

# EUROPEAN PARLIAMENT

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**A5-0137/2003**

28 April 2003

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## **REPORT**

on the proposal from the Commission with a view to the adoption of a Council directive on the conditions of entry and residence of third-country nationals for the purposes of studies, vocational training or voluntary service (COM(2002) 548 – C5-0502/2002 – 2002/0242(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Martine Roure

### ***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***. 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). These suggested corrections are subject to the agreement of the departments concerned.

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## PROCEDURAL PAGE

By letter of 21 October 2002 the Council consulted Parliament, pursuant to Article 67 of the EC Treaty, on the proposal from the Commission with a view to the adoption of a Council directive on the conditions of entry and residence of third-country nationals for the purposes of studies, vocational training or voluntary service (COM(2002) 548 – 2002/0242(CNS)).

At the sitting of 24 October 2002 the President of Parliament announced that he had referred the proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and to the Committee on Legal Affairs and the Internal Market, the Committee on Employment and Social Affairs and the Committee on Culture, Youth, Education, the Media and Sport for their opinions (C5-0502/2002).

At the sitting of 16 January 2003 the President of Parliament announced that he had also referred the proposal to the Committee on Petitions for its opinion.

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Martine Roure rapporteur at its meeting of 11 November 2002.

The committee considered the Commission proposal and draft report at its meetings of 17-18 February, 19 March and 23-24 April 2003.

At the last meeting it adopted the draft legislative resolution by 26 votes to 4, with 1 abstention.

The following were present for the vote: Robert J.E. Evans (vice-chairman), Johanna L.A. Boogerd-Quaak (vice-chairman) Giacomo Santini (vice-chairman), Martine Roure (rapporteur), Mary Elizabeth Banotti, Alima Boumediene-Thiery, Kathalijne Maria Buitenweg (for Patsy Sørensen), Michael Cashman, Charlotte Cederschiöld, Carmen Cerdeira Morterero, Ozan Ceyhun, Carlos Coelho, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Ewa Hedkvist Petersen (for Adeline Hazan), Margot Keßler, Eva Klamt, Alain Krivine (for Fodé Sylla), Baroness Sarah Ludford, Lucio Manisco (for Ole Krarup), Bill Newton Dunn, Marcelino Oreja Arburúa, Elena Ornella Paciotti, Hubert Pirker, Heide Rühle, Ilka Schröder, Ole Sørensen (for Francesco Rutelli), Joke Swiebel, Maurizio Turco, Christian Ulrik von Boetticher and Christos Zacharakis (for Bernd Posselt).

The opinions of the Committee on Legal Affairs and the Internal Market, the Committee on Employment and Social Affairs and the Committee on Petitions are attached. The Committee on Culture, Youth, Education, the Media and Sport decided on 12 November 2002 not to deliver an opinion.

The report was tabled on 28 April 2003.

## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal from the Commission with a view to the adoption of a Council directive on the conditions of entry and residence of third-country nationals for the purposes of studies, vocational training or voluntary service (COM(2002) 548 – C5-0502/2002 – 2002/0242(CNS))**

### **(Consultation procedure)**

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2002) 548)<sup>1</sup>,
  - having regard to Article 63 of the EC Treaty,
  - having been consulted by the Council pursuant to Article 67 of the EC Treaty (C5-0502/2002),
  - having regard to Rule 67 of its Rules of Procedure,
  - having regard to the opinion of the Economic and Social Committee,
  - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinion of the Committee on Legal Affairs and the Internal Market, the Committee on Employment and Social Affairs and the Committee on Petitions (A5-0137/2003),
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. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
  5. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

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Amendments by Parliament

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Amendment 1  
Recital 4

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<sup>1</sup> OJ C 45 E, 25.2.2003, p. 18.

(4) One of the objectives of European Community action in education is to promote Europe as a whole as a world centre of excellence for studies and *vocational training*. Promoting the mobility of third-country nationals to Europe for the purpose of studies, ***vocational training or voluntary service*** is a key factor in that strategy. The approximation of the Member States' national legislation on conditions of entry and residence is part of this.

(4) One of the objectives of European Community action in education is to promote Europe as a whole as a world centre of excellence for studies and *to share knowledge better around the world as a means of helping to disseminate the values of human rights, democracy and the rule of law*. Promoting the mobility of third-country nationals to Europe for the purpose of studies ***and research*** is a key factor in that strategy. The approximation of the Member States' national legislation on conditions of entry and residence, ***work and social protection*** is part of this.

#### *Justification*

*Europe's contribution to sharing knowledge better around the world must take into account not only the role of students, but also that of researchers in disseminating research and scientific information.*

#### Amendment 2 Recital 5

(5) Migration for the purpose of studies, vocational training or voluntary service, which is by definition temporary and does not depend on the employment-market situation in the host country, constitutes a form of mutual enrichment for the migrants concerned, their country of origin and the host country and helps to promote better familiarity between cultures.

(5) Migration for the purpose of studies, vocational training or voluntary service, which is by definition temporary and does not depend on the employment-market situation in the host country, constitutes a form of mutual enrichment for the migrants concerned, their country of origin and the host country and helps to promote better familiarity between cultures. ***To this end, the Member States take all appropriate steps to discourage the flight of skills to the detriment of the less developed countries.***

#### *Justification*

*In view of the serious damage caused to countries of origin by the failure of their elites to*

*return, the EU Member States must take all possible measures to ensure coherence between immigration policy in this area and development policy (codevelopment: list of professions that are banned because they are in deficit in the country of origin).*

Amendment 3  
Recital 6

(6) The new Community rules are based on definitions of student, trainee, educational establishment, vocational training scheme and volunteer already in use in European law, in particular in the various Community programmes to promote the mobility of the relevant persons (Socrates, European Voluntary Service etc.).

(6) The new Community rules are based on definitions of student, trainee, **unpaid researcher**, educational establishment, vocational training scheme and volunteer already in use in European law, in particular in the various Community programmes to promote the mobility of the relevant persons (Socrates, European Voluntary Service etc.).

*Justification*

*See Amendment 1.*

Amendment 4  
Recital 7

(7) The mobility of students who are third-country nationals studying in several Member States must be facilitated, as must the admission of third-country nationals participating in Community programmes to promote mobility within and towards Europe for the purpose of studies, vocational training **or** voluntary service.

(7) The mobility of students who are third-country nationals studying in several Member States must be facilitated, as must the admission of third-country nationals participating in Community programmes to promote mobility within and towards Europe for the purpose of studies, vocational training, voluntary service **and research**.

