EC to allow for longer periods of absence than those provided for in this Directive. In order to ensure consistency in particular with the underlying development objectives, these derogations should only be applicable if it can be proven that the person concerned has returned to his/her country of origin.

Justification

The requirement whereby third-country nationals may return to their country of origin only if they can prove that they will work, study or undertake volunteering activities there represents an extra administrative obligation and a complication which is out of all proportion to the situation. Third-country nationals must also be able to return temporarily to their country of origin for family or personal reasons.

Amendment 9

Proposal for a directive Recital 20

Text proposed by the Commission

(20) In implementing this Directive, Member States should ***refrain from pursuing active recruitment in developing countries in sectors suffering from lack of human resources***. Ethical recruitment policies and principles ***applicable to public and private sector employers should be developed in particular in the health sector, as underlined in the Council and Member States' conclusions of 14 May 2007 on the European Programme for***

Compromise amendment

(20) In implementing this Directive, ***the*** Member States should ***not actively seek to attract highly qualified workers in sectors that are already subject, or are expected to be subject, to a shortage of highly qualified workers in the third country. This applies to the health and education sectors in particular. Member States should establish cooperation agreements with third countries with a view to safeguarding both the Union's needs and***

Action to tackle the critical shortage of health workers in developing countries (2007-2013). These should be strengthened by the development of mechanisms, guidelines and other tools to facilitate circular and temporary migration, as well as other measures that would minimise negative and maximise positive impacts of highly skilled immigration on developing countries. Any such intervention must be taken along the lines of the Joint Africa-EU Declaration on Migration and Development agreed in Tripoli on 22 and 23 November 2006 and with a view of establishing a comprehensive migration policy as called for by the European Council of 14 and 15 December 2006.

the development of the third countries from which highly qualified immigrants come. The cooperation agreements should include ethical recruitment policies and principles and be strengthened by the development of mechanisms, guidelines and other tools to facilitate circular and temporary migration by which highly qualified immigrants may return to their countries of origin. Any such intervention must be taken along the lines of the Joint Africa-EU Declaration on Migration and Development agreed in Tripoli on 22 and 23 November 2006 *and the conclusions of the first meeting of the Global Forum on Migration and Development of July 2007,* and with a view of establishing a comprehensive migration policy as called for by the European Council of 14 and 15 December 2006. *In addition, the Member States, in cooperation with the countries of origin, should offer concrete support for the training of professionals in key sectors weakened by the exodus of talent.*

5Amendment 10

Proposal for a directive Article 2 – point b

Text proposed by the Commission

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

Comprimise amendment

(b) "highly qualified employment" means the exercise of genuine and effective work *as an employee* under the direction of someone else for which a person is paid and for which higher education qualifications or *higher professional qualifications are* required;

Amendment 11

Proposal for a directive

Article 2 – point c

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 12

Proposal for a directive

Article 2 - point f

Text proposed by the Commission

(f) "family members" means third-country nationals as defined in Article 4(1) of Directive 2003/86/EC;

Amendment

(f) "family members" means third-country nationals as defined in Article 4(1), ***4(2)(b) and 4(3)*** of Directive 2003/86/EC;

Justification

Excluding the persons referred to in Article 4.2(b) of Directive 2003/86/EC is highly undesirable from a humanitarian point of view. Excluding the persons referred to in Article 4.3 of Directive 2003/86/EC is discriminatory towards unmarried couples who are in a long-term and committed relationship.

Amendment 13

Proposal for a directive

Article 2- point g

Text proposed by the Commission

(g) "higher education qualification" stands for any degree, diploma or other

Compromise amendment

(g) "higher education qualification"

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;

stands for any degree, diploma or other certificate issued **by a third country and subsequently recognised** by the competent authority **of a Member State** attesting the successful completion of a higher education programme, namely a set of courses provided by an educational establishment recognised as a higher education institution by the State in which it is situated. These qualifications are taken into account, for the purposes of this directive, on condition that the studies needed to acquire them lasted at least three years. **For the purpose of this Directive, in order to evaluate whether a third-country national possesses higher education, reference shall be made to International Standard Classification of Education (ISCED) 1997 levels 5a and 6;**

Amendment 14

Proposal for a directive Article 2- point h

Text proposed by the Commission

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

Compromise amendment

(h) "higher professional qualifications" means qualifications attested by evidence of **at least five years of professional experience of a level comparable to higher education qualifications, including at least two years in a senior position;**

Amendment 15

Proposal for a directive Article 2 – point i

Text proposed by the Commission

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

Amendment

(i) 'professional experience' means the actual and lawful pursuit of the profession concerned, **attested by any document**

issued by the public authorities, e.g. certificate of employment, social insurance certificate or tax certificate.

Amendment 16

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

Text proposed by the Commission

Amendment

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

Amendment 17

Proposal for a directive Article 3 – paragraph 1

Text proposed by the Commission

Amendment

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.

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 **as well as third-country nationals already legally resident under other schemes in a Member State who apply for an EU Blue Card.**

Justification

In order to promote for instance students having completed their higher education within the territory of a Member State staying within in the EU it would be logical to also apply this

directive to those wishing to stay within the 'territory of a Member State for the purpose of highly qualified employment'.

Amendment 18

Proposal for a directive

Article 3 – paragraph 2 – point a

Text proposed by the Commission

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

Amendment

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

Amendment 19

Proposal for a directive

Article 3 - paragraph 2 - point b

Text proposed by the Commission

(b) who ***are refugees or*** have applied for recognition as refugees and whose application has not yet given rise to a final decision;

Amendment

(b) who have applied for recognition as refugees and whose application has not yet given rise to a final decision;

Amendment 20

Proposal for a directive

Article 3 – paragraph 2 – point f

Text proposed by the Commission

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

Amendment

(f) entering a Member State under commitments contained in an international agreement facilitating the entry and temporary stay of certain categories of trade and investment-related natural persons, ***in particular intra-corporate transferees, providers of contractual services and trainees with higher-***

education qualifications who are covered by the European Community's obligations under the General Agreement on Trade in Services (GATS);

Amendment 21

Proposal for a directive Article 3 - paragraph 2- point g a (new)

Text proposed by the Commission

Amendment

(ga) who have been admitted in the territory of a Member State as seasonal workers.

Justification

In order to complete the list of categories.

Amendment 22

Proposal for a directive Article 3- paragraph 3

Text proposed by the Commission

Amendment

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.

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, ***in sectors vital to achieving the UN Millennium Development Goals, in particular the health and education sectors, and in sectors vital to the ability of developing countries to deliver basic social services***, by protecting human resources in the developing countries, signatories to these agreements.

