

Meijers Committee

Standing committee of experts on international immigration, refugee and criminal law

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To (by email)

European Parliament
Civil Liberties, Justice and Home Affairs Committee
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Reference Regarding

CM1310
Note Meijers Committee on the Proposal for a Directive on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing (COM(2013) 151 final)

Date

3 June 2013

Dear members of the Civil Liberties, Justice and Home Affairs Committee,

The Meijers Committee welcomes the Proposal for a Directive on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing (COM(2013) 151 final).

The Committee is pleased that under the current proposal the granting of a long-stay visa or residence permit is mandatory once the applicant fulfills the conditions, intra-EU mobility is improved, students obtain the right to work for a minimum period of 20 hours per week and both students and researchers will –under certain conditions- be granted the possibility to find work or entrepreneurship after finalization of research or studies. Procedural guarantees are also improved: a time-limit is introduced for the competent authorities to decide on the application and the provision on fees now explicitly refers to the case law of the Court of Justice stating that fees asked from the applicant may not endanger the fulfillment of the objectives of the proposal. Furthermore, the Meijers Committee supports the inclusion of rights of au pairs and remunerated trainees in the proposal.

Grounds for rejection and withdrawal of an authorization (Articles 18-19)

Articles 18 and 19 of the proposal considerably extend the grounds for rejection or withdrawal of the authorization. Grounds that have been added are all related to behavior of the host entity or the host family. Applications shall for example be rejected or authorizations be withdrawn where the host entity was established in the sole purpose of facilitating entry or when the host entity does not meet the legal obligations regarding social security and/or taxation set out in national law or has filed for bankruptcy or is otherwise insolvent.

The Committee recognizes that these grounds for rejection may be valuable in the protection of the third-country national from malpractices by host entities and host families when he or she is applying for authorization. However, the Committee is concerned about the obligation of Member States to withdraw the authorization on the basis of actions by the host entity or host family as laid down in Article 19(1)(c), (d) and (e) of the proposal. At that stage the third-country national is already legally residing in the host country, but his authorization to continuous residence, according to the proposal, can at any time be withdrawn on the basis of developments outside his or her influence, namely the actions by the host entity or host family. The Meijers Committee is of the opinion that this is not in line with the Union law principle of legal certainty (*lex certa*). Moreover, the Meijers Committee notes that the withdrawal of the authorization is made mandatory in the proposed Directive, as opposed to the provisions in the current Directives on students and researchers (Council Directive 2004/114/EC and Council Directive 2005/71/EC). The Meijers Committee is concerned that the mandatory withdrawal of

the authorization leaves no room for the Member States to take the individual circumstances into account and balance the interests involved.

This is also problematic in light of Article 19(1)(f) of the proposal. Whereas under Article 12(2) of Council Directive 2004/114/EC the authorization *may* be withdrawn when the student does not respect the time limits imposed on access to economic activities or does not make acceptable progress in the relevant studies, the proposed Article 19(1)(f) makes the withdrawal mandatory when such a situation occurs. The Meijers Committee fears that this leads to disproportional consequences, as individual circumstances of the student cannot be taken into account.

The Meijers Committee is of the opinion that the withdrawal of the authorization on the basis of the grounds in Article 19(1) should not be made mandatory and that therefore the word “shall” must be changed back into “may”.

Moreover, the Committee advises to regulate in the proposal that, if the authorization is withdrawn on the basis of Article 19(1)(c), (d) or (e), he or she is given the opportunity to find another host entity or host family in order to finish his or her studies or research or for another purpose for which the authorization has been granted.

The Meijers Committee has also taken note of the newly added ground to reject an application in Article 18(2):

“Member States may reject an application if the host entity appears to have deliberately eliminated the positions it is trying to fill through the new application within the 12 months immediately preceding the date of application”.

This ground for rejection is comparable to an amendment which was brought in by the Council in the negotiations on the proposal for a Directive on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment (COM(2010) 379).¹ The Meijers Committee expressed in an earlier comment its concerns about this ground for rejection.²

It is difficult, if not impossible, for the deciding authorities to gain knowledge of the fact that the host entity appears to have deliberately eliminated the positions it is trying to fill with the new application. Moreover, it is difficult for the host entity to rebut the presumption that this was the case.

The Meijers Committee therefore finds that the rejection ground in Article 18(2) is too vague, leaving too much discretion to the Member States and creating a legally uncertain situation for the applicant. The Meijers Committee therefore proposes to delete Article 18(2).

We hope you will find these comments useful. Should any questions arise, the Meijers Committee is prepared to provide you with further information on this subject.

Yours sincerely,



Prof. dr. C.A. Groenendijk
Chairman

¹ See Council doc 6312/13 of 12 February 2013 Article 6(c) jo. 7(d).

² CM1214 of 25 September 2012, via www.commissie-meijers.nl.