*Justification*

*The scope of the directive is too limited. Freedom of movement for researchers is just as important as freedom of movement for students.*

Amendment 5  
Recital 12

(12) The objectives of the proposed action, namely the establishment of a harmonised Community legal framework for the conditions for entry and residence of third-country nationals in the territory of the Member States for a period exceeding three months for the purposes of studies, vocational training or voluntary service, and for the procedures for issuing residence permits allowing them to enter and reside in the Member States for those purposes, cannot be sufficiently achieved by the Member States and can, by reason of the scale or effects of the proposed action, be better achieved by the Community in accordance with the subsidiarity principle declared by Article 5 of the Treaty. In accordance with the proportionality principle declared by Article 5, this Directive does not go beyond what is necessary to achieve these objectives.

(12) The objectives of the proposed action, namely the establishment of a harmonised Community legal framework for the conditions for entry and residence of third-country nationals in the territory of the Member States for a period exceeding three months for the purposes of studies, **research**, vocational training or voluntary service, and for the procedures for issuing residence permits allowing them to enter and reside in the Member States for those purposes, cannot be sufficiently achieved by the Member States and can, by reason of the scale or effects of the proposed action, be better achieved by the Community in accordance with the subsidiarity principle declared by Article 5 of the Treaty. In accordance with the proportionality principle declared by Article 5, this Directive does not go beyond what is necessary to achieve these objectives.

*Justification*

*See Amendment 1.*

Amendment 6  
Article 1(a)

a) the conditions for entry and residence of third-country nationals in the territory of the Member States for a period exceeding three months for the purpose of studies, vocational training or voluntary service;

a) the conditions for entry and residence of third-country nationals in the territory of the Member States for a period exceeding three months for the purpose of studies, **research**, vocational training or voluntary service;



*Justification*

*The scope of the directive should be extended to cover researchers in order to achieve better sharing of knowledge, a declared objective of the Commission, as stated particularly in its proposal for the Erasmus World Programme 2004-2008.*

Amendment 7  
Article 2(ba)(new)

***ba) ‘researcher’ means a third-country national admitted to reside in the territory of a Member State in order to collaborate on a research programme or take part without remuneration in a programme of scientific exchange and cooperation in an establishment of higher education or a research institute;***

*Justification*

*Unpaid stays by third-country nationals for purposes of research are likely to have positive effects for both the country of origin and the host country.*

Amendment 8  
Article 3, paragraph 2

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.

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. ***This Directive must not lead to changes in existing, more favourable rules.***

*Justification*

*The Union's minimum standards must not result in students' existing entitlements being discontinued.*

Amendment 9  
Article 5, paragraph 2

2. Member States shall facilitate the issuance of the residence permit and such visas as they require for the third-country nationals covered by Articles 6 to 10 who participate in Community programmes enhancing mobility towards or within the European Union.

2. Member States shall facilitate the issuance of the residence permit and such visas as they require for the third-country nationals covered by Articles 6 to 10 who participate in Community programmes enhancing mobility towards or within the European Union, ***so as not to delay the start of the intended training activities.***

*Justification*

*Specifies why the Member States must be prompt in issuing residence permits.*

Amendment 10  
Article 6, paragraph 1, letter (a)

a) is admitted to an establishment of higher or professional education to follow a full-time course of study. The student may prove that he meets this condition by presenting, among other possibilities, a letter or certificate confirming his definite enrolment, or evidence that he is enrolled subject to a decision on the equivalence of his foreign qualification or passing an entrance test;

a) is admitted to ***a legally recognised*** establishment of higher or professional education to follow a full-time course of study. The student may prove that he meets this condition by presenting, among other possibilities, a letter or certificate confirming his definite enrolment, or evidence that he is enrolled subject to a decision on the equivalence of his foreign qualification or passing an entrance test;

*Justification*

*The education establishments should be legally recognised by the Member States in order to avoid “phantom” establishments which may serve as a gateway for illegal entry.*

Amendment 11

Article 6(1)(b)

b) provides evidence by any lawful means that during his stay he will have sufficient resources to cover his subsistence, study and return travel costs. The Member States shall publish the minimum monthly resources required in terms of the resources which a person pursuing studies on their territory must generally have, without prejudice to individual examination of each case;

b) provides evidence by any lawful means that during his stay he will have sufficient resources to cover his subsistence, study and return travel costs. The Member States shall publish the minimum monthly resources required in terms of the resources which a person pursuing studies on their territory must generally have, without prejudice to individual examination of each case. ***Verification of this condition is not necessary if the student is in receipt of a grant or scholarship, or has received an undertaking of sponsorship from a host family or a firm offer of part-time work;***

*Justification*

*The fact of being in receipt of a grant or scholarship or of having received an undertaking of sponsorship from a host family or a firm offer of part-time work satisfies the requirement to have adequate resources without the host country authorities needing to undertake verification.*

Amendment 12  
Article 6, paragraph 1, point c

c) has, if the Member State so requires, sufficient knowledge of the language of the course followed by the student;

c) has, if the Member State ***or the host establishment*** so requires, sufficient knowledge of the language of the course followed by the student ***or enrolled at a school recognised in a Member State for compulsory learning of the language;***

*Justification*

*This reflects the reality better: it is an educational requirement.*

Amendment 13  
Article 6(1)(d)

d) provides evidence, if the Member State so requires, that he has paid the fees charged by the establishment.

d) provides evidence, if the Member State so requires ***and on condition that it undertakes to issue a residence permit once this final condition has been met by the student***, that he has paid the fees charged by the establishment.

### *Justification*

*It would be improper to require a student from a third country to pay registration fees, which in some establishments are very high, without first being certain of receiving a residence permit.*

### Amendment 14 Article 6a (new)

#### ***Article 6a: specific conditions for unpaid researchers***

***The Member States may not issue a ‘research’ residence permit to a third-country national unless he or she, as well as fulfilling the general conditions set out in Article 5, also meets the following conditions:***

***(a) to have signed a research or advanced study agreement, as the case may be, authorised by the competent authority in the Member State concerned under the terms of its regulations or following its administrative practice, with a view to engaging in research or taking part in an exchange or cooperation programme with a public or private research institute licensed or funded by a Member State under the terms of its regulations or following its administrative practice;***

***(b) provides evidence by any lawful means that during his stay he will have sufficient resources to cover his subsistence, study and return travel costs.***

*Justification*

*This amendment seeks to set out the conditions for unpaid researchers to obtain residence permits.*

Amendment 15  
Article 7, title

Mobility of students

Mobility of students ***and unpaid researchers***

*Justification*

*The status of researchers must be brought into line with that of students as regards mobility.*

Amendment 16  
Article 7, introductory paragraph

Without prejudice to Articles 11(2)(c) and (d), 15, 16 and 20(2), a third-country national who already holds a ‘student’ residence permit issued by a Member State and wishes to follow part of the studies already commenced, or add another course of study, in another Member State shall obtain a ‘student’ residence permit from the latter Member State within 30 days of applying for it, if he:

Without prejudice to Articles 11(2)(c) and (d), 15, 16 and 20(2), a third-country national who already holds a ‘student’ ***or ‘unpaid researcher’*** residence permit issued by a Member State and wishes to follow part of the studies already commenced, ***(deletion)*** add another course of study ***or take part in a research programme*** in another Member State shall obtain a ‘student’ ***or ‘unpaid researcher’*** residence permit from the latter Member State within 30 days of applying for it, if he:

*Justification*

*See previous amendment.*

Amendment 17

## Article 8(1)(e)

e) is accommodated throughout his stay in 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 is participating.

e) is accommodated throughout his stay in a **host structure such as 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 is participating.