Amendment 23

Proposal for a directive Article 4 – paragraph 2

Text proposed by the Commission

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

Amendment

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

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

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

Justification

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

Amendment 24

Proposal for a directive Article 4a (new)

Text proposed by the Commission

Amendment

Article 4a

Criteria for granting an EU Blue Card

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

Amendment 25

Proposal for a directive

Article 5 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 26

Proposal for a directive

Article 5 – paragraph 1 – point c

Text proposed by the Commission

(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;

Amendment

deleted

Justification

This clause is no longer necessary, since proof of highly qualified employment, which, under the amended definition in Article 2(b), also includes recognition of professional experience in unregulated professions, is now already required in Article 5(1)(a). Further distinction between regulated and unregulated professions is not necessary.

Amendment 27

Proposal for a directive

Article 5 – paragraph 1 – point e

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 28

Proposal for a directive

Article 5 – paragraph 1 – point (f)

Text proposed by the Commission

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

Amendment

(f) not, **for reasons which can be objectively demonstrated, constitute** a threat to public policy, public security or public health.

Justification

The question of whether a person constitutes a threat to public policy, public security or public health must not be determined by an arbitrary administrative decision.

Amendment 29

Proposal for a directive Article 5- paragraph 2

Text proposed by the Commission

2. 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**.

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.

Compromise amendment

2. In addition to the conditions stipulated in paragraph 1, the gross monthly **wage** specified in the work contract or binding job offer must not be inferior to a national **level** defined and published for the purpose by the Member States which shall be at least **1.7** times **of** the gross monthly **or annual average wages in the Member State concerned and shall not be inferior to the wages which apply or would apply to a comparable worker in the host country**.

Amendment 30

Proposal for a directive Article 5 a (new)

Text proposed by the Commission

Amendment

Article 5a

Avoiding shortage of highly qualified workers in third countries

The Member States shall not actively seek to attract highly qualified workers in sectors that are already subject, or are expected to be subject, to a shortage of highly qualified workers in the third country. This applies to the health and

education sectors in particular.

Amendment 31

Proposal for a directive Article 6

Text proposed by the Commission

Amendment

Article 6

deleted

Derogation

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

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

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

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

Justification

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

Amendment 32

Proposal for a directive Article 8 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Justification

Amendment 33

Proposal for a directive Article 8 - paragraph 2 a (new)

Text proposed by the Commission

Compromise amendment

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

Amendment 34

Proposal for a directive

Article 9 – paragraph 2 – subparagraph 1

Text proposed by the Commission

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.

Amendment

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 national **and Community** procedures regarding the requirements for filling a vacancy. **Their discretionary decision shall take account of national and regional demand for labour.**

Justification

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

Amendment 35

Proposal for a directive

Article 9 - paragraph 2 - subparagraph 1 a (new)

Text proposed by the Commission

Compromise amendment

Member States may reject an application for an EU Blue Card in order to avoid a brain drain in sectors suffering from a lack of qualified personnel in the countries of origin.

Amendment 36

Proposal for a directive
Article 9 - paragraph 2 - subparagraph 2

Text proposed by the Commission

Amendment

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

deleted

Amendment 37

Proposal for a directive
Article 10 - paragraph 1 – point a

Text proposed by the Commission

Amendment

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 *that* that for which he/she was authorised to reside.

(c) when the holder has not respected the limitations set out in Articles 13(1) and (2) and 14.

1. Member States shall withdraw or refuse to renew an EU Blue Card issued on the basis of this Directive when ***the EU Blue Card*** has been fraudulently acquired, or has been falsified or tampered with.

1a. Member states may withdraw or refuse to renew an EU Blue Card issued on the basis of this Directive in the following cases:

(a) 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;

(b) when the holder has not respected the limitations set out in Articles 13(1) and (2) and 14.

Amendment 38

Proposal for a directive
Article 10 – paragraph 3

Text proposed by the Commission

3. Member States may withdraw or refuse to renew an EU Blue Card **for reasons** of public policy, public security or public health.

Amendment

3. Member States may withdraw or refuse to renew an EU Blue Card **only where there is a threat to the implementation** of public policy, **or to** public security or public health **which can be objectively demonstrated**.

Justification

The question of whether a person constitutes a threat to public policy, public security or public health must not be determined by an arbitrary administrative decision.

Amendment 39

Proposal for a directive
Article 11 – paragraph 3 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

3a. By issuing an EU Blue Card, a Member State commits itself to issuing relevant documentation and visas, where applicable, as speedily as possible, but at least within a reasonable period of time before the applicant is due to start the employment on the basis of which the EU Blue Card was issued, unless that Member State cannot reasonably be expected to do so because of a late application for the EU Blue Card by either the employer or the third-country national concerned.

Justification

It is important that Member States commit themselves to, after having decided to grant a TCN a Blue Card, make sure that all the necessary documentation and visas are taken care of as speedily as possible in order to have the greatest advantage of the Blue Card system

Amendment 40

Proposal for a directive Article 12 - paragraph 2

Text proposed by the Commission

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.

Amendment

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

Amendment 41

Proposal for a directive Article 12 - paragraph 3

Text proposed by the Commission

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

Amendment

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

Justification

The body responsible for such challenges should be appointed in accordance with national law. Moreover the requirements for decisions rejecting applications to be open to challenge before the courts of a Member State concerned, may give rise to unnecessary delays to the

system.

Amendment 42

Proposal for a directive Article 13 – paragraph 1

Text proposed by the Commission

1. For the first two years 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 authorisation*** in writing ***of*** the competent authorities of the Member State of residence, according to national procedures and within the time limits set out in Article 12(1).

Amendment

1. For the first two years 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 ***notified in advance***, in writing, ***to*** the competent authorities of the Member State of residence, according to national procedures and within the time limits set out in Article 12(1).

Amendment 43

Proposal for a directive Article 13 – paragraph 2

Text proposed by the Commission

2. After the first two years of legal residence 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 changes in his/her work relationship to the competent authorities of the Member State of residence, according to national procedures.***

Amendment

2. After the first two years of legal residence in the Member State concerned as holder of an EU Blue Card, the person concerned shall enjoy equal treatment with nationals.

Amendment 44

Proposal for a directive Article 14 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Unemployment in itself shall not constitute a reason for **withdrawing or failing to renew** an EU Blue Card, unless the period of unemployment exceeds **six consecutive months**.

Amendment 45

Proposal for a directive Article 14 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. An EU Blue card holder shall have the right to remain on the territory of the Member States for as long as he or she is engaged in training activities aimed at further increasing his/her professional skills or professional re-qualification.

Amendment 46

Proposal for a directive Article 14 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 47

Proposal for a directive
Article 15 – paragraph 2

Text proposed by the Commission

Amendment

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.

deleted

Amendment 48

Proposal for a directive
Article 15 – paragraph 3

Text proposed by the Commission

Amendment

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.

deleted

Amendment 49

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

Text proposed by the Commission

Amendment

2a. Article 8(2) shall be taken to mean that an EU Blue Card holder must have resided lawfully in the territory of a first Member State for the period of validity of the EU Blue Card, renewal included.

Amendment 50

Proposal for a directive
Article 17 - paragraph 2 - point b

Text proposed by the Commission

(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 immediately prior to the submission of the relevant application.

