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**Interinstitutional File:  
2013/0081 (COD)**

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**LIMITE**

**MIGR 106  
RECH 319  
EDUC 258  
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**NOTE**

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From:	Presidency
To:	Working Party on Integration, Migration and Expulsion
No. prev. doc.:	10717/14 MIGR 97 RECH 269 EDUC 209 CODEC 1446
No. Cion doc.:	7869/13 MIGR 27 RECH 87 EDUC 97 CODEC 669
Subject:	Proposal for a Directive of the European Parliament and of the Council 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 [Recast]

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At its meeting held on 18 June, the Working Party on Integration, Migration and Expulsion had an exchange of views on the Presidency's compromise suggestions for Articles 26 - 26G as well as Articles 3, 7, 10, 10a, 11, 13, 14, 16, 17, 18, 19, 24 and 29.

Discussions at the meeting on 7 July will focus on the provisions concerning mobility as well as those dealing with researchers. New text is indicated with ➡**addition in bold**⬅; the deleted text is indicated with ➡[...]⬅.

All delegations have a general scrutiny reservation on the text, and in particular on the most recent compromise proposals. **AT, CZ, HU, PL** have indicated that they have a Parliamentary scrutiny reservation on the text. Delegations have also indicated that they have linguistic reservations on several parts of the text.

For the convenience of delegations, this is a list of the provisions that have been subject to the new compromise suggestions:

- |                             |                                    |
|-----------------------------|------------------------------------|
| - Recital 4                 | - Article 8(3), (4)                |
| - Recitals 9, 9a, 9b        | - Article 9(2), (3), (4), (6), (8) |
| - Recital 12                | - Article 15 (3)                   |
| - Recital 18                | - Article 16(1), (2), (3)          |
| - Recital 24a               | - Article 22                       |
| - Recital 25                | - Article 23(4), (5)               |
| - Recital 28                | - Article 26(2), (3)               |
| - Recital 29                | - Article 26A                      |
| - Recitals 31, 31b          | - Article 26B                      |
| - Recital 32                | - Article 26C                      |
| - Recitals 33a              | - Article 26D                      |
| - Recital 42                | - Article 26G(1), (4)              |
| - Article 3(f)              | - Article 31                       |
| - Article 7(1), (1bis), (2) | - Article 32(2)                    |

## ANNEX

↓ 2004/114/EC, 2005/71/EC (adapted)

⇒ new

2013/0081 (COD)

Proposal for a

### **DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the conditions of ~~admission~~ ⇒ entry and residence ⇐ of third-country nationals for the purposes of ☒ research, ☒ studies, pupil exchange, ⇒ remunerated and ⇐ unremunerated training ~~or~~, voluntary service ⇒ and au pairing ⇐<sup>1</sup>**

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- <sup>1</sup>. Delegations' position concerning the groups included in this proposal:
- **School pupils:**
    - \* Reservation against becoming mandatory: AT, BE, DE, EL, ES, FI, LT, NL, PL, SK.
  - **Unremunerated trainees:**
    - \* Reservation against becoming mandatory: AT, BE, DE, EL, ES, FI, LV, LT, NL, PL, SK.
  - **Remunerated trainees:**
    - \* Reservation against inclusion: AT, CY, CZ, DE, EL, ES, FI, HU, PL, RO, SI.
    - \* Reservation against becoming mandatory: ES, LV, LT, SK.
  - **Volunteers:**
    - \* Reservation against becoming mandatory: AT, BE, CY, DE, ES, FI, NL, LV, LT, PL, SK.
  - **Au-pairs:**
    - \* Reservation against inclusion: AT, BG, CY, CZ, DE, EL, EE, ES, FI, HU, NL, LV, SI.
    - \* Reservation against becoming mandatory: SK, LT

~~on a specific procedure for admitting third-country nationals for the purposes of scientific research~~

[RECAST]<sup>2</sup>

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty ~~(X)~~ on the Functioning of the European Union ~~(X)~~ ~~establishing the European Community~~, and in particular points ~~(3)~~ (a) ~~(X)~~ and (b) ~~(X)~~ ~~(4)(b)~~ of the first subparagraph of Article ~~63~~ ~~(X)~~ 79(2) ~~(X)~~ thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the Opinion of the European Economic and Social Committee,

Having regard to the Opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:<sup>3</sup>

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<sup>2</sup> **AT, CZ** prefer two separate directives instead of a single one. **CZ**: this proposal should deal only with stays on the basis of residence permits and not on the basis of long-stay visas, which remain a national competence. **AT**: doubts whether Article 79 of the TFEU is a sufficient legal base or whether Article 153 should not be a better legal base.