### *Justification*

*In some countries the concept of a 'family' may be subject to a very strict interpretation not including widow(er)s, single parents, same-sex couples, communities, etc.*

*In the agreements to be drawn up between exchange organisations and Member States the national legislator will then be free to define the terms of reception more precisely.*

## Amendment 18

### Article 9, paragraph 1, letter (a)

a) has 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 accredited or financed by the Member State in accordance with its regulations or administrative practice.

a) has 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 accredited or financed by the Member State in accordance with its regulations or administrative practice. ***The host enterprise or establishment shall be required to provide proof that it has the means to guarantee the training and that the training concerned corresponds to the basic training of the trainee.***

### *Justification*

*Otherwise enterprises could act as "front organisations" allowing unpaid trainees to enter legally and then be used or exploited in irregular economic activities.*

Amendment 19  
Article 10, letter a)

a) is not below the minimum age *nor above the maximum age* set by the Member State concerned;

a) is not below the minimum age set by the Member State concerned;

*Justification*

*This limitation does not appear warranted; it would even run counter to the political principles championed by the European Union as regards lifelong learning and vocational training*

Amendment 20  
Article 10, letter d)

d) receives a basic introduction to the language, *history and political and social structures* of the host *Member State*.

d) receives a basic introduction to the language of the host *country*.

*Justification*

*It would appear normal for a volunteer to be given a basic introduction to the working language and the language of the country.*

Amendment 21  
Article 11 paragraph 1

1. Except where the student is admitted subject to a decision on the equivalence of his foreign qualification or to passing an entrance test, a ‘student’ residence permit shall be issued for a period of no less than one year and renewed from year to year if the holder continues to meet the conditions of Articles 5 and 6. *Where the duration of the course of study or vocational training*

1. Except where the student is admitted subject to a decision on the equivalence of his foreign qualification or to passing an entrance test, a ‘student’ residence permit shall be issued for a period of no less than one year and renewed from year to year if the holder continues to meet the conditions of Articles 5 and 6. *(Deletion)*

*is less than one year, the permit shall be valid for the duration of the course.*

#### *Justification*

*In most cases study programmes last for 9 months. It would be regrettable, not to say discriminatory, if nationals of less developed third countries were not granted residence permits for a year, enabling them to work during the summer vacation preceding or following their study programme in order to earn some of the funds needed for their stay.*

#### Amendment 22

##### Article 12

A “pupil exchange” residence permit shall be issued **only** for a **non-renewable** period of no more than one year.

A “pupil exchange” residence permit shall be issued for a period of no more than one year, **which shall be renewable where the holder continues to meet the requirements set out in Articles 5 and 8 respectively.**

#### *Justification*

*It does not make sense that students should be able to renew their "student" residence permit whilst pupils are not allowed to do likewise. They should be allowed to follow more than one course at a secondary education establishment as long as they still meet the requirements set out in the directive.*

#### Amendment 23

##### Article 14

A “volunteer” residence permit shall be issued only for a **non-renewable** period of no more than one year.

A “volunteer” residence permit shall be issued only for a period of no more than one year.



*Justification*

*It must be left to the Member States to decide, on a case-by-case basis, to extend or limit residence permits for these individuals.*

Amendment 24  
Article 15, paragraph 2

2. Member States may withdraw residence permits or visas on grounds of public policy, public security or public health. Public policy or public security grounds shall be based exclusively on the personal conduct of the third-country national concerned. Public health shall not be invoked by Member States as a reason for revoking or not renewing a residence permit or expelling the holder **solely** on the ground of illness or disability suffered after the issue of the residence permit.

2. Member States may withdraw residence permits or visas on grounds of public policy, public security or public health. Public policy or public security grounds shall be based exclusively on the personal conduct of the third-country national concerned, **with due regard for the principle of non-discrimination**. Public health shall not be invoked by Member States as a reason for revoking or not renewing a residence permit or expelling the holder (**deletion**) on the ground of illness or disability suffered after the issue of the residence permit.

*Justification*

*Illness must not in any circumstances constitute a reason for withdrawing a residence permit.*

*Whatever the reasons for withdrawing residence permits or visas, the principle of non-discrimination must be acted upon.*

Amendment 25  
Article 15, paragraph 2 a (new)

**2a. Decisions to withdraw residence permits or visas shall be in writing, stating reasons. They shall be communicated to the third-country nationals concerned within a short period of time.**

*Justification*

*To enable an appeal as provided for in Article 20(3) to be lodged, it would appear essential for the Member State decision to be made in writing and communicated to the student concerned.*

Amendment 26  
Article 18, second paragraph

***Member States may withhold this right for the first year of residence and may withdraw it if the student does not make sufficient progress in his studies.*** Deleted

*Justification*

*Withholding the right to work in the first year of residence or withdrawing residence permits if students do not make sufficient progress in their studies is unjustifiable and would tend to encourage illegal employment and exploitation of these nationals. Where there is insufficient progress in studies, attested to by the teaching establishment, the Member State has the option, sufficient in itself, of not renewing a residence permit.*

Amendment 27  
Article 18, third paragraph

***Member States may authorise*** unremunerated trainees to work under the same limits as those imposed on students, but they may not be employed, directly or indirectly, by the firm with which they have signed a training contract in accordance with Article 9(a). Unremunerated trainees ***may*** work under the same limits as those imposed on students, but they may not be employed, directly or indirectly, by the firm with which they have signed a training contract in accordance with Article 9(a).

*Justification*

*There is nothing to justify the option for Member States to restrict the right of unpaid trainees to work within the same limits as students. On the contrary, a provision such as this would give rise to unacceptable discrimination from one Member State to another.*

Amendment 28  
Article 18, fourth paragraph

Member States may require students and unremunerated trainees to report, in advance or otherwise, to an authority designated by them, that they are engaging in an employed or self-employed activity. Their employers may also be subject to a reporting obligation, in advance or otherwise.