Amendment

(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 **three** years immediately prior to the submission of the relevant application.

Justification

It might be considered advisable to increase the term for acquiring long-term resident status to three years.

Amendment 51

Proposal for a directive
Article 17 - paragraph 4

Text proposed by the Commission

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.

Amendment

4. By way of derogation from Article 9(1)(c) of Directive 2003/109/EC, Member States **may** 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.

Amendment 52

Proposal for a directive
Article 17 - paragraph 5

Text proposed by the Commission

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

Amendment

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, or to study ***in his/her own country of origin***.

evidence that he/she has been absent from the territory of the Community to exercise, ***in his/her country of origin***, an economic activity in an employed or self-employed capacity, or to perform a voluntary service, or to study. ***This will encourage the circular mobility of these professionals, as well as the subsequent involvement of the same migrant workers in training, research and technical activities in their countries of origin.***

Amendment 53

Proposal for a directive

Article 19 – paragraph 3 – introductory part

Text proposed by the Commission

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

Amendment

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

Amendment 54

Proposal for a directive

Article 19 – paragraph 3 – point b

Text proposed by the Commission

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

Amendment

(b) refuse to issue an EU Blue Card ***if the conditions set out in this Article are not fulfilled or there are grounds for refusal pursuant to Article 9. In that case, the Member State shall*** oblige the applicant, ***if he/she is already in its territory***, and his/her family members, in accordance with the procedures provided for by national law, including removal procedures, to leave its territory. The first Member State shall immediately readmit

readmission.

without formalities the holder of the EU Blue Card and his/her family members. The provisions of Article 14 shall apply after readmission.

Amendment 55

Proposal for a directive Article 19 – paragraph 4

Text proposed by the Commission

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

Amendment

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

Amendment 56

Proposal for a directive Article 20 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 57

Proposal for a directive Article 22 – paragraph 1

Text proposed by the Commission

1. Member States shall communicate to the

Amendment

1. Member States shall communicate to the

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

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

Amendment 58

Proposal for a directive Article 22 – paragraph 3

Text proposed by the Commission

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.

Amendment

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 **in accordance with legislation for the protection of personal data**. Statistics on admitted family members shall be communicated likewise **with the exception of information concerning their occupation**. 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.

EXPLANATORY STATEMENT

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

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

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

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

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

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

Rapporteur's position

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

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

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

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

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

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

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

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

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

11.9.2008

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS (*)

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a Council directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment
(COM(2007)0637 – C6-0011/2008 – 2007/0228(CNS))

Rapporteur (*): Jan Tadeusz Masiel

(*) Associated committees – Rule 47 of the Rules of Procedure

AMENDMENTS

The Committee on Employment and Social Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive Citation 1

Text proposed by the Commission

Having regard to the Treaty establishing the European Community, and in particular Article 63(3)(a) and (4) thereof,

Amendment

Having regard to the Treaty establishing the European Community, and in particular Article 63(3)(a) and (4) thereof, ***and mindful also of Title III, Chapter 1,***

Amendment 2

Proposal for a directive Recital 3

Text proposed by the Commission

(3) The Lisbon European Council in March 2000 set the Community the objective of becoming the most competitive and dynamic knowledge-based economy in the world by 2010.

Amendment

(3) The Lisbon European Council in March 2000 set the Community the objective of becoming the most competitive and dynamic knowledge-based economy in the world ***capable of sustainable economic growth with more and better jobs and greater social cohesion*** by 2010.
Measures to attract and retain highly qualified third-country workers as part of an approach based on the needs of Member States should be seen in the broader context established by the Lisbon Strategy and by the Integrated Guidelines for Growth and Jobs.

Amendment 3

Proposal for a directive Recital 3 (a) (new)

Text proposed by the Commission

Amendment

(3a) At its special meeting in Tampere on 15 and 16 October 1999, the European Council acknowledged the need to approximate national laws on the conditions of entry and residence of third-country nationals. Accordingly, it declared that the European Union should ensure fair treatment to third-country nationals legally residing in the territory of its Member States and that a more vigorous integration policy should aim to offer them rights and obligations comparable to those of European Union citizens. To that end it asked the Council swiftly to adopt decisions on the basis of Commission proposals.

Amendment 4

Proposal for a directive Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) Against a background of increasing globalisation of the labour market, the European Union should increase its attractiveness to workers, in particular highly qualified third-country workers. This objective should be more easily achieved by simplifying administrative procedures – which should be uniform in all Member States – granting certain facilities, including exemptions from some of the applicable provisions, and providing easier access to the relevant information.

Amendment 5

Proposal for a directive Recital 6

Text proposed by the Commission

Amendment

(6) To achieve the objectives of the Lisbon Process it is also important to foster the mobility within the Union of highly qualified workers who are EU citizens, and in particular from the Member States which acceded in 2004 and 2007. In ***implementing*** this Directive, ***Member States are bound to respect*** the principle of Community preference as expressed in particular in the relevant provisions of the Acts of Accession of 16 April 2003 and 25 April 2005.

(6) To achieve the objectives of the Lisbon Process it is also important to foster the mobility within the Union of highly qualified workers who are EU citizens, and in particular from the Member States which acceded in 2004 and 2007. In ***the implementation of*** this Directive, the principle of Community preference as expressed in particular in the relevant provisions of the Acts of Accession of 16 April 2003 and 25 April 2005 ***should be respected.***

Amendment 6

Proposal for a directive

Recital 7

Text proposed by the Commission

(7) This Directive is intended to contribute to achieving these goals and addressing these labour shortages by fostering the admission and mobility – for the purposes of highly qualified employment – of third-country nationals for stays of more than three months, in order to make the Community more attractive to such workers from around the world **and sustain its competitiveness and economic growth**. To reach *these* goals, it is necessary to facilitate the admission of highly qualified workers and their families by establishing a fast-track admission procedure and by granting them equal social and economic rights with nationals of the host Member State in a number of areas. As concerns these rights, this Directive builds on the corresponding provision of 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"].

Amendment

(7) This Directive is intended to contribute to achieving these goals and addressing these labour shortages by fostering the admission and mobility – for the purposes of highly qualified employment – of third-country nationals for stays of more than three months, in order to make the Community more attractive to such workers from around the world. To reach **all Lisbon** goals, it is necessary to facilitate the admission of highly qualified workers, **both male and female**, and their families by establishing a fast-track admission procedure and by granting them equal social and economic rights with nationals of the host Member State in a number of areas. As concerns these rights, this Directive builds on the corresponding provision of 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"].

Justification

The Lisbon Strategy encompasses more than just competitiveness and economic growth.

