



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 28 February 2008**

---

**Interinstitutional File:  
2007/0228 (CNS)**

---

**6051/08**

**LIMITE**

**DOCUMENT PARTIALLY  
ACCESSIBLE TO THE PUBLIC**

**MIGR 6  
SOC 73**

**OUTCOME OF PROCEEDINGS**

---

of : Working Party on Migration and Expulsion  
on : 28 January 2008

---

No. Cion doc: 14490/07 MIGR 104 SOC 413

---

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

---

1. At its meeting on 28 January 2008, the Working Party continued the first reading of the above proposal and addressed in particular Articles 4-12.
2. The results of the discussions are set out in the Annex to this Note, with delegations' comments in the footnotes.

#### *Article 4*

#### **More favourable provisions**

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

---

<sup>1</sup> In reply to a query from **DELETED**, the **Cion** clarified that agreements already applicable and also future agreements, not yet concluded, would be covered by this provision.

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

---

<sup>2</sup> It was generally felt that the text of this provision needs to be clarified. As underlined by **DELETED**, two different issues arose from the discussions, which need to be addressed separately.

- ***A first issue***, to which in particular **DELETED** drew attention, concerns the scope of this provision. According to **DELETED**, supported by **DELETED**, Member States should be allowed to maintain national schemes, resulting in the issue of a national residence permit/card for highly skilled third-country nationals. In this context, **DELETED** suggested adding the following new paragraph:

*Member States may issue residence permits for the purpose of highly qualified employment on terms that are more favourable than those laid down by this Directive. Such residence permits shall not confer the right of residence in the other Member States as provided by Chapter V of this Directive.*

**DELETED** drew attention to the fact that, if the **DELETED** suggestion for Article 1 (a) is taken on board (see 5255/08, page 3, footnote 2) the scope of this provision would become clearer.

The **Cion** noted that Article 4 addresses the issue of more favourable provisions in the framework of the implementation of the rules introduced by the proposal. This means that the Member States could continue to admit, under national schemes, applicants who do not fulfil all the entry criteria as set out by Articles 5 and 6 and accordingly issue them with national permits. On the issue raised by **DELETED**, it pointed out that the co-existence of national arrangements with the Blue Card scheme set is not excluded by the proposal. However, it stressed that only applicants who meet the requirements set out by the proposal should be entitled to obtain an EU Blue Card. Finally, it drew attention to the fact the applicants of an EU Blue Card who meet all the relevant requirements could only be admitted on the basis of the proposal, not under national schemes.

- ***A second issue*** results from the concerns expressed in particular by **DELETED**, with respect to possible derogations to the system established by this proposal which could be applied by individual Member States, as a consequence of the implementation of this provision. **DELETED** drew attention to the possibility, by means of the combined application of Articles 4(2), 17(2) and 19(1), of waiving the requirement of at least two years of legal residence in the first Member State as a Blue Card holder before moving to another Member State. **DELETED** added that the application of Article 4(2) could have similar consequences for other provisions of the proposal as well. It also drew attention on the link between paragraph 1 and 2 of Article 2, referring to the case of an agreement signed by a Member State with a third-country, which contain more favourable provisions vis-à-vis the proposal. In this context, it also wondered if the more favourable provisions could apply to the first entry of the third-country concerned and/or also to the case when he/she, as a Blue Card holder, moves to a second Member State.

The **Cion** acknowledged that the text of paragraph 2 is not entirely clear. In its view the first entry, as well as the issuing of the Blue Card, should take place on the basis of rules as uniform as possible. More favourable provisions could then be granted for residence conditions and intra EU-mobility. However, certain criteria, such as the two years of legal residence in the first Member State evoked by **DELETED**, are essential requirements that should not fall within the scope of this provision. For this reason it suggested to revise the draft of this provision, by means of inserting, in paragraph 2, a list of provisions for which Article 4 could not apply and/or by introducing appropriate clarifications in the Preamble.