Member States may require students and unremunerated trainees to report, in advance or otherwise, to an authority designated by them, that they are engaging in an employed or self-employed activity. Their employers may also be subject to a reporting obligation, in advance or otherwise. ***Trade union representatives shall be informed by the employer of the presence of unremunerated trainees and the content of the traineeships offered.***

*Justification*

*To be able to check on compliance with the provisions of the directive, trade union representatives must be informed of the presence of unremunerated trainees and the content of the traineeships offered.*

Amendment 29  
Article 18 a (new)

***Article 18a: Admission of third-country nationals for purposes of study and unremunerated research***

***The competent institutions of the Member States shall take the necessary measures, under their national legislation, to enable third-country nationals to be admitted under the same conditions as European students.***

*Justification*

*The rights of third-country students must match those of European students as far as possible.*

Amendment 30  
Article 20 paragraph 1

1. Without prejudice to Article 7, decisions on applications for admission or renewal shall be adopted and the applicant shall be notified of them no later than **90** days after the date of the application.

1. Without prejudice to Article 7, decisions on applications for admission or renewal shall be adopted and the applicant shall be notified of them no later than **60** days after the date of the application.

#### *Justification*

*The 90-day period is too long, and would be a source of uncertainty; it should be reduced to 60 days.*

#### Amendment 31 Article 20, paragraph 3

3. A third-country national shall be entitled to apply to the courts of the Member State concerned against any decision refusing, amending, refusing to renew or withdrawing a residence permit or a visa. Such decision must give reasons based on objective and verifiable criteria and specify the redress procedures available and the time limits applicable to them.

3. A third-country national shall be entitled to apply to the courts of the Member State concerned against any decision refusing, amending, refusing to renew or withdrawing a residence permit or a visa. Such decision must give reasons based on objective and verifiable criteria and specify the redress procedures available and the time limits applicable to them. ***Such appeals shall have suspensive effect.***

#### *Justification*

*Unless it has suspensive effect, an appeal by the applicant is an ineffectual practice.*

#### Amendment 32 Article 21, paragraph 1

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

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 or professional education or an organisation operating *pupil* exchange schemes which has been accredited for this purpose by the Member State concerned in accordance with its regulations or administrative practice.

students or school pupils who are third-country nationals and an establishment of higher or professional education or an organisation operating **(deletion)** exchange schemes which has been accredited **or recognised** for this purpose by the Member State concerned in accordance with its regulations or administrative practice.

#### *Justification*

*Some exchange bodies organise educational stays and/or stays for the purpose of social or voluntary service; hence the deletion of the reference to exchange bodies operating pupil exchange schemes only.*

*Also, it is preferable always to use 'accredited or recognised', to avoid unnecessary formalisation of the process.*

#### Amendment 33 Article 24

The Member States shall give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age **or** sexual orientation.

The Member States shall give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age, sexual orientation **or any other personal or social circumstance or condition.**

#### *Justification*

*An exhaustive or restrictive list always seems more accurate; however, in legal terms an open list is more suitable. With the addition of the above text all possible grounds for discrimination have been covered.*

#### Amendment 34 Article 26

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.

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. ***This report shall evaluate, on the basis of precise statistics provided by the Member States, the positive and any negative effects of the application of the present directive, including its effect on controlling the phenomenon of skills drain from less advanced third countries.***

#### *Justification*

*As stated above, accepting third-country national for purposes of study, research or teaching must not lead to a rise in the skills drain from less developed third countries.*

#### Amendment 35 Article 26, paragraph 1 a (new)

***Each year, the Member States shall forward a statistical breakdown to the Commission by sex and country of origin of the students, volunteers, unremunerated trainees, school pupils and unremunerated researchers concerned.***

#### *Justification*

*It is important that quantitative data on entry into European Union territory for study, traineeship, research and voluntary service purposes can be drawn on so that, if necessary, the directive or future measures can be adjusted.*

## EXPLANATORY STATEMENT

This proposal sets out to enable third-country nationals to enter Member States for purposes of study, vocational training or voluntary service on the basis of a minimum set of rules common to all the Member States. In the process, the Commission is also supplementing the measures already presented on immigration for purposes of employment and family reunion.

### **I. Europe, a centre of knowledge sharing**

#### **1. The objective**

This proposal meets the wish expressed in the Bologna Declaration of 19 June 1999 by the Education Ministers of 29 European countries, which stated that ‘the vitality and efficiency of any civilisation can be measured by the appeal that its culture has for other countries’.

A characteristic of migration for purposes of study and voluntary service is that it is temporary and has no impact on the labour market of the host country. In addition, it is a source of intellectual enrichment not only for the migrants but for the country of origin and the host country. For all of these reasons, admitting third-country nationals for this purpose is generally looked upon favourably by host countries, particularly in the case of students in higher education.

Establishments in the host country are encouraged by the presence of students from third countries to develop programmes that keep pace with the internationalisation of teaching and the increase in student mobility. This is in keeping with the objective of ‘the development of quality education’ set forth in Article 149 of the EC Treaty and forms part of the strategy to reinforce cooperation with third countries in the area of education as embodied, for example, in the programme Erasmus World.<sup>1</sup>

#### **2. Scope**

The proposal for a directive applies to four categories of third-country nationals: students, school pupils, unpaid trainees and volunteers.

Students make up the largest category of third-country nationals, since they are at the stage of study where international mobility is most common (90% of migrants admitted for purposes of study in the United Kingdom, 86% in Belgium, 67% in France and 54% in Germany).<sup>2</sup>

Then there are unpaid trainees engaging in vocational training. Finally, the directive also applies to exchanges of schoolchildren and ‘volunteers’, i.e. people who are neither students nor trainees but wish to take part in solidarity programmes run by non-profit organisations such as NGOs.

In addition to students, unpaid researchers should be included in order to allow them to gain valuable experience.

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<sup>1</sup> Commission communication of 18 July 2001 (COM(2001) 385).

<sup>2</sup> Study carried out for the Commission on admission of third-country nationals for purposes of study, August 2000, p. 19.

### 3. Risk of 'brain drain'

Accepting students from third countries carries with it the well-known risk of 'brain drain'. The Community has therefore undertaken to ensure that national and regional cooperation programmes are directed towards employment of their beneficiaries in their countries of origin.<sup>1</sup>

If it is conceivable that the third-country nationals could, at the end of their higher education, be employed in order to acquire further training or, possibly, to fill any labour deficit the host country might be experiencing, this option must be subject to a strict time limit in order to avoid adding to the skills drain from the less developed countries.<sup>2</sup>

## **II. Entry and residence arrangements for study visits by third-country nationals**

### **1. The initial conditions**

#### (a) Common conditions

Residence permits are not issued by the host country unless four conditions are met (Article 5): presentation of a valid passport; health-care insurance covering all risks in the host Member State; not presenting a risk to public policy, public security or public health; and, finally, payment of the fee for handling the application.