Amendment 7

Proposal for a directive

Recital 10

Text proposed by the Commission

(10) This Directive should provide for a flexible **demand-driven** entry system, based on objective criteria such as **a minimum salary threshold comparable**

Amendment

(10) This Directive should provide for a flexible entry system **driven by the demand of the Member States**, based on objective criteria such as professional

with the wage levels in the Member States and on professional qualifications. The definition of a common minimum denominator for the national wage threshold is necessary to ensure a minimum level of harmonisation in the admission conditions throughout the EU. Member States should fix their national threshold accordingly to the situation of their respective labour markets and their general immigration policies.

qualifications. *The principle of equal pay for equal work or work of equal value should apply.*

Amendment 8

Proposal for a directive

Recital 11

Text proposed by the Commission

Amendment

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

deleted

Justification

Easier access for highly qualified people under 30 is inconsistent with the EU's principle of equal treatment, according to which there must be no discrimination on the grounds of age. In addition, easier access for highly qualified people under 30 brings with it the danger that investment in training young EU citizens will be neglected. This must not be allowed to happen, as the unemployment rate among young people under 30 throughout the EU is around 15% (Eurostat statistic for 2007) and as high as 20% in Greece, France, Italy, Poland, Romania and Slovakia.

Amendment 9

Proposal for a directive Recital 12

Text proposed by the Commission

(12) Once a Member State has decided to admit a third-country national fulfilling these common criteria, the third-country national should receive a specific residence permit, which should be called EU Blue Card **and should allow a progressive access to the labour market, and enjoy the residence and mobility rights accorded to him/her and his/her family.**

Amendment

(12) Once a Member State has decided to admit a third-country national fulfilling these common criteria, the third-country national should receive a specific residence permit, which should be called EU Blue Card.

Amendment 10

Proposal for a directive Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) Should a Member State decide that an EU Blue Card application may be submitted by the employer of a third-country national, the employer and the third-country national should cooperate in order to comply with the obligations laid down in Regulation 1030/2002/EC.

Amendment 11

Proposal for a directive Recital 17

Text proposed by the Commission

(17) The mobility of highly qualified third-country workers between the Community and their countries of origin should be fostered and sustained. Derogations from Council Directive 2003/109/EC of 25 November 2003 on the status of third-

Amendment

(17) The mobility of highly qualified third-country workers between the Community and their countries of origin should be fostered and sustained. Derogations from Council Directive 2003/109/EC of 25 November 2003 on the status of third-

country nationals who are long-term residents should be foreseen in order to extend the period of absence from the territory of the Community which is not taken into account for the calculation of the period of legal and continuous residence necessary to be eligible for the EC long-term residence status. Longer periods of absence than those provided for in Council Directive 2003/109/EC should also be allowed after highly qualified third-country workers have acquired EC long-term residence status. In particular, to encourage the circular migration of highly qualified third-country workers originating from developing countries, Member States should take into consideration making use of the possibilities offered in Article 4(3), second subparagraph, and Article 9(2) of Council Directive 2003/109/EC to allow for longer periods of absence than those provided for in this Directive. In order to ensure consistency in particular with the underlying development objectives, these derogations should only be applicable if it can be proven that the person concerned has returned to his/her country of origin **for work, study or volunteering activities**.

country nationals who are long-term residents should be foreseen in order to extend the period of absence from the territory of the Community which is not taken into account for the calculation of the period of legal and continuous residence necessary to be eligible for the EC long-term residence status. Longer periods of absence than those provided for in Council Directive 2003/109/EC should also be allowed after highly qualified third-country workers have acquired EC long-term residence status. In particular, to encourage the circular migration of highly qualified third-country workers originating from developing countries, Member States should take into consideration making use of the possibilities offered in Article 4(3), second subparagraph, and Article 9(2) of Council Directive 2003/109/EC to allow for longer periods of absence than those provided for in this Directive. In order to ensure consistency in particular with the underlying development objectives, these derogations should only be applicable if it can be proven that the person concerned has returned to his/her country of origin.

Justification

The requirement whereby third-country nationals may return to their country of origin only if they can prove that they will work, study or undertake volunteering activities there represents an extra administrative obligation and a complication which is out of all proportion to the situation. Third-country nationals must also be able to return temporarily to their country of origin for family or personal reasons.

Amendment 12

Proposal for a directive

Recital 20

Text proposed by the Commission

(20) In implementing this Directive, Member States should refrain from pursuing **active** recruitment in developing

Amendment

(20) In implementing this Directive, Member States should refrain from pursuing recruitment in developing

countries in sectors suffering from lack of human resources. **Ethical** recruitment policies and principles applicable to public and private sector employers should be developed in particular in the health sector, as underlined in the Council and Member States' conclusions of 14 May 2007 on the European Programme for Action to tackle the critical shortage of health workers in developing countries (2007-2013). These should be strengthened by the development of mechanisms, guidelines and other tools to facilitate circular and temporary migration, as well as other measures that would minimise negative and maximise positive impacts of highly skilled immigration on developing countries. Any such intervention must be *taken* along the lines of the Joint Africa-EU Declaration on Migration and Development agreed in Tripoli on 22 and 23 November 2006 and with a view *of* establishing a comprehensive migration policy as called for by the European Council of 14 and 15 December 2006.

countries in sectors suffering from a lack of human resources, **in sectors where it could hinder the ability of developing countries to deliver basic social services or in sectors vital to achieving the UN-Millennium Development Goals, in particular the health and educational sectors. In the abovementioned sectors ethical** recruitment policies and principles applicable to **both** public and private sector employers should be developed, in particular in the health and education sector, as underlined in the Council and Member States' conclusions of 14 May 2007 on the European Programme for Action to tackle the critical shortage of health workers in developing countries (2007-2013). These should be strengthened by the development of mechanisms, guidelines and other tools to facilitate circular and temporary migration, as well as other measures that would minimise negative and maximise positive impacts of highly skilled immigration on developing countries. Any such intervention must be along the lines of the Joint Africa-EU Declaration on Migration and Development agreed in Tripoli on 22 and 23 November 2006 and with a view *to* establishing a comprehensive migration policy as called for by the European Council of 14 and 15 December 2006. **It should also be in consultation with the social partners in both the countries of origin and the host countries in relevant sectors. Member States should abide by codes of conduct when implementing their policies of admission of third-country highly qualified workers.**

Justification

It is important that Member States do not attract highly skilled workers from those sectors in developing countries that lack personnel that are vital to developing basic social services and/or are crucial to achieving the UN MDG development goals. Member States should be especially cautious when it comes to recruitment in the health and educational sectors. The introduction of the EU Blue Card should in no way hinder the development of developing countries.

Amendment 13

Proposal for a directive

Article 1 – point (a)

Text proposed by the Commission

(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,

Amendment

(a) the conditions of entry and residence in the territory of the Member States of third-country nationals and of their family members for the purpose of highly qualified employment,

Justification

It is obvious that since this relates to entry and residence for work purposes, the period of residence will be longer than three months, as the latter period of time is only for tourists who are not entitled to work.