<sup>3</sup> **ES** suggested the inclusion of the following new recital: "*This Directive should not affect the bilateral or multilateral agreements concluded between one or more Member States and one or more third countries even if these agreements comprise mobility measures for third-country nationals.*"

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↓ new

→ Council

- (1) A number of amendments are to be made to Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service<sup>4</sup> and Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research<sup>5</sup>. In the interests of clarity, those Directives should be recast.
- (2) This Directive should respond to the need identified in the implementation reports of the two Directives<sup>6</sup> to remedy the identified weaknesses, and to offer a coherent legal framework for different groups coming to the Union from third countries. It should therefore simplify and streamline the existing provisions for the different groups in a single instrument. Despite differences between the groups covered by this Directive, they also share a number of characteristics which makes it possible to address them through a common legal framework at Union level.
- (3) This Directive should contribute to the Stockholm Programme's aim to approximate national legislation on the conditions for entry and residence of third-country nationals. Immigration from outside the Union is one source of highly skilled people, and in particular students and researchers are increasingly sought after. They play an important role to form the Union's key asset – human capital - in ensuring smart, sustainable and inclusive growth, and therefore contribute to the achievement of the objectives of the Europe 2020 Strategy.

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<sup>4</sup> OJ L 375, 23.12.2004, p. 12.

<sup>5</sup> OJ L 289, 3.11.2005, p. 15.

<sup>6</sup> COM(2011) 587 final and COM(2011) 901 final

(4) The [...] implementation reports of the two Directives [...] pointed out certain insufficiencies of the two instruments in relation mainly with the admission conditions, rights, procedural safeguards, students' access to the labour market during studies, intra-Union mobility provisions [...]. **Also specific improvements were considered necessary** regarding the optional categories of third-country nationals. Subsequent wider consultations have also pointed out the need for better job-seeking possibilities for researchers and students and better protection of au-pairs<sup>7</sup> and remunerated trainees [...] by extending the scope of [...] the current instruments for [...] the latter two categories.<sup>8</sup>

↓ 2004/114/EC recital 1

(5) For the gradual establishment of an area of freedom, security and justice, the Treaty provides for measures to be adopted in the fields of asylum, immigration and the protection of the rights of third-country nationals.

↓ 2004/114/EC recital 2 (adapted)

~~The Treaty provides that the Council is to adopt measures on immigration policy relating to conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits.~~

<sup>7</sup> ES: reservation.

<sup>8</sup> AT: the recital should be deleted.

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↓ 2004/114/EC recital 3 (adapted)

~~At its special meeting at Tampere on 15 and 16 October 1999, the European Council acknowledged the need for approximation of national legislation on the conditions for admission and residence of third-country nationals and asked the Council to rapidly adopt decisions on the basis of proposals by the Commission.~~

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↓ new

(6) This Directive should also aim at fostering people-to-people contacts and mobility, as important elements of the Union's external policy, notably vis-à-vis the countries of the European Neighbourhood Policy or the Union's strategic partners. It should allow for a better contribution to the Global Approach to Migration and Mobility and its Mobility Partnerships which offer a concrete framework for dialogue and cooperation between the Member States and third countries, including in facilitating and organizing legal migration.

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↓ 2004/114/EC recital 6 (adapted)

~~One of the objectives of Community action in the field of 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 the Community for the purpose of studies 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.~~

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↓ 2004/114/EC recital 7 (adapted)

⇒ new

- (7) Migration for the purposes set out in this Directive ~~is by definition temporary and does not depend on the labour market situation in the host country.~~<sup>9</sup> ⇒ should promote the generation and acquisition of knowledge and skills<sup>10</sup>. ⇐ ⊗ It ⊗ constitutes a form of mutual enrichment for the migrants concerned, their country of origin and the host Member State and helps to promote better familiarity among cultures.
- 

↓ new

- (8) This Directive should promote the Union as an attractive location for research and innovation and advance the Union in the global competition for talent. Opening the Union up to third-country nationals who may be admitted for the purposes of research is also part of the Innovation Union flagship initiative. Creating an open labour market for Union researchers and for researchers from third countries was also affirmed as a key aim of the European Research Area (ERA), a unified area, in which researchers, scientific knowledge and technology circulate freely.