#### (b) Specific conditions

The conditions specific to the various categories raise a number of problems:

In the case of students, Article 6 sets out the following conditions: a letter or certificate confirming definite enrolment; evidence by any lawful means that the student has sufficient resources; adequate knowledge of the language of the course; possibly, proof of payment of enrolment fees.

As regards the requirement to have sufficient resources, the fact of having a grant or scholarship from the host country or country of origin, an undertaking by a host family that it will sponsor the student or a guaranteed offer of part-time work should in themselves be enough. It would also be desirable, where possible, to give these students preferential access to university canteens and accommodation.

As to subsidiary proof of having paid enrolment fees, which in some establishments are very high, it would be improper to require a student from a third country to pay them without first being certain of receiving a residence permit.

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<sup>1</sup> See, in particular, the conclusions of the Tampere European Council and Article 13, paragraph 4, subparagraph 3 of the Cotonou Agreement with the ACP countries of 23 June 2000.

<sup>2</sup> Cf. programme to improve the quality of higher education and promote intercultural understanding through cooperation with third countries (Erasmus World), COM(2002) 410, p. 22.



As regards schoolchildren, the proposal for a directive states (Article 8) that pupils must provide evidence of admission to a secondary education establishment and of participation in a pupil exchange scheme programme operated by an accredited organisation which accepts financial responsibility for them throughout their stay.

This early contact by pupils with a foreign country and language does indeed offer an enormous multiplier effect. Living in a family, the fact that a foreign language is learned more quickly at this early age and the open-mindedness that results will all encourage schoolchildren to study abroad again when they move on to higher education.

## **2. Length of stay and monitoring of studies**

### **(a) Length of stay**

The length of the stay varies from category to category. Students may be granted residence permits valid for a year or more, and renewed from year to year. For schoolchildren and volunteers, on the other hand, the maximum length of stay is one year, with no possibility of renewal. In the case of trainees the length of stay can be extended once, by way of exception, to allow the trainee to obtain a professional qualification.

The host Member State should not have the option of limiting a student's stay to the duration of the programme if the latter is less than one year; this would mean depriving students of the chance to work during the summer vacation preceding or following their university programme – usually of 9 months' duration – in order to earn some of the funds needed for their stay.

### **(b) Withdrawal or non-renewal of 'student' residence permit**

If students do not make sufficient progress in their studies the Member State may refuse renewal of their residence permit on the basis of a decision stating specific reasons (opinion of the educational establishment).

The Member State can also withdraw the residence permit if the holder no longer fulfils the conditions, or for reasons of public policy, public security or public health. It is excessive to include the contraction of a disease among the reasons for withdrawal.

## **3. Possibility of working**

Students and unpaid researchers can exercise an activity in an employed capacity for between 10 and 20 hours per week depending on the Member State. This limitation does not apply during holiday periods. Member States may withhold this right for the first year of residence and may withdraw it if the student does not make sufficient progress in his studies. This provision should be deleted, since the possibility of working allows students and trainees to boost their income – an essential option, given the cost of living in the EU, which is higher than in the countries of origin of nationals of less developed third countries –, enabling them to live decently and avoid illegal work and exploitation by employers.

## **4. Procedure and appeal**

Third-country nationals enjoy procedural guarantees, in particular a right of appeal against any decision by the host Member State refusing, amending, refusing to renew or withdrawing a residence permit. The deadline for notification of such decisions should be shortened.

Article 21 refers to the possibility of agreements on the establishment of fast-track admission procedures between host Member States and establishments of higher or vocational education. This possibility should be strongly encouraged so that the EU can offer a system comparable to that of the United States, for example.<sup>1</sup>

Finally, the Commission should report back to the Council and the EP three years after the entry into force of the directive (no later than 31 December 2004). In particular, the report should evaluate the directive's impact on skills drain from less advanced third countries on the basis of precise statistics provided by the Member States.

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<sup>1</sup> The J1 visa issued by the United States is a visa for non-immigrant visitors which is issued very quickly.

18 March 2003

## **OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET**

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the proposal from the Commission with a view to the adoption of a Council directive on the conditions of entry and residence of third-country nationals for the purposes of studies, vocational training or voluntary service  
(COM(2002)548 – C5-0502/2002 – 2002/0242(CNS))

Draftsman: Marcelino Oreja Arburúa

### **PROCEDURE**

The Committee on Legal Affairs and the Internal Market appointed Marcelino Oreja Arburúa draftsman at its meeting of 5 November 2002.

It considered the draft opinion at its meetings of 20 February and 18 March 2003.

At the last meeting it adopted the following amendments by 17 votes to 9, with one abstention.

The following were present for the vote: Giuseppe Gargani (chairman), Willi Rothley (vice-chairman), Ioannis Koukiadis (vice-chairman), Marcelino Oreja Arburúa (draftsman), Paolo Bartolozzi, Luis Berenguer Fuster (for Carlos Candal), Ward Beysen, Charlotte Cederschiöld (for Rainer Wieland), Michel J.M. Dary, Bert Doorn, Francesco Fiori, Janelly Fourtou, Evelyne Gebhardt, Fiorella Ghilardotti, José María Gil-Robles Gil-Delgado, Malcolm Harbour, The Lord Inglewood, Hans Karlsson (for Maria Berger), Kurt Lechner, Klaus-Heiner Lehne, Toine Manders, Manuel Medina Ortega, Imelda Mary Read (for Arlene McCarthy), Anne-Marie Schaffner, Marianne L.P. Thyssen, Ieke van den Burg (for François Zimeray, pursuant to Rule 153(2) of the Rules of Procedure), Diana Wallis, Matti Wuori (for Heidi Anneli Hautala) and Stefano Zappalà.

## AMENDMENTS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission<sup>1</sup>

Amendments by Parliament

### Amendment 1

Article 6, paragraph 1, letter (a)

a) is admitted to an establishment of higher or professional education to follow a full-time course of study. The student may prove that he meets this condition by presenting, among other possibilities, a letter or certificate confirming his definite enrolment, or evidence that he is enrolled subject to a decision on the equivalence of his foreign qualification or passing an entrance test;

a) is admitted to ***a legally recognised*** establishment of higher or professional education to follow a full-time course of study. The student may prove that he meets this condition by presenting, among other possibilities, a letter or certificate confirming his definite enrolment, or evidence that he is enrolled subject to a decision on the equivalence of his foreign qualification or passing an entrance test;

### *Justification*

*The education establishments should be legally recognised by the Member States in order to avoid “phantom” establishments which may serve as a gateway for illegal entry.*

### Amendment 2

Article 8, paragraph 2

2. ***Member States may confine*** the issuance of “pupil exchange” residence permits to nationals of third countries that offer the same possibility for ***their own nationals***.

