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THE EUROPEAN UNION**

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on : 11-12 February 2004

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Subject : Proposal for a Council Directive on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service

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At its meeting held on 11 and 12 February 2004 the Working Party completed the third reading of the above Proposal.

The text of the entire draft Directive is set out below, with the comments and reservations of the delegations in footnotes.

Proposal for a

## COUNCIL DIRECTIVE

**on the conditions of admission<sup>1</sup> of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service<sup>2</sup>**

### Chapter I

#### General Provisions

##### *Article 1: Subject-matter*

The purpose of this Directive is to determine:

- a) the conditions for admission of third-country nationals to the territory of the Member States for a period exceeding three months for the purpose of studies, pupil exchange unremunerated training or voluntary service
- b) rules concerning the procedures for admitting third-country nationals to the territory of the Member States for those purposes.

##### *Article 2: Definitions*

For the purposes of this Directive:

- a) “third-country national” means any person who is not a citizen of the European Union within the meaning of Article 17(1) of the Treaty;
- b) “student” means a third-country national accepted by an establishment of higher education and admitted to the territory of a Member State to pursue as his / her main activity a full-time course of study leading to a higher education qualification recognised by the Member State, including diplomas, certificates or doctoral degrees in an establishment of higher education which may cover a preparatory course prior to such education whose duration is determined<sup>3</sup> according to national legislation.

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<sup>1</sup> **DELETED** suggested inserting a recital in the Preamble clarifying the notion of the term *admission*, which is used throughout this Proposal.

<sup>2</sup> **DELETED** maintained a general scrutiny reservation on the whole Draft Directive.

<sup>3</sup> **DELETED** suggested to delete the wording *whose duration is determined* and to introduce a more general recital in this respect.

- c) “school pupil” means a third-country national admitted to the territory of a Member State to follow a recognised programme of secondary education in the context of an exchange scheme operated by an organisation recognised for the purpose by the Member State in accordance with its regulations or administrative practice;
- d) “unremunerated trainee” means a third-country national who has been admitted to the territory of a Member State for a training period without remuneration, in accordance with national law;
- e) “establishment” means a public or private establishment recognised by the host Member State and /or whose courses of study are recognised in accordance with its regulations or administrative practice for the purposes set out in this Directive;
- f) “voluntary service scheme” means a programme of activities of practical solidarity, based on a State or a Community scheme, pursuing objectives of general interest.

*Article 3: Scope*

1. This Directive applies to third-country nationals who apply to be admitted to the territory of a Member State for the purposes of studies.

This Directive also applies to third-country nationals who apply to be admitted to the territory of a Member State for the purposes of pupil exchange, unremunerated training or voluntary service, on condition that the Member State concerned provides in its national legislation for specific schemes for admitting such categories of third country nationals<sup>1</sup>.

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<sup>1</sup> **DELETED** maintained its reservation on the provision. Several delegations, namely **DELETED** suggested that the scope of this Proposal should be compulsory only for students, whereas its application to the categories of pupils, unremunerated trainees and volunteers should be at the discretion of the Member States, thus rendering this second subparagraph purely optional. Consequently, these delegations suggested amending the relevant provisions of this Proposal accordingly. For **DELETED** the inclusion of pupils to the scope of this Proposal posed particular problems, for **DELETED** the inclusion of unremunerated trainees and volunteers caused particular concerns, whilst **DELETED** stressed that it would oppose the exclusion of unremunerated trainees. Additionally, **DELETED**, pointing out that the text should focus on the students, wondered why the principle of subsidiarity in favour of the national legislation could not be applied for the other three aforementioned categories, especially if they comprise only very few third country nationals. The **Cion** underscored that to make the application of the Directive to the other categories completely optional would deprive the instrument from its added value in respect of these categories. The **Pres** took the view that under the current wording Member States shall apply this Draft Directive only if and when they introduce specific formal schemes for the admission of the three aforementioned categories. It pointed out that this issue needs further consideration.