Amendment 14

Proposal for a directive

Article 2 – point (b)

Text proposed by the Commission

(b) ‘highly qualified employment’ means the exercise of genuine and effective work under the direction of someone else for which a person is paid and for which higher education qualifications or **at least three years of equivalent professional experience** is required;

Amendment

(b) ‘highly qualified employment’ means the exercise of genuine and effective work under the direction of someone else for which a person is paid and for which higher education qualifications or, **in duly justified exceptional cases, higher professional competence is** required;

Amendment 15

Proposal for a directive

Article 2 – point (f)

Text proposed by the Commission

(f) ‘family members’ means third-country nationals as defined in **Article 4(1)** of

Amendment

(f) ‘family members’ means third-country nationals as defined in **Article 4(1), (2) and**

Amendment 16

Proposal for a directive Article 2 – point (g)

Text proposed by the Commission

(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;

Amendment

(g) "higher education qualification" *means* 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. ***In evaluating whether a third-country national has completed a higher education programme, reference shall be made to ISCED 1997 levels 5a and 6;***

Amendment 17

Proposal for a directive Article 2 – point (h)

Text proposed by the Commission

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

Amendment

(h) 'higher professional ***competence***' means at least ***five years*** professional experience ***that demonstrates knowledge of a level equivalent to that required for a higher education qualification, accredited by a work certificate and confirmed by certification from the competent administration;***

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Amendment 18

Proposal for a directive Article 3 – paragraph 1

Text proposed by the Commission

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.

Amendment

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 **as well as third-country nationals already legally resident under other schemes in a Member State who apply for a Blue Card.**

Justification

In order to promote for instance students having completed their higher education within the territory of a Member State staying within in the EU it would be logical to also apply this directive to those wishing to stay within the 'territory of a Member State for the purpose of highly qualified employment'.

Amendment 19

Proposal for a directive Article 3 – paragraph 2 – point (a)

Text proposed by the Commission

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

Amendment

(a) **who have the opportunity of** staying in a Member State under temporary protection schemes **or have submitted an application and are awaiting a reply concerning the determination of their status;**

Amendment 20

Proposal for a directive Article 3 – paragraph 2 – point (a a) (new)

Text proposed by the Commission

Amendment

(aa) who are applicants for international

protection under Directive 2004/83/EC and whose applications have not yet given rise to a final decision;

Amendment 21

Proposal for a directive Article 3 – paragraph 2 – point (b)

Text proposed by the Commission

(b) who *are refugees or* have applied for *recognition as refugees* and whose *application has* not yet given rise to a final decision;

Amendment

(b) who have applied for *protection in accordance with the national legislation or practice of a Member State* and whose *applications have* not yet given rise to a final decision;

Amendment 22

Proposal for a directive Article 3 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. This directive shall apply without prejudice to applicable collective agreements or practices in relevant occupational branches.

Amendment 23

Proposal for a directive Article 5 – paragraph 1 – point (b)

Text proposed by the Commission

(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;

Amendment

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

Amendment 24

Proposal for a directive

Article 5 – paragraph 1 – point (c)

Text proposed by the Commission

(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;

Amendment

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

Amendment 25

Proposal for a directive

Article 5 – paragraph 1 – point (f)

Text proposed by the Commission

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

Amendment

(f) not, ***for reasons which can be objectively demonstrated, constitute*** a threat to public policy, public security or public health.

Justification

The question of whether a person constitutes a threat to public policy, public security or public health must not be determined by an arbitrary administrative decision.

Amendment 26

Proposal for a directive

Article 5 – paragraph 2 – subparagraph 1

Text proposed by the Commission

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

Amendment

2. 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 ***1,7 times*** the ***average*** gross monthly wage.

In any event, the gross monthly salary specified in the work contract or binding job offer shall not be inferior to the wages which apply or would apply to a comparable worker in the host country.

Amendment 27

**Proposal for a directive
Article 6**

Text proposed by the Commission

Amendment

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

deleted

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

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

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

Amendment 28

Proposal for a directive Article 8 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 29

Proposal for a directive Article 9 – paragraph 2 – subparagraph 2

Text proposed by the Commission

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

Amendment

deleted

Amendment 30

Proposal for a directive Article 10 – paragraph 3

Text proposed by the Commission

3. Member States may withdraw or refuse to renew an EU Blue Card **for reasons** of public policy, public security or public health.

Amendment

3. Member States may withdraw or refuse to renew an EU Blue Card **only where there is a threat to the implementation** of public policy, **or to** public security or public health **which can be objectively demonstrated**.

Justification

The question of whether a person constitutes a threat to public policy, public security or public health must not be determined by an arbitrary administrative decision.

Amendment 31

Proposal for a directive

Article 11 – paragraph 3 – subparagraph 1a (new)

Text proposed by the Commission

Amendment

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

Justification

It is important that Member States commit themselves to, after having decided to grant a TCN a Blue Card, make sure that all the necessary documentation and visas are taken care of as speedily as possible in order to have the greatest advantage of the Blue Card system

Amendment 32

Proposal for a directive

Article 12 – paragraph 2

Text proposed by the Commission

Amendment

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

2. If the information ***or documents*** supplied in support of the application ***are*** inadequate, the competent authorities shall notify the applicant of the additional information ***or documents*** that ***are*** required ***specifying a reasonable length of time within which to supply them.*** The period referred to in paragraph 1 shall be suspended until the authorities have

received the additional information *or documents* required. ***If the additional information or documents are not received within the specified period the application shall be rejected.***

Amendment 33

Proposal for a directive Article 13 – paragraph 1

Text proposed by the Commission

1. For the first two years 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 authorisation*** in writing ***of*** the competent authorities of the Member State of residence, according to national procedures and within the time limits set out in Article 12(1).

Amendment

1. For the first two years 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 ***notified in advance***, in writing, ***to*** the competent authorities of the Member State of residence, according to national procedures and within the time limits set out in Article 12(1).

Amendment 34

Proposal for a directive Article 13 – paragraph 2

Text proposed by the Commission

2. After the first two years of legal residence 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 changes in his/her work relationship to the competent authorities of the Member State of***

Amendment

2. After the first two years of legal residence in the Member State concerned as holder of an EU Blue Card, the person concerned shall enjoy equal treatment with nationals.

residence, according to national procedures.

Amendment 35

Proposal for a directive Article 14 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Unemployment in itself shall not constitute a reason for **withdrawing or failing to renew** an EU Blue Card, unless the period of unemployment exceeds **six consecutive months**.

Amendment 36

Proposal for a directive Article 14 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The EU Blue card holder shall have the right to remain on the territory for as long as he is engaged in training activities aimed at further increasing his/her professional skills or professional re-qualification.

Amendment 37

Proposal for a directive Article 14 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 38

Proposal for a directive Article 15 – paragraph 2

Text proposed by the Commission

Amendment

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.

deleted

Amendment 39

Proposal for a directive Article 15 – paragraph 3

Text proposed by the Commission

Amendment

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.

deleted

Amendment 40

Proposal for a directive Article 16 – paragraph 3

Text proposed by the Commission

Amendment

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.