## Chapter II

### CONDITIONS OF ADMISSION

#### Article 5

##### *Criteria for admission*

1. A third-country national who applies to be admitted for the purposes set out in this Directive shall<sup>3</sup>:
  - (a) present a valid work contract or a binding job offer of at least one year in the Member State concerned<sup>4</sup>;

---

<sup>3</sup> **DELETED** entered reservations on Article 5.

In reply to a query from **DELETED**, the **Cion** pointed out that the list of conditions contained in Article 5 to be met by a third-country national in order to obtain a Blue Card is an exhaustive one. According to **DELETED**, supported by **DELETED**, this list should also contain the requirement of providing evidence of appropriate accommodation (as in the case of the sponsor under Article 7 (a) of the Directive on the right to family reunification). The **Cion** took the view that it would not be justified to introduce this new requirement, as the situation is quite different (the sponsor already lives in the territory of the Member State concerned, while under this proposal the applicant will, in most cases, not be resident there yet).

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

<sup>4</sup> **DELETED** entered a scrutiny reservation on point a). In reply to a query from **DELETED**, the **Cion** clarified that the deadline of one year applies to both alternative criteria (*valid work contract* and *binding job offer*) mentioned in point a). Noting that the Blue Card is issued for an initial period of two years, **DELETED** wondered why this provision requests evidence of a *valid work contract* or *binding job offer* for a period of one year. Both **DELETED** drew attention to the fact that the notion of *binding job offer* is not acknowledged in their legal system. **DELETED** preferred to refer to a system of *letter of guarantees*.

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

- (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;
- (c) for unregulated professions, present the documents attesting the relevant higher professional qualifications in the occupation or sector specified in the work contract or in the binding offer of work<sup>5</sup>;
- (d) present a valid travel document, as determined by national law and, if appropriate, evidence of valid residence permit. Member States may<sup>6</sup> require the period of the validity of the travel document to cover at least the initial duration of the residence permit<sup>7</sup>;

---

<sup>5</sup> **DELETED** entered a reservation on point c), pointing out that the criterion of the salary should be considered a sufficient one. Moreover, it raised the question of who will assess the qualifications. It took the view, supported by **DELETED**, that the authorities should not take the role of the employer.

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

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

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

<sup>6</sup> **DELETED** suggested replacing *may* with *shall*. The **Cion** felt that this suggestion could be accepted.

<sup>7</sup> **DELETED** raised the issue of the relation between this provision and Article 11 (2), according to which the application could also be submitted when the person concerned is residing outside the territory of the Member State where he/she should be admitted to work. Drawing attention to the fact that, in such cases, the person concerned will need a visa to enter the territory of that Member State, they noted that point d) does not contain any reference to visas.

The **Pres.** felt that this concern could be addressed by inserting a reference to *visas* in this provision. **DELETED** suggested adding, at the beginning of this provision, the words *Without prejudice to Article 11*.

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

- (e) present evidence of having a sickness insurance for the applicant and his/her family members for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or resulting from, the work contract<sup>8</sup>;
- (f) not be considered to pose a threat to public policy, public security or public health<sup>9</sup>.

---

<sup>8</sup> **DELETED** suggested amending the beginning of point e) as follows:  
*present evidence of having, or that he/she will have, a sickness insurance for the applicant...*  
[rest unchanged].

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

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

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

<sup>9</sup> **DELETED**, supported by **DELETED**, suggested adding *as defined by national law* in point f).

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

2. <sup>10</sup>In addition to the conditions stipulated in paragraph 1, the gross monthly salary specified in the work contract or binding job offer must not be inferior to a national salary threshold defined and published for the purpose by the Member States which shall be at least three times the minimum gross monthly wage as set by national law.