2. The provisions of this Directive do not apply to:

- a) third-country nationals residing in a Member State as asylum-seekers, or under subsidiary forms of protection or under temporary protection schemes;
- b) third-country nationals whose expulsion has been suspended for reasons of fact or of law;
- c) third-country nationals who are members of the family of Union citizens who have exercised their right to free movement in the Community;
- d) third-country nationals who enjoy long-term resident status in a Member State in accordance with Council Directive 2003/109/EC of 25 November 2003 on the status of third country nationals who are long - term residents<sup>1</sup> and exercise their right to reside in another Member State in order to study or receive vocational training.
- e)<sup>2</sup> third country nationals qualified under the national legislation of the Member State concerned as workers or self- employed persons.

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<sup>1</sup> OJ L 16, 23.1.2004, p.44.

<sup>2</sup> The Working Party agreed to insert the following recital to the Preamble in respect of this provision:  
*Third country nationals who fall under the categories of unremunerated trainees and volunteers who are considered, by virtue of their activities or the kind of compensation or remuneration received, as workers under national legislation should not be covered by the scope of this Directive.*

**DELETED** repeated its suggestion to add the following point to paragraph 3 in order to accommodate its concerns for medical students whose studies involve paid training:

*Member States may determine the conditions of entry and residence of third country nationals who intend to carry out specialisation studies in the field of Medicine, taking into account the situation of their national labour market.*

The **Pres** pointed out that the fact that this special category of students may be paid during training does not affect the structure of the Proposal. **DELETED** added that the University Authorities of the Member States maintain their full discretion in respect of the admission of these third country nationals, even by applying a *numerus clausus* in their admission policy. The **Cion** endorsed the argument put forward by **DELETED** and underscored that under this provision **DELETED** would be free to qualify this category as workers and thus exclude them from the scope of this Directive.

*Article 4: More favourable provisions*

1. This Directive is without prejudice to more favourable provisions of:
  - a) bilateral or multilateral agreements between the Community or the Community and its Member States and one or more third countries; or
  - b) bilateral or multilateral agreements between one or more Member States and one or more third countries.
  
2. This Directive is without prejudice to the right of Member States to adopt or maintain provisions that are more favourable to the persons to whom it applies.

## **Chapter II**

### **Conditions of admission**

#### *Article 4a: Principle*

The admission of a third country national under this Directive is subject to the verification of documentary evidence showing that he / she meets the conditions laid down in Article 5 and whichever of Article 6, 7, 8, 9 or 10 applies to the relevant category.

#### *Article 5: General conditions*

1. A third country national who applies to be admitted for the purposes set out in Articles 6-10 shall:
  - a) present a valid travel document, as determined by the national law. Member States may require the period of the validity of the travel document to cover the duration of the planned stay;
  - b) if he /she is a minor under the national law of the host Member State, present a parental authorisation for the planned stay;
  - c) have sickness insurance in respect of all risks normally covered for its own nationals in the Member State concerned;
  - d) not be regarded as a threat to public policy, public security or public health.
  - e) provide proof, if the Member State so requests, that he / she has paid the fee for handling the application on the basis of Article 22 of this Directive.
  
2. Member States shall facilitate the admission procedure for the third-country nationals covered by Articles 6 to 10 who participate in Community programmes enhancing mobility towards or within the European Union.

*Article 6: Specific conditions for students<sup>1</sup>*

1. In addition to the general conditions stipulated in Article 5, a third country national who applies to be admitted for study purposes shall:
  - a) have been accepted by an establishment of higher education to follow a course of study. The student may prove that he / she meets this condition by presenting, among other possibilities, a letter or certificate confirming his /her enrolment, or evidence that he / she is enrolled, subject to a decision on the equivalence of his /her foreign qualification or passing an entrance test<sup>2</sup>;
  - b) provide evidence requested by a Member State that during his /her stay he /she will have sufficient resources to cover his /her subsistence, study and return travel costs<sup>3</sup>. Member States shall make public the minimum monthly resources required for the purpose of this provision, without prejudice to individual examination of each case;
  - c) provide evidence , if the Member State so requires, of sufficient knowledge of the language of the course followed by the student;
  - d) provide evidence, if the Member State so requires, that he / she has paid the fees charged by the establishment.
  
2. Students who automatically qualify for sickness insurance as a result of enrolment at an establishment shall be presumed to meet the condition of Article 5(1)(b).