3. By way of derogation from Article 5(4), first subparagraph, of Directive 2003/86/EC, residence permits for family members shall be granted **as soon as possible, wherever possible in conjunction with the decision to issue the EU Blue Card, and in any event** within six months from the date on which the application was lodged.

Amendment 41

Proposal for a directive Article 17 – paragraph 6

Text proposed by the Commission

Amendment

6. Articles 13, 15 and 16 shall continue to apply, where applicable, after the holder of the EU Blue Card has been issued a residence permit pursuant to Article 18. *deleted*

Justification

Third-country nationals with long-term, EU-wide residence permits should be on an equal footing with EU citizens.

Amendment 42

Proposal for a directive Article 19 – paragraph 1

Text proposed by the Commission

Amendment

1. After two years of legal residence in the first Member State as holder of an EU Blue Card, the person concerned and his/her family members shall be allowed 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.

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

Amendment 43

Proposal for a directive Article 19 – paragraph 2

Text proposed by the Commission

Amendment

2. No later than one month after entering the territory of the second Member State, the holder of the EU Blue Card shall notify his/her presence to the competent authorities of that Member State and present all the documents proving that

2. No later than one month after entering the territory of the second Member State, the holder of the EU Blue Card shall notify 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 for the second Member State.

he/she fulfils the conditions set out in Articles 5 and 6 for the second Member State. ***The holder of an EU Blue Card may also apply in writing to the competent authority for authorisation to stay in the second Member State before arrival, in which case he/she shall supply the required documents.***

Justification

Travelling to a second Member State involves considerable upheaval and legal uncertainty for highly qualified people and their families. There must therefore always be provision for their residence status in the second Member State to be confirmed before they change their place of residence.

Amendment 44

Proposal for a directive Article 19 – paragraph 4

Text proposed by the Commission

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

Amendment

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

Amendment 45

Proposal for a directive Article 21 – paragraph 2

Text proposed by the Commission

2. No later than one month after entering the territory of the second Member State, ***the family members concerned shall notify their presence to the competent authorities of that Member State and present an application for a residence permit.***

Amendment

2. ***An application for a residence permit in a second Member State for members of the family of an EU Blue Card holder may be made while the person concerned is still staying in the territory of the first Member State, and shall be made*** no later than one month after entering the territory of the second Member State ***if the person concerned is already in the territory of the***

second Member State.

Amendment 46

Proposal for a directive Article 22 – paragraph 3

Text proposed by the Commission

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.

Amendment

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 ***in accordance with personal data protection legislation.*** Statistics on admitted family members shall be communicated likewise ***with the exception of information concerning their occupation.*** 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.

PROCEDURE

Title	Conditions of entry and residence of third-country nationals for the purposes of highly qualified employment
References	COM(2007)0637 – C6-0011/2008 – 2007/0228(CNS)
Committee responsible	LIBE
Opinion by Date announced in plenary	EMPL 17.1.2008
Associated committee(s) - date announced in plenary	13.3.2008
Drafts(wo)man Date appointed	Jan Tadeusz Masiel 20.11.2007
Discussed in committee	25.6.2008 9.9.2008
Date adopted	10.9.2008
Result of final vote	+: 36 -: 2 0: 4
Members present for the final vote	Jan Andersson, Edit Bauer, Iles Braghetto, Philip Bushill-Matthews, Milan Cabrnock, Alejandro Cercas, Ole Christensen, Derek Roland Clark, Jean Louis Cottigny, Proinsias De Rossa, Carlo Fatuzzo, Ilda Figueiredo, Roger Helmer, Stephen Hughes, Karin Jöns, Ona Juknevičienė, Jean Lambert, Bernard Lehideux, Elizabeth Lynne, Thomas Mann, Jan Tadeusz Masiel, Maria Matsouka, Mary Lou McDonald, Elisabeth Morin, Juan Andrés Naranjo Escobar, Siiri Oviir, Pier Antonio Panzeri, Rovana Plumb, Elisabeth Schroedter, José Albino Silva Peneda, Jean Spautz, Gabriele Stauner, Ewa Tomaszewska, Anne Van Lancker, Gabriele Zimmer
Substitute(s) present for the final vote	Gabriela Crețu, Petru Filip, Sepp Kusstatscher, Roberto Musacchio, Csaba Sógor
Substitute(s) under Rule 178(2) present for the final vote	Matthias Groote, Tadeusz Zwiefka

3.9.2008

OPINION OF THE COMMITTEE ON DEVELOPMENT

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a Council directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment
(COM(2007)0637 – C6-0011/2008 – 2007/0228(CNS))

Rapporteur: Danutė Budreikaitė

SHORT JUSTIFICATION

The European Commission has presented a Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, also known as the "Blue Card" in order to attract highly qualified migrants to meet its labour force needs and compete in the global "battle for brains". Although the framework of the proposal is to make the EU the most competitive economy in the XXI Century, there are several issues that affect primarily its Development Policy. Indeed, the EU recognizes the importance of coherence between its Development Policy and the rest of its policies included migration, but the Blue Card however risks increasing the shortage of skilled workers or "brain drain" in developing countries, with negative consequences for key development sectors. In that sense, the Blue Card proposal could run against the Policy Coherence for Development framework set up in 2006, one of the main contributions of the EU to attain the Millennium Development Goals in 2015.

Currently, more than 25% of the highly skilled workers from African countries, such as Mozambique, Ghana, Kenya and Uganda live in developed countries. Figures in the Caribbean and Pacific mount up to 70%¹. This brain drain impacts negatively on essential sectors such as education and health and affects the capacity of developing countries to achieve the Millennium Development Goals (MDGs), one of the priorities of the EU's development policy.

Other issue to be addressed by the proposal is the statement that recruitment is made on the basis of the concept of temporary migration, which means that after a certain period working in the EU, the migrant will return to its place of origin (this is also known as "circular migration"). But after two years working in the first Member State, a migrant may move to a

¹ Policy Coherence for Development: Climate Change/Energy/Biofuels, Migration and Research: 22-23.
[http://ec.europa.eu/development/icenter/repository/SEC\(2008\)434%20Pol%20coherence-3.pdf](http://ec.europa.eu/development/icenter/repository/SEC(2008)434%20Pol%20coherence-3.pdf)

second Member State and may cumulate periods of residence in order to obtain long-term status, which turns the temporary migration into a permanent migration. Also related to job opportunities for migrants is the issue of ethical recruitment, a sort of code of conduct to prevent active recruitment in sectors suffering from a lack of human resources. Such a code will however not be able to stop workers flowing to developed countries. What is more, the proposed code of conduct does not include recruitment practices of the private sector and will not include countries such as the United Kingdom, Ireland and Denmark, which do not take part in the Blue Card negotiations

To sum up, although the EU recognizes the possible negative effects of highly skilled migration for developing countries, it argues that highly skilled migration will also benefit developing countries by reducing domestic labour market pressures and by sending remittances back home by migrants abroad. None of these arguments have proved to be completely right: it may be true that the Blue Card reduces the labour market pressures but it will attract workers from sectors already suffering of labour shortage inter alia education and health; at the same time, no consensus has been reached so far as to the real contribution of remittances in the development of social sectors as health or education in developing countries.