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

---

<sup>10</sup> **DELETED** entered a scrutiny reservation on this provision. Pointing out that their national legislation does not provide for the criterion of a *national salary threshold* **DELETED** entered reservations on paragraph 2. **DELETED** - which is still considering how this provision could be implemented in its legal system - and **DELETED** also entered scrutiny reservations on paragraph 2, and, in particular, on its second sub-paragraph. **DELETED** suggested deleting the entire paragraph 2, while **DELETED**, supported by **DELETED**, suggested using a different, job-based criterion, such as the salary earned for the specific category of job concerned. **DELETED**, supported by **DELETED**, suggested referring to the average wage in the sector where the person concerned will be employed. **DELETED** supported the criterion adopted in the proposal and opposed deleting paragraph 2. However, **DELETED** stressed that the criterion of a *national salary threshold* should appropriately reflect the fact that the persons concerned are highly qualified third-country nationals. With respect to the **DELETED** suggestions, **DELETED** felt that it would be difficult to define a specific or an average wage for a certain category of job. In its view, an important issue is to avoid fraud, in the sense that the Blue Card holder should effectively receive the required salary. **DELETED**, which made reference to Article 15 (1) (a), pointed out that the Blue Card holder should be treated as a national also with respect to wages. With respect in particular to the second sub-paragraph, **DELETED** took the view that the envisaged salary threshold appears to be too small.

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

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

## Article 6

### Derogation

If the application is submitted by a third-country national of less than 30 years of age and holding higher education qualifications, the following derogations shall<sup>11</sup> apply:

- (a) Member States shall<sup>12</sup> consider fulfilled the condition set out in Article 5(2) if the gross monthly salary offered corresponds to at least two-thirds of the national salary threshold defined in accordance with Article 5(2);
- (b) Member States may<sup>13</sup> waive the salary requirement provided for in Article 5(2) on condition that the applicant has completed higher education on site studies and obtained a 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<sup>14</sup>.

---

<sup>11</sup> **DELETED** entered a reservation and **DELETED**, as well as **DELETED**, entered scrutiny reservations on this provision. In particular, **DELETED** considered that this provision might raise concerns in terms of the principle of non-discrimination.

**DELETED**, which took the view that the derogations listed in this provision should not be compulsory, suggested replacing *shall* with *may*. In reply to a query from **DELETED**, the **Cion** noted that the choice of the exact age of a person who is entitled to enjoy the derogations contained in this provision (less than 30 years old) resulted from a political decision. On the question of non-discrimination, the **Cion** pointed out that this rule is to be interpreted as a positive discrimination, which is therefore consistent with the EU acquis. With respect to a query from **DELETED**, it noted that, if the person turns 30 after, for example, one year from the beginning of the work contract, he/she could still benefit from this provision. However, in case of renewal of his/her EU Blue Card, the general rule will apply.

<sup>12</sup> **DELETED**, supported by **DELETED**, suggested replacing *shall* with *may*. **DELETED** entered a scrutiny reservation on point a).

<sup>13</sup> **DELETED** suggested replacing *shall* with *may*. Moreover **DELETED**, as well as **DELETED**, felt that, instead of waiving the salary requirement, it would more appropriate to soften it. **DELETED** also expressed concerns on the consequences that this provision might have vis-à-vis the promotion of circular migration. **DELETED** entered a scrutiny reservation on point b).

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

<sup>14</sup> **DELETED** entered a scrutiny reservation on point b). The **Cion**, supported by **DELETED**, took the view that point c) could be deleted. Also, the **Pres.** considered that it would be appropriate to delete point b).



## Article 7

### *Volumes of admission*

Articles 5 and 6 shall be without prejudice to the competence of the Member States to determine volumes of admission of third-country nationals for highly qualified employment<sup>15</sup>.

## Chapter III

### EU BLUE CARD, PROCEDURE AND TRANSPARENCY

## Article 8

### *EU blue card*

1. A person fulfilling the requirements set out in Articles 5 and 6 and for whom a positive decision has been issued<sup>16</sup> by the competent authorities shall be issued an EU Blue Card.

---

<sup>15</sup> A number of delegations indicated that the word *volumes* has been wrongly translated in different language versions as *quotas* and needs therefore to be corrected.