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<sup>1</sup> **DELETED** suggested inserting the following recital to the Preamble:  
*In case of doubt concerning the grounds of the application, Member States may require, in addition to the conditions set in Articles 5 and 6, all the evidence which is necessary to assess the coherence of the programme of study in order to fight against abuse and misuse of the procedure set by this Directive.*

**DELETED** did not support this suggestion, preferring, if such a clause is to be inserted, a more positive wording.

<sup>2</sup> **DELETED** entered a reservation on this point, linked with the possibility of the third country nationals to enter *subject to a decision on the equivalence of his /her foreign qualification or passing an entrance test* (these delegations expressed their concerns in particular for the latter case: *subject to the passing of an entrance test*)

<sup>3</sup> **DELETED** suggested inserting the following recital to the Preamble:  
*Fellowships may be considered as a suitable mean to make proof of the availability of means of subsistence, as a general requirement for the entry of its holders into the territories of the Member States.*

*Article 7: Mobility of students*

1. Without prejudice to Articles 11(2)(c) and (d), 15 and 20(2), a third-country national who has already been admitted as a student and applies to follow in another Member State part of the studies already commenced, or complement them with a related course of study in another Member State, shall be admitted<sup>1</sup> by the latter Member State within a period that does not hamper the pursuit of the relevant studies, whilst leaving the competent authorities sufficient time to process the application, if he /she:
  - a) meets the conditions laid down by Articles 5 and 6 in relation to that Member State; and
  - b) has sent, with his /her application for admission, full documentary evidence of his /her academic record and evidence that the course he /she wishes to follow genuinely complements the one he /she has completed.
2. Member States may restrict the application of paragraph 1 to Community or bilateral exchange programmes<sup>2</sup>.
3. The competent authorities of the first Member State shall, at the request of the competent authorities of the second Member State provide the appropriate information in relation to the stay of the third country national student in the territory of the first Member State.

*Article 8:*

*Specific conditions for school pupils participating in an exchange scheme*

1. Where a Member State provides in its national legislation for specific schemes for admitting third country nationals for the participation in pupil exchange schemes, a third country national who applies to be admitted as pupil shall, in addition to the general conditions stipulated in Article 5:
  - a) not be below the minimum age nor above the maximum age set by the Member State concerned;
  - b) provide evidence of acceptance to a secondary education establishment;

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<sup>1</sup> **DELETED** entered a reservation on this provision.

<sup>2</sup> **DELETED** entered a scrutiny reservation on this provision.

- c) provides evidence of participation in a recognised pupil exchange scheme programme operated by an organisation recognised for that purpose by the Member State concerned in accordance with its regulations or administrative practice;
- d) provides evidence that the pupil exchange organisation accepts responsibility for him /her throughout his /her period of presence in the territory of the Member State concerned, in particular as regards subsistence, study, health-care and return travel costs;
- e) be accommodated throughout his /her stay by a family meeting the conditions set by the Member State concerned and selected in accordance with the rules of the pupil exchange scheme in which he / she is participating.

2. Member States may confine the admission of school pupils participating in an exchange scheme to nationals of third countries which offer the same possibility for their own nationals.

*Article 9: Specific conditions for unremunerated trainees*

Where a Member State provides in its national legislation for specific schemes for admitting third country nationals as unremunerated trainees, a third country national who applies to be admitted as unremunerated trainee, shall, in addition to the general conditions stipulated in Article 5:

- a) have signed a training agreement, approved if need be by the relevant authority in the Member State concerned in accordance with its regulations or administrative practice, for an unremunerated placement with a public- or private-sector enterprise or vocational training establishment recognised by the Member State in accordance with its regulations or administrative practice;
- b) provide evidence requested by a Member State that during his / her stay he / she will have sufficient resources to cover his / her subsistence, training and return travel costs. The Member States shall make public the minimum monthly resources required for the purpose of this provision, without prejudice to individual examination of each case;

- c) receive, if the Member State so requires, basic language training so as to acquire the knowledge needed for the purposes of the placement.