2. ***The*** issuance of “pupil exchange” residence permits ***shall be confined*** to nationals of third countries that offer the same possibility for ***citizens of the European Union***.

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<sup>1</sup> OJ C 45 E, 25.2.2003, p. 18.

*Justification*

*There is a need to harmonise the issuance of “pupil exchange” residence permits according to the principle of reciprocity, establishing a system of equal opportunities for citizens of the European Union and third country nationals.*

Amendment 3  
Article 8, paragraph 2a (new)

***2a. Member States may refuse to issue “pupil exchange” residence permits to third country nationals where the studies to be taken in the Member State are not recognised or deemed to form part of the pupil’s study programme by the third country concerned.***

*Justification*

*The aim is to ensure that the exchange be of as much use as possible to the recipient of a “pupil exchange” residence permit.*

Amendment 4  
Article 9, paragraph 1, letter (a)

a) has 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 accredited or financed by the Member State in accordance with its regulations or administrative practice.

a) has 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 accredited or financed by the Member State in accordance with its regulations or administrative practice. ***The host enterprise or establishment shall be required to provide proof that it has the means to guarantee the training and that the training concerned corresponds to the basic training of the trainee.***

*Justification*

*Otherwise enterprises could act as "front organisations" allowing unpaid trainees to enter legally and then be used or exploited in irregular economic activities.*

Amendment 5  
Article 10, letter (a)

a) is ***not below the minimum age nor above the maximum age set by the Member State concerned;***

a) is not ***less than 18 nor more than 25 years of age;***

*Justification*

*The minimum and maximum ages should be harmonised at Community level in the interests of expediency.*

Amendment 6  
Article 12

A "pupil exchange" residence permit shall be issued ***only*** for a ***non-renewable*** period of no more than one year.

A "pupil exchange" residence permit shall be issued for a period of no more than one year, ***which shall be renewable where the holder continues to meet the requirements set out in Articles 5 and 8 respectively.***

*Justification*

*It does not make sense that students should be able to renew their "student" residence permit whilst pupils are not allowed to do likewise. They should be allowed to follow more than one course at a secondary education establishment as long as they still meet the requirements set out in the directive.*

Amendment 7  
Article 18, paragraph 2

Member States may ***withhold this right for***

Member States ***may withdraw this right if***

*the first year of residence and may withdraw it* if the student does not make sufficient progress in his studies.

the student does not make sufficient progress in his studies.

*Justification*

*It does not make sense for access to teaching work to be restricted during the first year of residence if the requirements established under articles 6 and 9 are met.*

Amendment 8  
Article 20, paragraph 1

1. Without prejudice to Article 7, decisions on applications for admission or renewal shall be adopted and the applicant shall be notified of them no later than **90** days after the date of the application.

1. Without prejudice to Article 7, decisions on applications for admission or renewal shall be adopted and the applicant shall be notified of them no later than **60** days after the date of the application.

*Justification*

*Given that only students may renew their permits and that the time between the end of an academic course and the start of another is less than 90 days, the deadline for dealing with an application should not exceed 60 days.*

22 January 2003

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

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the proposal from the Commission with a view to the adoption of a Council directive on the conditions of entry and residence of third-country nationals for the purposes of studies, vocational training or voluntary service  
(COM(2002) 548 – C5-0502/2002 – 2002/0242(CNS))

Draftsman: Luciana Sbarbati

**PROCEDURE**

The Committee on Employment and Social Affairs appointed Luciana Sbarbati draftsman at its meeting of 23 October 2002.

It considered the draft opinion at its meetings of 21 November 2002 and 21/22 January 2003.

At the latter meeting it adopted the following amendments by 13 votes to 7, with 2 abstentions.

The following were present for the vote: Theodorus J.J. Bouwman, chairman; Marie-Hélène Gillig, vice-chairman, Winfried Menrad, vice-chairman, Luciana Sbarbati, draftsman; Elspeth Attwooll, Regina Bastos, Philip Bushill-Matthews, Alejandro Cercas, Luigi Cocilovo, Carlo Fatuzzo, Fiorella Ghilardotti (for Jan Andersson), Anne-Karin Glase, Stephen Hughes, Ioannis Koukiadis, Jean Lambert, Mario Mantovani, Claude Moraes, Manuel Pérez Álvarez, Bartho Pronk, Gerhard Schmid, Miet Smet, Gabriele Stauner (for Enrico Ferri), Ieke van den Burg and Barbara Weiler.



## SHORT JUSTIFICATION

The Commission proposal for a directive on the conditions of entry and residence of third-country nationals for the purposes of studies, vocational training or voluntary service completes the set of initiatives already presented on immigration, and takes account of the specific features of such migration, such as its temporary nature, independence of the labour market situation in the host country, etc.

The Commission also stresses that it constitutes a form of mutual enrichment, both for the migrants directly concerned and for the country of origin and the host country, because in general terms it promotes greater mutual understanding between cultures and, specifically, the dynamism of European education systems and the quest for high standards in education.

The Commission proposal should accordingly be welcomed overall as marking substantial progress, not only in enhancing cooperation with third countries, but also in developing high-quality training.

Some gaps nonetheless remain. Above all, contrary to the provisions of European legislation covering mobility in the field of education, training and research, the proposal does not include cooperation and exchanges between teachers, trainers and researchers, which are, in fact, an important factor in the pursuit of the Commission's stated objectives: promoting Europe as a world centre of excellence in education and sharing knowledge better around the world.

The proposal has not been coordinated, either, with that on family reunification, and it therefore ignores the need to ensure that the immediate families of third-country nationals admitted to Europe for the purposes of study, training or voluntary service are able to join them. This aspect seems all the more important if it is borne in mind that those covered by the proposal will stay in Europe temporarily, but for periods of more than three months.

Finally, the Commission is to be congratulated on its decision to give third-country students the right to work; this is essential to ensure that they can support themselves and avoid recourse to moonlighting. However, it is essential to ensure that this right is on the same scale as that enjoyed by nationals of the host country; the scope of the provision allowing the Member States to prevent that right being exercised in the first year of a student's stay is not clear, either.