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

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

<sup>16</sup> **DELETED**, supported by **DELETED**, felt that the text of paragraph 1 is not clear and should be revised. In particular **DELETED** expressed concerns on the use of the word *issued* in relation with *positive decision*. In order to cover this concern, the **Pres.** suggested replacing *issued* with *taken*. The **Cion** supported this suggestion.

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

The **Cion** underlined that paragraph 1 refers to the entire provision. In this context, it drew attention to the fact that the purpose of the expression *a positive decision has been issued* is to underline that there is not an automatic right of admission.

2. <sup>17</sup>The initial validity of an EU Blue Card shall be of two years<sup>18</sup> and shall be renewed for at least the same duration. If the work contract covers a period less than two years, the EU Blue Card shall be issued for the duration of the work contract plus three months<sup>19</sup>.
3. The EU Blue Card shall be issued by the competent authorities of the Member State using the uniform format as laid down in Regulation (EC) No 1030/2002. In accordance with its Annex a, 7.5-9, Member States shall indicate on the EU Blue Card the conditions for access to the labour market as set out in Article 13(1) or (2) of this Directive, whichever is applicable. Under the heading “type of permit”, Member States shall enter "EU Blue Card".

---

<sup>17</sup> **DELETED** entered a scrutiny reservation on paragraph 2. **DELETED** that paragraph 3 is a complex provision, the structure of which needs to be revised, namely by dividing it in various sub-paragraphs.

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

<sup>18</sup> **DELETED** entered a scrutiny reservation on the period of validity of the Blue Card (2 years). According to **DELETED**, the period of validity of the Blue Card should not be set at 2 years, but linked to the duration of the work contract. **DELETED** preferred sticking to a period of validity of 2 years, which will allow Member States to carry out checks when the Blue Card is renewed. **DELETED** took the view that the initial period of validity should be of at least one year. The Blue Card would then be renewed until the person is entitled to acquire long-term resident status. **DELETED** expressed some concerns in relation with this provision, insofar as in its legal system the duration of the residence permit is linked with the purpose of the stay. If the work contract is no longer running, the person concerned would then be in an illegal situation. **DELETED** suggested adding the word *at least* before *two years*. In its view the Blue Card should be renewed only if the work contract has a duration which is longer than its period of validity. **DELETED** felt that, when renewing the Blue Card, its period of validity should correspond to the duration of the work contract.

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

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

<sup>19</sup> The **Cion** clarified that the second sentence of paragraph 2 covers both the initial period of validity of the Blue Card and its renewal.

4. During the period of its validity, the EU Blue Card shall entitle its holder to:
  - (a) <sup>20</sup>enter, re-enter and stay<sup>21</sup> in the territory of the Member State issuing the EU Blue Card;
  - (b) passage through other Member States in order to exercise the rights under point (a).
5. Holders of the EU Blue Card shall be entitled to the rights recognised to them and their family members by Articles 8, 10(2), 12, 13-19 and 21 of this Directive<sup>22</sup>.

### Article 9

#### *Grounds for refusal*

1. Member States shall reject an application for a EU Blue Card whenever the applicant does not meet the conditions set out in Articles 5 and 6 or whenever the documents presented have been fraudulently acquired, or falsified or tampered with<sup>23</sup>.

---

<sup>20</sup> **DELETED** entered a scrutiny reservation on paragraph 4.  
**DELETED** wondered what the relation is between this provision and the visa requirement for the person concerned.

The **Pres.**, supported by the **Cion**, took the view that the word *enter* already covers the **DELETED** concern.

<sup>21</sup> **DELETED** drew attention to the fact that paragraph 2 provides for an entitlement to reside and work, while a reference to work is missing in paragraph 4.

<sup>22</sup> **DELETED**, which found the scope of paragraph 5 quite unclear and expressed doubts about its added value, suggested deleting it.