*Article 10: Specific conditions for volunteers*

Where a Member State provides in its national legislation for specific schemes for admitting third country nationals as volunteers, a third country national who applies to be admitted as a volunteer shall, in addition to the general conditions stipulated in Article 5:

- a) not be below the minimum age nor above the maximum age set by the Member State concerned;
- b) produce an agreement with the organisation responsible in the Member State concerned for the voluntary service scheme in which he is participating, giving a description of tasks, the conditions in which he is supervised in the performance of those tasks, his working hours, the resources available to cover his travel, subsistence, accommodation costs and pocket money throughout his stay and, if appropriate, the training he will receive to help him perform his service;
- c) provide evidence that the organisation responsible for the voluntary service scheme in which he /her is participating has subscribed a third-party insurance policy and accepts full responsibility for him throughout his stay, in particular as regards his subsistence, health-care and return travel costs;
- d) and, if the host Member State specifically requires it, receives a basic introduction to the language, history and political and social structures of that Member State.

### Chapter III

#### Residence permits

##### *Article 11: Residence permit issued to students<sup>1</sup>*

1. A residence permit shall be issued to the student for a period of at least one year and renewable if the holder continues to meet the conditions of Articles 5 and 6. Where the duration of the course of study is less than one year, the permit shall be valid for the duration of the course.

The provisions of the first subparagraph shall apply without prejudice to cases where the student is admitted subject to a decision on the equivalence of his / her foreign qualification or to passing an entrance test<sup>2</sup>,

2. Without prejudice to Articles 15, renewal of a residence permit may be refused or the permit may be withdrawn if the holder:
  - a) has been admitted, subject to passing an entrance test at the establishment where he wishes to study and fails to produce a certificate of enrolment in this establishment;
  - b) has been admitted, subject to a decision on the equivalence of his foreign qualification and has failed to obtain a decision;
  - c) does not respect the limits imposed on access to economic activities under Article 18 of this Directive;

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<sup>1</sup> **DELETED** entered a reservation for the use of the term *residence permit* throughout this Chapter, pointing out that according to its legislation third country nationals who wish to enter the country as students are granted long-term visas and not residence permits. **DELETED** underlined that it shared the concerns of **DELETED**, since the granting of a residence permit, in accordance with its legislation, could give rise to permanent residence rights and eventually the granting of the **DELETED** nationality. This delegation entered also a scrutiny reservation on the last sentence of the first subparagraph of paragraph 1. These two delegations added that the same concerns also apply to the other provisions of this Chapter.

While aware of the problems raised by **DELETED**, the **Cion** took the view that the issue of residence permits on the basis of the standard format provided for in Regulation 1030/02 would be the preferable approach, for three reasons: the common security features of the harmonised residence permits, the need to avoid proliferation of varying permits to third country nationals and the possibility to travel up to three months within the Schengen Area.

The **Pres** noted that this issue needs to be further considered.

<sup>2</sup> **DELETED** entered a scrutiny reservation on this provision.

- d) does not make acceptable progress in his studies in accordance with national legislation or administrative practice.

*Article 12: Residence permit issued to school pupils*

A residence permit issued to school pupils shall be issued only for a period of no more than one year.

*Article 13: Residence permit issued to unremunerated trainees*

The period of validity of a residence permit issued to unremunerated trainees shall correspond to the duration of the placement or for a maximum of one year. In exceptional cases, it may be renewed, once only and exclusively for such time as is needed to acquire a vocational qualification recognised by a Member State in accordance with its regulations or administrative practice, provided the holder still meets the conditions laid down in Articles 5 and 9.

*Article 14: Residence permit issued to volunteers*

A residence permit issued to volunteers shall be issued only for a period of no more than one year.

In exceptional circumstances, if the duration of the relevant programme is longer than one year, the duration of the validity of the residence permit may correspond to the period concerned.

*Article 15: Withdrawal of permits*

1. Member States may withdraw a residence permit issued on the basis of this Directive when it has been fraudulently acquired or wherever it appears that the holder did not meet or no longer meets the conditions for entry and residence provided for by Article 5 and whichever of Articles 6 to 10 inclusive applies to the relevant category.
2. Member States may withdraw residence permits on grounds of public policy, public security or public health.

*Article 16 Fraud*

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## Chapter IV

### Treatment of the third-country nationals concerned

#### *Article 17: Initial entry<sup>1</sup>*

Where a Member State issues residence permits exclusively within its territory and demands a visa for the initial entry, as soon as an application for a residence permit under this Directive has been accepted, the Member State concerned shall facilitate the procedure for obtaining the requisite visas.