To sum up, the Commission proposal can be endorsed, by and large, but an effort must be made to fill the gaps that still exist if we want the proposal to make an effective contribution to attaining the goal of enhanced worldwide cooperation relating to education and knowledge.

## AMENDMENTS

The Committee on Employment and Social Affairs calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

## Amendment 1

## Recital 4

(4) One of the objectives of European Community action in education is to promote Europe as a whole as a world centre of excellence for studies and *vocational training*. Promoting the mobility of third-country nationals to Europe for the purpose of studies, ***vocational training or voluntary service*** is a key factor in that strategy. The approximation of the Member States' national legislation on conditions of entry and residence is part of this.

(4) One of the objectives of European Community action in education is to promote Europe as a whole as a world centre of excellence for studies and *to share knowledge better around the world as a means of helping to disseminate the values of human rights, democracy and the rule of law*. Promoting the mobility of third-country nationals to Europe for the purpose of studies ***and research*** is a key factor in that strategy. The approximation of the Member States' national legislation on conditions of entry and residence, ***work and social protection*** is part of this.

*Justification*

*Europe's contribution to sharing knowledge better around the world must take into account not only the role of students, but also that of researchers in disseminating research and scientific information.*

## Amendment 2

## Recital 7

(7) The mobility of students who are third-country nationals studying in several Member States must be facilitated, as must the admission of third-country nationals participating in Community programmes to promote mobility within and towards Europe for the purpose of studies, vocational training ***or*** voluntary service.

(7) The mobility of students who are third-country nationals studying in several Member States must be facilitated, as must the admission of third-country nationals participating in Community programmes to promote mobility within and towards Europe for the purpose of studies, vocational training, voluntary service ***and research***.

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<sup>1</sup> Not yet published in OJ.

*Justification*

*The scope of the directive is too limited. Freedom of movement for researchers is just as important as freedom of movement for students.*

Amendment 3  
Recital 8

(8) To reflect the cost of training and the fact that more and more people have to work to help pay for it, third-country nationals admitted for study purposes should be given **limited** access to the employment market.

(8) To reflect the cost of training and the fact that more and more people have to work to help pay for it, third-country nationals admitted for study purposes should be given access to the employment market. ***Access to the employment market must always constitute and be understood to constitute a secondary matter or means of helping to pay for the student's stay, and it should be understood that in no case may studies be used as grounds for disregarding the rules governing access to the employment market. Studies, research and training must always constitute the prime objective.***

*Justification*

*Third-country nationals residing in Europe for the purpose of study must be able to have access to the labour market with the same rights as students of the host country, in order to avoid cases of exploitation and moonlighting.*

Amendment 4  
Article 1, point a

a) the conditions for entry and residence of third-country nationals in the territory of the Member States for a period exceeding three months for the purpose of studies, vocational training or voluntary service;

a) the conditions for entry and residence of third-country nationals in the territory of the Member States for a period exceeding three months for the purpose of studies, ***research***, vocational training, ***teaching*** or

voluntary service;

#### *Justification*

*The scope of the directive must be extended to include researchers and teachers if the aim is to attain the Commission's stated objective of sharing knowledge better. Similarly, as provided for in the case of mobility within Europe, it is important to allow teachers and trainers access to Europe in order to gain valuable experience and to strengthen scientific exchanges.*

#### Amendment 5

Article 2, point h a (new)

***ha) 'researcher' means a third-country national admitted to reside in the territory of a Member State to collaborate on a research programme or to take part in a programme of exchanges and scientific cooperation at a higher education or research establishment;***

#### *Justification*

*Periods of research, further vocational training or teaching assignments abroad have positive effects on the sector of research, education, training and scientific cooperation as a whole, with regard to both the country of origin and the host country. It is therefore important to facilitate exchanges and stays by third-country nationals who work in research, training and education in the broad sense, and not to restrict them just to students.*

#### Amendment 6

Article 2, point h b (new)

***hb) 'teacher' and 'trainer' mean a teacher or trainer from a higher education establishment or an accredited vocational establishment taking part in a teacher exchange programme.***

*Justification*

*See justification to Amendment 5.*

Amendment 7

Article 5, paragraph 1, point b a (new)

***(ba). produces evidence in any form that he possesses the necessary funds during his stay to cover the cost of his maintenance and return journey;***

*Justification*

*Under the relevant decisions of Parliament, third-country nationals have to show that they will not need to make any claim on the host country's social assistance during their stay in the Community.*

Amendment 8

Article 5, paragraph 1, point c

c) is not regarded as a threat to public policy, public security ***or public health, and provides the documentary evidence required by the Member State.*** Public policy or public security grounds shall be based exclusively on the personal conduct of the third-country national concerned;

c) is not regarded as a threat to public policy or public security. Public policy or public security grounds shall be based exclusively on the personal conduct of the third-country national concerned;

*Justification*

*Public health may be unacceptable grounds for discrimination under the principles by which we are governed.*

Amendment 9  
Article 5, paragraph 2

2. Member States shall facilitate the issuance of the residence permit and such visas as they require for the third-country nationals covered by Articles 6 to 10 who participate in Community programmes enhancing mobility towards or within the European Union.

2. Member States shall facilitate the issuance of the residence permit and such visas as they require for the third-country nationals covered by Articles 6 to 10 who participate in Community programmes enhancing mobility towards or within the European Union, ***so as not to delay the start of the intended training activities.***

*Justification*

*Specifies why the Member States must be prompt in issuing residence permits.*

Amendment 10  
Article 6, paragraph 1, point c

c) has, if the Member State so requires, sufficient knowledge of the language of the course followed by the student;

c) has, if the Member State ***or the host establishment*** so requires, sufficient knowledge of the language of the course followed by the student;

*Justification*

*This reflects the reality better: it is an educational requirement.*

Amendment 11  
Article 10 a (new)

***Article 10a: Specific conditions for researchers, teachers and trainers***  
***Member States may issue a 'research, teaching, training or further training' residence permit to a third-country***

*national only if, in addition to the general conditions stipulated in Article 5, he:*

*(a) has signed a training, teaching, research or further training agreement, possibly approved by the competent authority of the Member State concerned in accordance with its regulations or administrative practice, to carry out research or a period of teaching or training, or to take part in an exchange and cooperation programme at a public- or private-sector training, secondary education or research establishment accredited or financed by a Member State in accordance with its regulations or administrative practice;*

*b) provides evidence by any lawful means that during his stay he will have sufficient resources to cover his subsistence and return travel costs.*

#### *Justification*

*This amendment lays down the conditions to be met in order to obtain a residence permit for researchers, teachers and trainers.*

Amendment 12  
Article 10 b (new)