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<sup>9</sup> **CY:** cannot support the deletion.

<sup>10</sup> **BG:** insert "... knowledge, skills *and competences*" in order to cover the full range of learning outcomes as defined in the European Qualifications Framework for lifelong learning.



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↓ 2005/71/EC recital 5 (adapted)

~~This Directive is intended to contribute to achieving these goals by fostering the admission and mobility for research purposes of third-country nationals for stays of more than three months, in order to make the Community more attractive to researchers from around the world and to boost its position as an international centre for research.~~

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↓ 2004/114/EC recital 9 (adapted)

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

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↓ 2004/114/EC recital 11

~~Third-country nationals who fall into the categories of unremunerated trainees and volunteers and who are considered, by virtue of their activities or the kind of compensation or remuneration received, as workers under national legislation are not covered by this Directive. The admission of third-country nationals who intend to carry out specialisation studies in the field of medicine should be determined by the Member States.~~

↓ 2005/71/EC recitals 11, 13 and 14

(adapted)

⇒ new

↻ Council

- (9) It is appropriate to facilitate the admission of researchers ~~by establishing~~ ⇒ through ⇐  
↻ [...] ⇐ ↻ a fast track ⇐ admission procedure which does not depend on their legal  
relationship with the host research organisation and by no longer requiring a work permit in  
addition to ↻ [...] ⇐ ⇒ ↻ [...] ⇐ ↻ an authorisation ⇐ ⇐ . ~~Member States could apply  
similar rules for third-country nationals requesting admission for the purposes of teaching in  
a higher education establishment in accordance with national legislation or administrative  
practice, in the context of a research project. The~~ ⊗ This ⊗ ~~specific admission~~ procedure  
~~for researchers~~ should be based on collaboration between ~~the~~ research organisations and the  
immigration authorities in the Member States. It should give the former a key role in the  
admission procedure with a view to facilitating and speeding up the entry and residence of  
third-country researchers in the ~~Community~~ ⊗ Union ⊗ while preserving Member States'  
prerogatives with respect to immigration ~~policy~~ ⊗ policy ⊗. Research organisations  
approved in advance by the Member States<sup>11</sup> should be able to sign ↻ either ⇐ a hosting  
agreement ↻ or a contract ⇐ with a third-country national for the purposes of carrying out a  
research ↻ [...] ⇐ ↻ activity<sup>12</sup> ⇐ . Member States should issue ~~a residence permit~~ ⇒ an  
authorisation ⇐ on the basis of the hosting agreement ↻ or the contract ⇐ if the conditions  
for entry and residence are met.

<sup>11</sup> ES: reservation.

<sup>12</sup> AT, CY prefer "*research project*" since it is narrower and in order to limit abuse as much as possible.

⇒ ( ⇒ [...] ⇒ 9a [previous 9b] ) Member States should have the possibility to apply, in addition to the general procedures of admission of students, school pupils, remunerated or unremunerated trainees, ⇒ [...] volunteers ⇒ or au pairs , a fast track procedure, when these categories of third-country nationals are recruited by an approved host entity ⇒ [...] for the purposes of entry to the first Member State <sup>13</sup>

⇒ ( ⇒ [...] ⇒ 9b [previous 9a] ) Member States should have the right to ⇒ [...] ⇒ provide for an approval procedure for respective entities to host pupils, remunerated and unremunerated trainees ⇒ [...] volunteers ⇒ or au pairs . This approval should be in accordance with the procedures set out in the national law or administrative practice of the Member State concerned, while Member State would have the possibility to apply this procedure to some or all of the categories of the host entities. <sup>14</sup>

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<sup>13</sup> **PL:** the wording gives an impression that there are 2 parallel schemes, one for the admission by approved host entities and another one that concerns. **ES:** this recital should also mention researchers as a group with access to the fast-track procedure.

<sup>14</sup> **DE:** the link between Recitals 9a and 9b should be clearer as they seem to supplement each other.