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

<sup>23</sup> According to **DELETED**, supported by **DELETED**, the fact that the employer has been convicted for illegal employment should also be a reason for rejecting an application.

2. Before taking the decision on an application for an EU Blue Card, Member States may examine the situation of their labour market and apply their national procedures regarding the requirements for filling a vacancy<sup>24</sup>.

For reasons of labour market policy, Member States may<sup>25</sup> give preference to Union citizens, to third-country nationals, when provided for by Community legislation, as well as to third-country nationals who reside legally and receive unemployment benefits in the Member States concerned<sup>26</sup>.

---

<sup>24</sup> Considering the relationship between paragraphs 1 and 2, **DELETED** took the view that they address two different issues. The first refers to the rejection of an application, while the second addresses the question of the availability of a specific quota. In reply to a query from **DELETED**, the **Cion** noted that the assessment of the situation of the labour market will be made by the Member State. Once the Blue Card is issued, the Member State will be allowed to check the situation of the labour market after two years, at the time of its renewal.

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

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

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

<sup>25</sup> **DELETED** wanted *may* to be replaced with *shall*, insofar as the principle of the 'Community preference' should be a compulsory one. In this context, **DELETED** suggested moving the second-subparagraph of paragraph 2 to Article 5, as one of the conditions to be met for being entitled to obtaining a Blue Card.

**DELETED** preferred maintaining *may*.

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

<sup>26</sup> In reply to a query from **DELETED**, the **Cion** clarified that the list of cases contained in this provision should be considered as exhaustive.

## Article 10

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

1. Member States shall withdraw or refuse to renew an EU Blue Card issued on the basis of this Directive in the following cases:
  - (a) when it has been fraudulently acquired, or has been falsified or tampered with, or
  - (b) wherever it appears that the holder did not meet or no longer meets the conditions for entry and residence laid down in Articles 5 and 6 or is residing for purposes other than that for which he/she was authorised to reside.
  - (c) when the holder has not respected the limitations set out in Articles 13(1)<sup>27</sup> and (2)<sup>28</sup> and 14.
2. The lack of notification pursuant to Article 13(2) shall not be considered to be a sufficient reason for withdrawing or not renewing the EU Blue Card<sup>29</sup>.
3. Member States may<sup>30</sup> withdraw or refuse to renew an EU Blue Card for reasons of public policy, public security or public health<sup>31</sup>.

---

<sup>27</sup> **DELETED** expressed doubts about the reference to Article 13 (1) in this provision.

<sup>28</sup> **DELETED** queried the reference to Article 13 (2) in paragraph 1 c) and in paragraph 2. The **Cion** drew attention to the fact that the first provision refers to the first sentence of Article 13 (2), while the second refers to the second sentence of Article 13 (2). It added that this issue will need to be clarified.

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

<sup>29</sup> **DELETED**, supported by **DELETED**, felt that the provision in paragraph 2 is too strict, insofar in its view as a lack of notification could be considered to be a sufficient reason for withdrawing or not renewing the EU Blue Card.

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

<sup>30</sup> **DELETED** suggested replacing *may* with *shall*.

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

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

<sup>31</sup> **DELETED**, which wondered why paragraph 4 (*reasons of public policy, public security or public health*) is different from that contained in Article 5 (1) f) (*threat to public policy, public security or public health*), suggested aligning the two provisions.

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

## Article 11

### *Applications for admission*

1. Member States shall determine whether applications for an EU Blue Card are to be made by the third-country national or by his/her employer<sup>32</sup>.
2. The application shall be considered and examined either when the third-country national concerned is residing outside the territory of the Member State<sup>33</sup> to which he/she wishes to be admitted or when he/she is already legally resident in the territory of the Member State concerned<sup>34</sup>.
3. The Member State concerned shall grant the third-country national whose application has been accepted<sup>35</sup> every facility to obtain the requisite visas<sup>36</sup>.

---

<sup>32</sup> **DELETED** entered a reservation on Article 11. **DELETED** felt that paragraph 1 could not be consistent with the provisions of Regulation 1030/2002, in particular with respect to the biometrics requirements.