#### *Article 18: Economic activities by students<sup>2</sup>*

1. Outside their study time and subject to the rules and conditions applicable to the relevant activity in the host Member State, students shall be entitled to be employed and may be entitled to exercise self – employed economic activity<sup>3</sup>. The situation of the labour market in the said Member State may be taken into account<sup>4</sup>.

Where necessary, Member States shall grant students and / or employers prior authorisation in accordance with national legislation.

2. Each Member State shall determine the maximum number of hours per week or days per year allowed for such an activity, which shall not be less than 10 hours per week, or the equivalent in days per year.
3. Access to economic activities for the first year of residence may be restricted by the host Member State<sup>5</sup>.
4. Member States may require students to report, in advance or otherwise, to an authority designated by them, that they are engaging in an economic activity. Their employers may also be subject to a reporting obligation, in advance or otherwise.

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<sup>1</sup> **DELETED** entered a scrutiny reservation on this provision.

<sup>2</sup> **DELETED** entered scrutiny reservations on the current draft as a whole of this Article, which results from a compromise proposal, suggested by the Presidency.

<sup>3</sup> **DELETED** entered a scrutiny reservation on the option of the Member States to allow the exercise of self – employed activities.

<sup>4</sup> **DELETED** entered a reservation on the possibility of Member States to take into account the situation of the labour market.

<sup>5</sup> **DELETED** entered a scrutiny reservation on this paragraph.

## Chapter V

### Procedure and transparency

#### *Article 19: Applications for admission<sup>1</sup>*

The application shall be submitted and examined when the third country national concerned is residing outside the territory of the Member State to which he /she wishes to be admitted.

By way of derogation, a Member State may, where it is provided for by its national legislation, accept an application submitted when the third country national is already in its territory.

#### *Article 20: Procedural guarantees and transparency<sup>2</sup>*

1. A decision on an application for obtaining or renewing a residence permit shall be adopted and the applicant shall be notified of it within a period that does not hamper the pursuit of the relevant studies, whilst leaving the competent authorities sufficient time to process the application.
2. If the information supplied in support of the application is inadequate the consideration of the application may be suspended and the competent authorities shall inform the applicant what further information they need.
3. Reasons shall be given<sup>3</sup> for any decision rejecting an application for a residence permit. It shall be notified to the third - country national concerned in accordance with the notification procedures under the relevant national legislation. The notification shall specify the possible redress procedures available and the time limit for taking action.
4. Where an application is rejected, or a residence permit, issued in accordance with this Directive, is withdrawn, the person concerned shall have the right to mount a legal challenge before the authorities of the Member State concerned.

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<sup>1</sup> **DELETED** entered a scrutiny reservation on this provision

<sup>2</sup> **DELETED** entered scrutiny reservations on the current text, which results from a compromise suggested by the Presidency.

<sup>3</sup> **DELETED** entered a scrutiny reservation on the obligation of the Member States to give reasons for any decision rejecting an application for a residence permit.

*Article 21: Fast-track procedure for issuing residence permits or visas to student and school pupils*

An agreement on the establishment of a fast-track admission procedure allowing residence permits or visas to be issued in the name of the third-country national concerned may be concluded between the authority of a Member State with responsibility for the entry and residence of students or school pupils who are third-country nationals and an establishment of higher education or an organisation operating pupil exchange schemes which has been recognised for this purpose by the Member State concerned in accordance with its regulations or administrative practice.

*Article 22: Fees*

Member States may request applicants to pay fees for handling applications in accordance with this Directive.

*Article 23: Transparency*

[To be moved to the Preamble]

## **Chapter VI**

### **Final provisions**

*Article 24: Non discrimination*

[To be moved to the Preamble]

*Article 25: Penalties*

[To be deleted]

*Article 26: Reporting*

From time to time, and for the first time no later than three years after the period determined by Article 27, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and propose amendments if appropriate.

*Article 27: Transposal*

Member States shall bring into force the provisions necessary to comply with this Directive no later than twenty - four months after the date of entry into force of this Directive. They shall forthwith inform the Commission thereof.

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

*Article 28: Entry into force*

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

*Article 29: Addressees*

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council  
The President*

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