#### *Article 10b: Family reunification*

*Member States shall facilitate the issue of residence permits and such visas as they require for the immediate families (understood to be the spouse and children or dependent relatives in the ascending line) of the third-country nationals admitted to reside in a Member State for study, training, traineeships, voluntary service, or further vocational training, for the whole period of validity of the residence permits of those third-country nationals.*

*Justification*

*It is important to allow families to join the person concerned for the whole period spent in Europe for the purpose of study, research or training, particularly if it is lengthy.*

Amendment 13  
Article 11, paragraph 2, point c

***c) does not respect the limits imposed on the exercise of his right to work under Article 18 of this Directive;*** ***deleted***

*Justification*

*See justification to amendment on recital 8.*

Amendment 14  
Article 15, paragraph 2

2. Member States may withdraw residence permits or visas on grounds of public policy, public security ***or public health***. Public policy or public security grounds shall be based exclusively on the personal conduct of the third-country national concerned. ***Public health shall not be invoked by Member States as a reason for revoking or not renewing a residence permit or expelling the holder solely on the ground of illness or disability suffered after the issue of the residence permit.***

2. Member States may withdraw residence permits or visas on grounds of public policy ***or*** public security. Public policy or public security grounds shall be based exclusively on the personal conduct of the third-country national concerned.

*Justification*

*Danger of discrimination on health grounds at the end of the paragraph: the wording clearly demonstrates the risk of improper use of this provision.*



Amendment 15  
Article 18, paragraphs 1 and 2

Outside their study time, students may exercise an activity in an employed or self-employed capacity, subject to the rules applicable to the relevant trade. ***Each Member State shall determine the maximum number of hours of work allowed, between 10 and 20 hours per week. This limitation shall not apply during holiday periods.***

***Member States may withhold this right for the first year of residence and may withdraw it if the student does not make sufficient progress in his studies.***

Outside their study time, students may exercise an activity in an employed or self-employed capacity, subject to the rules applicable to the relevant trade ***and within the limits applicable to students who are nationals of the host country.***

*deleted*

*Justification*

*Where work is concerned, third-country students and trainees should enjoy the same rights as students and trainees who are nationals of the host country, partly in order to limit recourse to moonlighting and the risk of exploitation.*

Amendment 16  
Article 24

The Member States shall give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age ***or*** sexual orientation.

The Member States shall give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age, sexual orientation ***or any other personal or social circumstance or condition.***

*Justification*

*An exhaustive or restrictive list always seems more accurate; however, in legal terms an open list is more suitable. With the addition of the above text all possible grounds for discrimination have been covered.*

## **OPINION OF THE COMMITTEE ON PETITIONS**

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the proposal from the Commission with a view to the adoption of a Council directive on the conditions of entry and residence of third-country nationals for purposes of studies, vocational training or voluntary service  
(COM(2002) 548 – C5-0502/2002 – 2002/0242(CNS))

Draftsman: Luciana Sbarbati

### **PROCEDURE**

The Committee on Petitions appointed Luciana Sbarbati draftsman at its meeting of 23 January 2003.

It considered the draft opinion at its meeting of 20 March 2003.

At the last meeting it adopted the following conclusions unanimously.

The following were present for the vote: Roy Perry, vice-chairman and acting-chairman, Proinsias De Rossa, vice-chairman; Felipe Camisón Asensio, Marie-Hélène Descamps, Janelly Fourtou, Laura González Álvarez, The Earl of Stockton, Christian Ulrik von Boetticher and Eurig Wyn.

## SHORT JUSTIFICATION

1. Today, just as in Montaigne's time, travel – including travel for study and training purposes – is one of the best ways of producing '*the well-formed rather than well-filled minds*' so needed by our societies. Another key phrase, '*seek knowledge wherever it may be found*' remains a watchword in certain geographical and cultural areas of the planet, as well as a vital tool for professional life. Thousands of young people from all parts of the world want to enter our universities and schools to undergo or complete their education.
2. Within our Union, mobility among young people has long been encouraged and promoted, for the purposes of higher education or worthwhile voluntary work. Although initially confined to Community students, Erasmus, Comet and succeeding programmes have gradually been extended to a whole range of countries linked to the Union by association, partnership or other agreements.
3. Many of students wishing to enter our universities are nationals of third countries and require a residence permit or even a visa to pursue their studies here. That is why the Member States' provisions need to be harmonised at Community level, which is the aim of this directive.
4. This committee can only welcome that fact, since ultimately it sees the presence of foreign students as a powerful method of encouraging intercultural exchange, as well as extending the influence of our plural cultures among the students who come here. Their presence also offers a way of helping new generations from emerging countries, who are the leaders of the future, to complete their education while becoming familiar with our social and cultural environment and also developing a humanist, open and democratic vision of society.
5. It is not your draftsman's intention to table amendments to the directive. She has already tabled a number of amendments in her capacity as draftsman of the Committee on Employment and amendments will probably be tabled by the rapporteur and by the draftsmen of the other committees asked for an opinion.
6. Your wishes to draw attention to some of the wishes that appear in the petitions submitted to the European Parliament (notably by petitioners from third countries).

Sitting on a terrace in a holiday resort, we all appreciate the service provided by students working in the catering industry to supplement their meagre students' income.

**(a) First wish:** removing the option given to Member States under Article 18, second paragraph, *not to allow the exercise of a paid or self-employed activity during the first year of studies and to withdraw it if the student does not make sufficient progress in his studies*. The criterion of *insufficient progress* is too vague and could be open to abuse.

Any students or research workers with families will naturally wish to take advantage, where appropriate, of provisions on family reunification.

**(b) Second wish:** the directive should include provision for family reunification using the definition recently adopted by the Council.

With regard to the right of residence, everyone wishes to see residence permits issued without discrimination.

**(c) Third wish:** in addition to the non-discrimination provisions laid down in Article 24 of the directive, specific reference should be made to any other personal circumstances or social situation of the student or research worker.

ooOoo

In conclusion, your draftsman wishes to raise an issue that will be highly sensitive in the difficult days ahead. This concerns the link between public order and the prohibition of discrimination. Since public order concerns are a vital component, the directive quite rightly prohibits the issuing of residence permits to any person considered to be a threat to public order and security. However, just as no concessions should be allowed in this matter, care should also be taken not to let in, *de facto*, through the window what has been expelled, *de jure*, through the door. Indirect forms of racism or xenophobia could emerge almost involuntarily through excessive and finicky controls confined to certain groups of third-country nationals. The questionable measures taken in one particular country following the tragic events we are all familiar with serves as an example of how fear of the 'other' can under exceptional circumstances produce forms of racism and xenophobia that we would like to see consigned to the past forever.