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↓ 2005/71/EC recital 9 (adapted)

⇒ Council

- (10) As the effort to be made to achieve the ~~said 3 %~~ target ☒ of investing 3 % of GDP in research ☒ largely concerns the private sector, which ⇒ [...] ☒ ⇒ should<sup>15</sup> ☒ ⇒ be encouraged ☒ therefore ⇒ , where appropriate, to ☒ recruit more researchers in the years to come, the research organisations ~~potentially eligible~~ ☒ that can be approved ☒ under this Directive ☒ ⇒ [...] ☒ ⇒ could ☒ ☒ belong to either the public or private sectors.

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↓ 2005/71/EC recital 15 (adapted)

⇒ new

⇒ Council

- (11) In order to make the ~~Community~~ ☒ Union ☒ more attractive ~~to~~ ☒ for ☒ third-country ☒ national ☒ researchers, ⇒ family members of researchers, as defined in Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification<sup>16</sup>, ⇐ ~~they should be granted, during their stay, equal social and economic rights with nationals of the host Member State in a number of areas and the possibility to teach in higher education establishments~~ ⇒ should be admitted with them, ⇒ [...] ☒ benefit from intra- Union mobility provisions and ⇒ [...] ☒ have access to the labour market<sup>17</sup> ⇐.

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<sup>15</sup> **AT, CY, DE** against "should". In case "should" is kept, the wording "*where appropriate*" needs to be added.

<sup>16</sup> OJ L 251, 3.10.2003, p. 12.

<sup>17</sup> **CY**: deletion of "should"; the provisions of national law regarding family reunification should apply. **FI**: compatibility with the text in the Single Permit Directive. **BG**: add: "...have access to the labour market *with respect to the provisions of the Directive 2011/98/EU*".

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↓ new

↻ Council

(12) ↻ [...] ↻

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↓ 2005/71/EC recital 6 (adapted)

(13) Implementation of this Directive should not encourage a brain drain from emerging or developing countries. ~~Back-up~~ Measures to support researchers' reintegration into their countries of origin as well as the movement of researchers should be taken in partnership with the countries of origin with a view to establishing a comprehensive migration policy.

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↓ new

(14) In order to promote Europe as a whole as a world centre of excellence for studies and training, the conditions for entry and residence of those who wish to come to the Union for these purposes should be improved. This is in line with the objectives of the Agenda for the modernisation of Europe's higher education systems<sup>18</sup>, in particular within the context of the internationalisation of European higher education. The approximation of the Member States' relevant national legislation is part of this endeavour.

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<sup>18</sup> COM(2011) 567 final

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↓ new

→ Council

(15) The extension and deepening of the Bologna process launched through the Bologna Declaration<sup>19</sup> has led to → [...] → more comparable, compatible and coherent systems of higher education → in participating countries but also beyond them. This is because national authorities have supported the mobility of students and → [...] → researchers<sup>20</sup> → , and higher education → [...] → institutions → have integrated it in their curricula. This needs to be reflected through improved intra-Union mobility provisions for students. Making European higher education attractive and competitive is one of the objectives of the Bologna declaration. The Bologna process led to the establishment of the European Higher Education Area. → [...] → Its three-cycle structure with easily readable programmes and degrees as well as the introduction of qualifications frameworks have → made it more attractive for students who are third-country nationals to study in Europe.<sup>21</sup>

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<sup>19</sup> Joint declaration of the European Ministers of Education of 19 June 1999

<sup>20</sup> EE prefers the original term "*academic staff*" over "researchers".

<sup>21</sup> DE suggests the following changes to this recital in order to describe the impact of the Bologna Process in a more accurate manner:

“The extension and deepening of the Bologna process launched through the Bologna Joint Declaration of the European Ministers of Education of 19 June 1999 has led to more comparable, compatible and coherent systems of higher education ~~the progressive convergence of higher education systems~~ in participating countries but also beyond them. This is because national authorities have supported the mobility of students and researchers, and higher education institutions have integrated it in their curricula. This needs to be reflected through improved intra-Union mobility provisions for students. Making European higher education attractive and competitive is one of the objectives of the Bologna declaration. The Bologna process led to the establishment of the European Higher Education Area. Its three-cycle structure with easily readable programmes and degrees as well as the introduction of qualifications frameworks ~~Streamlining the European higher education sector~~ has made it more attractive for students who are third-country nationals to study in Europe.”

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↓ 2004/114/EC recital 10

- (16) The duration and other conditions of preparatory courses for students covered by this Directive should be determined by Member States in accordance with their national legislation.