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

According to **DELETED**, the consideration of this paragraph should take account of the discussions in the framework of the proposal for a Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State

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

<sup>33</sup> **DELETED** suggested to redraft the beginning of paragraph 2 as follows: *The third-country national concerned is entitled to submit the application when he/she is residing outside the territory of the Member State to which... [rest unchanged]*

<sup>34</sup> **DELETED** entered a reservation and **DELETED** a scrutiny reservation on this provision, linked in particular with the possibility of submitting the application when the person is already legally resident in the territory of the Member State concerned.

**DELETED** suggested replacing the words *already legally resident* with the word *holder of a Blue Card*.

In reply to a query from **DELETED**, which wondered why paragraph 2 uses the expression *legally resident*, while paragraph 4 refers to *legally present*, the **Cion** underlined that the distinction is deliberate.

<sup>35</sup> **DELETED** entered a scrutiny reservation on paragraph 3.

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

<sup>36</sup> **DELETED** suggested using for this provision a wording identical to that of Article 14 (4) of the Directive on researchers (*The Member State concerned shall grant the third-country national who has submitted an application and who fulfil the conditions of Articles 5 and 6*

4. By way of derogation from paragraph 2, Member States may accept, in accordance with their national legislation, an application submitted when the third-country national concerned is not in possession of a residence permit but is legally present in its territory<sup>37</sup>.

---

<sup>37</sup> *every facility to obtain the requisite visas*).  
**DELETED** entered a reservation on paragraph 4. **DELETED**, as well as **DELETED**, expressed the fear that this provision could give to illegally present persons the possibility of regularising their situation.

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

## Article 12

### *Procedural safeguards*<sup>38</sup>

1. <sup>39</sup>The competent authorities of the Member States shall adopt a decision on the complete application and notify the applicant in writing, in accordance with the notification procedures laid down in the national legislation of the concerned Member State, at the latest within 30 days of the date on which the application was lodged. In exceptional cases involving complex applications, the deadline may be extended for a maximum of another 60 days.

---

<sup>38</sup> **DELETED** entered reservations on Article 12.

**DELETED** considered that it is difficult to grant procedural guarantees to a person who is not yet on its territory. It felt that this provision does not clearly indicate that there are two different procedures involved: the first, which concerns the granting of the required visa, and the second which relates to the application for obtaining the Blue Card. A clear distinction should be introduced between the two procedures.

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

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

**DELETED** suggested inserting a new paragraph in Article 12 along these lines:

*Once received, the Member State shall consider and immediately process the application in accordance with its national law.*

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

<sup>39</sup> **DELETED** entered scrutiny reservations on paragraph 1.

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

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



2. If the information supplied in support of the application is inadequate, the competent authorities shall notify the applicant of the additional information that is required. The period referred to in paragraph 1 shall be suspended until the authorities have received the additional information required<sup>40</sup>.
3. Any decision rejecting an application for an EU Blue Card, or non-renewing or withdrawing an EU Blue Card, shall be notified in writing to the third-country national concerned and, where relevant, to his/her employer in accordance with the notification procedures under the relevant national legislation and shall be open to challenge before the courts of the Member State concerned<sup>41</sup>. The notification shall specify the reasons for the decision<sup>42</sup>, the possible redress procedures available and the time limit for taking action.

---

<sup>40</sup> **DELETED** suggested revising the draft of this provision. In its view the authorities should inform the person concerned that additional information is required and set a deadline to provide it. If the information is not communicated within the deadline, the application will not be deemed complete.

<sup>41</sup> Drawing attention to the fact that in their legal systems specific administrative bodies are competent to examine these kind of legal challenges, **DELETED** suggested also introducing this reference in this provision.

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

<sup>42</sup> **DELETED** felt that the extent of the procedural guarantees should be further considered. In particular it wondered why the competent authorities should provide reasons for rejecting applications.