AMENDMENTS

The Committee on Development calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive Recital 4a (new)

Text proposed by the Commission

Amendment

(4a) In order to better assist Member States in developing their immigration strategies and policies, as well as aiding migrants to better comprehend and follow the migration process, a common immigration policy should be devised and implemented at European level.

Amendment 2

Proposal for a directive Recital 6

Text proposed by the Commission

Amendment

(6) To achieve the objectives of the Lisbon

(6) To achieve the objectives of the Lisbon

Process it is also important to foster the mobility within the Union of **highly qualified** workers who are EU citizens, and in particular from the Member States which acceded in 2004 and 2007. In implementing this Directive, Member States are bound to respect the principle of Community preference as expressed in particular in the relevant provisions of the Acts of Accession of 16 April 2003 and 25 April 2005.

Process it is also important to foster the mobility within the Union of workers who are EU citizens, and in particular from the Member States which acceded in 2004 and 2007. In implementing this Directive, Member States are bound to respect the principle of Community preference as expressed in particular in the relevant provisions of the Acts of Accession of 16 April 2003 and 25 April 2005.

Amendment 3

Proposal for a directive Recital 17

Text proposed by the Commission

(17) The mobility of highly qualified third-country workers between the Community and their countries of origin should be fostered and sustained. Derogations from Council Directive 2003/109/EC of 25 November 2003 on the status of third-country nationals who are long-term residents should be foreseen in order to extend the period of absence from the territory of the Community which is not taken into account for the calculation of the period of legal and continuous residence necessary to be eligible for the EC long-term residence status. Longer periods of absence than those provided for in Council Directive 2003/109/EC should also be allowed after highly qualified third-country workers have acquired EC long-term residence status. In particular, to encourage the circular migration of highly qualified third-country workers originating from developing countries, Member States should take into consideration making use of the possibilities offered in Article 4(3), second subparagraph, and Article 9(2) of Council Directive 2003/109/EC to allow for longer periods of absence than those provided for in this Directive. In order to

Amendment

(17) The mobility of highly qualified third-country workers between the Community and their countries of origin should be fostered and sustained. Derogations from Council Directive 2003/109/EC of 25 November 2003 on the status of third-country nationals who are long-term residents should be foreseen in order to extend the period of absence from the territory of the Community which is not taken into account for the calculation of the period of legal and continuous residence necessary to be eligible for the EC long-term residence status. Longer periods of absence than those provided for in Council Directive 2003/109/EC should also be allowed after highly qualified third-country workers have acquired EC long-term residence status. ***In accordance with the Commission Communication of 12 April 2005 entitled "Policy Coherence for Development - Accelerating progress towards attaining the Millennium Development Goals" (COM(2005)0134), five targets need to be stressed in order to encourage circular migration, which are as follows: 1) training of workers in developing countries; 2) retention of***

ensure consistency in particular with the underlying development objectives, these derogations should only be applicable if it can be proven that the person concerned has returned to his/her country of origin *for work, study or volunteering activities*.

highly skilled workers in developing countries; 3) promotion of voluntary return to the country of origin by facilitating social and financial security; 4) ethical recruitment by a legally binding code of conduct; and 5) enhancing circular migration by implementing standards on dual citizenship and mutual recognition of diplomas. In particular, to encourage the circular migration of highly qualified third-country workers originating from developing countries, Member States should take into consideration making use of the possibilities offered in Article 4(3), second subparagraph, and Article 9(2) of Council Directive 2003/109/EC to allow for longer periods of absence than those provided for in this Directive. In order to ensure consistency in particular with the underlying development objectives, these derogations should only be applicable if it can be proven that the person concerned has returned to his/her country of origin.

Amendment 4

Proposal for a directive Recital 20

Text proposed by the Commission

(20) In implementing this Directive, Member States should refrain from pursuing active recruitment in developing countries in sectors suffering from lack of human resources. Ethical recruitment policies and principles *applicable to public and private sector employers should be developed in particular in the health sector, as underlined in the Council and Member States' conclusions of 14 May 2007 on the European Programme for Action to tackle the critical shortage of health workers in developing countries (2007-2013)*. These should be strengthened by the development of mechanisms, guidelines and other tools to facilitate

Amendment

(20) In implementing this Directive, Member States should refrain from pursuing active recruitment in developing countries in sectors suffering from lack of human resources, *especially the health and education sectors*. Ethical recruitment policies and principles should be strengthened by the development of mechanisms, guidelines and other tools to facilitate circular and temporary migration, as well as other measures that would minimise negative and maximise positive impacts of highly skilled immigration on developing countries. Any such intervention must be taken along the lines of *the Council conclusions of 15 May*

circular and temporary migration, as well as other measures that would minimise negative and maximise positive impacts of highly skilled immigration on developing countries. Any such intervention must be taken along the lines of the Joint Africa-EU Declaration on Migration and Development agreed in Tripoli on 22 and 23 November 2006 and with a view of establishing a comprehensive migration policy as called for by the European Council of 14 and 15 December 2006.

2007 on a European Programme for Action to tackle the critical shortage of health workers in developing countries (2007-2013), the Commission Communication entitled "Policy Coherence for Development - Accelerating progress towards attaining the Millennium Development Goals", the new EU-Africa Strategic Partnership initiated at the EU-Africa Summit of December 2007 in Lisbon and the Joint Africa-EU Declaration on Migration and Development agreed in Tripoli on 22 and 23 November 2006 with a view of establishing a comprehensive migration policy as called for by the European Council of 14 and 15 December 2006.

Amendment 5

Proposal for a directive Recital 20 a (new)

Text proposed by the Commission

Amendment

(20a) The Commission and the Member States should develop and implement, as stated in the Council conclusions of 10 April 2006 on the EU Strategy for Action on the Crisis in Human Resources for Health in Developing Countries, an EU Code of Conduct for ethical recruitment of health workers, compliant with the International Labour Organisation (ILO) provisions and based on Member States' best practices.

Justification

Following the idea of ethical recruitment, the proposal seeks to implement concrete measures (a legally binding commitment) in order to avoid shortage of skilled workers in developing countries.

Amendment 6

Proposal for a directive Recital 20 b (new)

Text proposed by the Commission

Amendment

(20b) The scope of the EU Code of Conduct for ethical recruitment of health workers should also be extended to other vital areas such as education with the objective of ensuring that both public and private recruiters will adopt an ethical approach to, or even better abstain from, the hiring of skilled migrants working in any area in which their country of origin suffers from a severe labour shortage.