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↓ 2004/114/EC recital 12

↻ Council

- (17) Evidence of acceptance of a student by a ↻ [...] ↻ higher education ↻ institution ↻ could include, among other possibilities, a letter or certificate confirming his/her enrolment.<sup>22</sup>

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<sup>22</sup> **ES:** business schools should be covered by the scope of the Directive and reference to them could be made in this recital.

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↓ 2004/114/EC recital 13

⇒ new

⇒ Council

- (18) ⇒ [...] ☹ ⇒ If the third-country national concerned can prove that he/she is in receipt of  
⇒ [...] ☹ resources throughout the period of his/her stay in the respective Member State  
that derive from a grant, a fellowship or a scholarship. ⇒ [...] ☹ ⇒ **the agreement between**  
**the au pair and the** ☹ host family, a firm offer of work or a financial undertaking by a  
pupil exchange scheme organisation or a voluntary service scheme organisation, Member  
States ☹ ~~may~~ ⇒ should ⇐ ⇒ [...] ☹ ⇒ take them ☹ into account in assessing the  
availability of sufficient resources. ⇒ Member States could lay down a reference amount  
which they regard as constituting “sufficient resources” that might vary for each one of the  
respective categories of third-country nationals, while ⇒ **, where applicable,** ☹ taking into  
account the level of minimum national wages, and ⇒ [...] ☹ the number of family  
members. ☹<sup>23</sup>

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<sup>23</sup> **CION:** the wording of the recital and Article 6(4) is too obvious and offers no added value.  
**CION** prefers the EP amendment for the corresponding provision.



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↓ new

→ Council

(19) [→ [...] ] Member States → should have [→ [...] ] discretion on whether or not to apply → this [→ [...] ] Directive → [...] [→ [...] ] to school pupils, volunteers → [...] [→ [...] ] , remunerated or [→ [...] ] unremunerated trainees → and au-pairs [→ [...] ] , → [...] [→ [...] ] in order to facilitate their entry and residence and ensure their rights. → [...] [→ [...] ] ]

(20) → [...] [→ [...] ]<sup>24</sup>

(21) → [...] [→ [...] ] → As far as au-pairs are concerned<sup>25</sup>, Member States could decide to apply this Directive in order [→ [...] ] to address their specific needs → [...] [→ [...] ]<sup>26</sup> . This Directive should foresee conditions to be fulfilled by both the au-pair and the host family, in particular as regards the agreement between them which should include elements such as → a minimum sum of money as [→ [...] ] [→ [...] ] pocket money to be received<sup>27 28</sup> .

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<sup>24</sup> **HU**: insert a new recital clarifying who should be considered a worker.

<sup>25</sup> **HU** suggests to change this wording to: "In order to better protect [...]".

<sup>26</sup> **CION**: the notion of vulnerability is used for seasonal workers and should be used here too.

<sup>27</sup> Council of Europe European Agreement on "au pair" Placement, Article 8

<sup>28</sup> **ES**: reservation. **AT** proposes to delete this recital.

- (22) Once all the general and specific conditions for admission are fulfilled, Member States should issue an authorisation, ~~...~~ within specified time limits. If a Member State issues a residence permit on its territory only and all the conditions of this Directive relating to admission are fulfilled, the Member State should grant the third-country national concerned ~~every facility to obtain~~ the requisite visa ~~or equivalent permit~~ ~~...~~ allowing entry ~~.~~<sup>29</sup>
- (23) Authorisations should mention the status of the third-country national concerned ~~...~~. Member States may indicate additional information ~~including~~ ~~...~~ relevant information on EU ~~...~~ or multilateral programmes that comprise mobility measures ~~in paper format or electronically, provided this does not amount to additional conditions.~~<sup>30</sup>
- (24) The different periods of duration regarding authorisations under this Directive should reflect the specific nature of the stay of each group.

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<sup>29</sup> **DE, PL** wish to make clear in this recital that the "equivalent permit for entry" applies only to Member States that are not part of Schengen. **AT** requests this recital to be put in line with Article 5(2). **EE**: reservation connected to Article 5(2); this recital and Article 5(2) clearly limit the right of Member States to consider who is allowed to enter into their territory. In addition, it creates for the third-country national an automatic right to enter in the Member State. **EE** also points out that even if Article 18(1)(d) allows to refuse the application, if it is evident that the third-country national intends to reside or carry out an activity for purposes other than those for which he/she applies to be admitted, in practice it is very difficult to prove the intention and therefore it is very difficult to apply this ground for refusal.