Justification

In order to prevent negative effects of unethical recruitment on the sector of education, the extension of the code of conduct to cover this vital area is also proposed.

Amendment 7

Proposal for a directive Recital 20 c (new)

Text proposed by the Commission

Amendment

(20c) The Commission should evaluate the impact of this Directive on the partnership on migration, mobility and employment included in the new Africa-EU Strategic Partnership signed at the EU-Africa Summit held in Lisbon in December 2007.

Amendment 8

Proposal for a directive Recital 20 d (new)

Text proposed by the Commission

Amendment

(20d) The Commission should provide

adequate technical assistance and training to developing countries in order to build up effective strategies to retain highly skilled workers through, for instance, development programmes aimed at the improvement of local employment opportunities and improvements in working conditions.

Amendment 9

Proposal for a directive Recital 20 e (new)

Text proposed by the Commission

Amendment

(20e) The EU should develop a comprehensive and coherent strategy to overcome the likely negative effects of the migration of highly qualified workers in developing countries. This strategy should focus on investing in the training of highly qualified human resources, especially in health and education, and on assisting developing countries to retain highly skilled workers at home.

Justification

Brain drain from developing countries encompasses negative consequences on human resources needs in developing countries. Basically EU Member States are benefiting of the fruits resulted from educational investments made by developing countries. EU has the moral obligation to plan arrangements in order to compensate the likely loss that different developing countries could be facing.

Amendment 10

Proposal for a directive Recital 21

Text proposed by the Commission

Amendment

(21) Specific reporting provisions should be foreseen to monitor the implementation of the highly qualified scheme, also with a view to identifying and possibly

(21) Specific reporting provisions should be foreseen to monitor the implementation of the highly qualified scheme, also with a view to identifying and possibly

counteracting its possible impacts in terms of brain drain in developing countries, especially in Sub-Saharan Africa. Data on the professions and the nationality of highly qualified immigrants admitted by Member States should therefore be transmitted annually by Member States through the network created for these purposes by Council Decision 2006/688/EC of 5 October 2006 on the establishment of a mutual information mechanism concerning Member States' measures in the areas of asylum and immigration.

counteracting its possible impacts in terms of brain drain in developing countries, especially in Sub-Saharan Africa. Data on the professions, age, gender and the nationality of highly qualified immigrants admitted by Member States should therefore be transmitted annually by Member States through the network created for these purposes by Council Decision 2006/688/EC of 5 October 2006 on the establishment of a mutual information mechanism concerning Member States' measures in the areas of asylum and immigration. ***Therefore the Commission should carry out an impact assessment on the consequences for developing countries of applying the Blue Card proposal and provide these data to Members States and the European Parliament.***

Amendment 11

Proposal for a directive Recital 21 a (new)

Text proposed by the Commission

Amendment

(21a) The Commission should take into account the potential impact of this Directive on the development of the health and education sectors in developing countries and, since those sectors are essential to the achievement of Millennium Development Goals (MDGs) number 2,4,5 and 6, a coherence between the Directive and the MDGs is therefore needed.

Amendment 12

**Proposal for a directive
Recital 26 a (new)**

Text proposed by the Commission

Amendment

(26a) Since it is important to involve immigrants in the development of their countries of origin, the Union should propose to governments of the African, Caribbean and Pacific (ACP) countries and governments of other countries of origin to consider together with the Union the implementation and application of policies aimed at maximising the positive impact of remittances by ensuring that they pass through official transfer systems, thereby making them more substantial, swifter, less expensive to carry out and better channelled.

Amendment 13

**Proposal for a directive
Recital 27 a (new)**

Text proposed by the Commission

Amendment

(27a) In order to apply EU legislation and a common strategy for conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, the Commission and the Council should express their regret at the non-participation of the UK, Denmark and Ireland in the Blue Card directive and implement a legally binding code of conduct on conditions for third-country nationals.

PROCEDURE

Title	Conditions of entry and residence of third-country nationals for the purposes of highly qualified employment
References	COM(2007)0637 – C6-0011/2008 – 2007/0228(CNS)
Committee responsible	LIBE
Opinion by Date announced in plenary	DEVE 17.1.2008
Drafts(wo)man Date appointed	Danutė Budreikaitė 18.12.2007
Discussed in committee	25.6.2008
Date adopted	25.8.2008
Result of final vote	+: 18 -: 0 0: 0
Members present for the final vote	Thijs Berman, Marie-Arlette Carlotti, Corina Crețu, Nirj Deva, Fernando Fernández Martín, Juan Fraile Cantón, Gay Mitchell, Horst Posdorf, Frithjof Schmidt, Jürgen Schröder, Jan Zahradil, Mauro Zani
Substitute(s) present for the final vote	John Bowis, Ana Maria Gomes, Miguel Angel Martínez Martínez, Manolis Mavrommatis, Anne Van Lancker, Renate Weber

PROCEDURE

Title	Conditions of entry and residence of third-country nationals for the purposes of highly qualified employment			
References	COM(2007)0637 – C6-0011/2008 – 2007/0228(CNS)			
Date of consulting Parliament	10.1.2008			
Committee responsible Date announced in plenary	LIBE 17.1.2008			
Committee(s) asked for opinion(s) Date announced in plenary	DEVE 17.1.2008	EMPL 17.1.2008		
Associated committee(s) Date announced in plenary	EMPL 13.3.2008			
Rapporteur(s) Date appointed	Ewa Klamt 18.12.2007			
Discussed in committee	27.2.2008	8.4.2008	16.7.2008	8.9.2008
	4.11.2008			
Date adopted	4.11.2008			
Result of final vote	+: -: 0:	33 0 11		
Members present for the final vote	Alexander Alvaro, Roberta Angelilli, Mario Borghezio, Catherine Boursier, Emine Bozkurt, Philip Bradbourn, Mihael Brejc, Kathalijne Maria Buitenweg, Maddalena Calia, Giusto Catania, Jean-Marie Cavada, Esther De Lange, Panayiotis Demetriou, Gérard Deprez, Agustín Díaz de Mera García Consuegra, Bárbara Dührkop Dührkop, Armando França, Urszula Gacek, Kinga Gál, Jeanine Hennis-Plasschaert, Ewa Klamt, Wolfgang Kreissl-Dörfler, Stavros Lambrinidis, Henrik Lax, Baroness Sarah Ludford, Javier Moreno Sánchez, Rareș-Lucian Niculescu, Maria Grazia Pagano, Martine Roure, Sebastiano Sanzarello, Inger Segelström, Csaba Sógor, Vladimir Urutchev, Ioannis Varvitsiotis, Manfred Weber, Renate Weber			
Substitute(s) present for the final vote	Genowefa Grabowska, Metin Kazak, Jean Lambert, Marian-Jean Marinescu, Antonio Masip Hidalgo, Hubert Pirker, Rainer Wieland			
Substitute(s) under Rule 178(2) present for the final vote	Fernand Le Rachinel			