<sup>30</sup> **AT** proposes the following wording: "Member States may indicate additional information including respective information on EU or multilateral programmes [...]". **ES**: reservation on multilateral programmes suggesting the following wording: "... Member States may indicate additional information including respective information on EU [...] programmes that comprise mobility measures in paper format or electronically, provided this does not amount to additional conditions."

☞ (24a) Member States should have the right to determine that the total duration of residence of students does not exceed the maximum duration of studies, as defined in national law. In this respect, the maximum duration of studies ☞ [...] ☞ ☞ could ☞ also include, if so provided by the national law of the Member State concerned, the possible extension of studies for the purpose of repeating one or more years of studies. ☞

(25) Member States may charge applicants for ☞ [...] ☞ ☞ handling<sup>31</sup> ☞ applications for authorisations ☞ **and notifications** ☞ . The ☞ [...] ☞ ☞ level of the fees ☞ [...] ☞ ☞ **should** ☞ not be disproportionate or excessive ☞ .

(26) The rights granted to third-country nationals ☞ [...] ☞ ☞ falling under the scope of this Directive ☞ should not depend on ☞ [...] ☞ ☞ the form of ☞ the ☞ authorisation each Member State grants ☞ [...] ☞ ☞ .<sup>32</sup>

↓ 2004/114/EC recital 8

☞ Council

(27) ☞ [...] ☞

<sup>31</sup> **AT:** reservation on the inclusion of the new wording "handling".

<sup>32</sup> **CY:** reservation as the meaning is unclear. **AT:** against including third-country nationals staying on the basis of a visa.

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↓ 2004/114/EC recital 14 (adapted)

⇒ new

↻ Council

- (28) ↻ It should be possible to refuse admission for the purposes of this Directive ↻  
↻ [...] ↻ on duly justified grounds. In particular, ↻ [...] ↻ it should be possible to  
refuse admission if a Member State considers ↻ , ↻ [...] ↻ on the basis of ↻ an  
assessment of the facts, ⇒ in an individual case, ⇐ that the third-country national concerned  
is a potential threat to public policy ↻, public security ⇒ or public health ⇐ . ↻ **Before  
taking a decision to reject an application or withdraw or non-renew an authorisation,  
the Member States concerned should take account of the specific circumstances of the  
case and respect the principle of proportionality.** ↻ ~~The notion of public policy may  
cover a conviction for committing a serious crime. In this context it has to be noted that the  
notions of public policy and public security also cover cases in which a third-country  
national belongs or has belonged to an association which supports terrorism, supports or has  
supported such an association, or has or has had extremist aspirations.~~

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↓ 2004/114/EC recital 15 (adapted)

→ Council

- (29) In case of doubts concerning the grounds of the application ~~of~~  for  admission, Member States should be able to  [...]  carry out appropriate checks or require evidence  in order to assess  [...]  the applicant's   intended  studies  or training   [...]  and  fight  against abuse and misuse of the procedure set out in this Directive.<sup>33</sup>

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↓ new

→ Council

- (30) National authorities should  [...]  notify to  third-country nationals who apply for admission to the Member States under this Directive  [...]  the  decision on the application. They should do so in writing as soon as possible and, at the latest within  [...]  the period specified in this Directive .

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<sup>33</sup> **PL:** why cannot this provision be applied to categories other than students and trainees?

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↓ 2004/114/EC recital 16

↻ Council

- (31) ↻ [...] ↻ This Directive aims to facilitate intra-EU mobility of researchers ↻ [...] ↻ and students ↻ [...] ↻ inter alia by reducing the administrative burden ↻ [...] ↻ related to their activities as well as the administrative procedures for their movement in several Member States. For this purpose, this Directive sets up a specific intra-EU mobility scheme whereby ↻ [...] ↻ a third-country national who holds an authorisation for the purpose of research or studies issued by the first Member State <sup>34</sup> might enter, stay and carry out part of his/her research or studies in one or several second Member States ↻ [...] ↻ in accordance with the provisions governing mobility under this Directive. ↻ [...] ↻ ↻ [...] ↻ ↻ [...] ↻ ↻ **↻ In order to enable researchers to move easily from one research organisation to another for purposes linked to their research activities, their short-term mobility ↻ [...] ↻ ↻ [...] ↻ should cover stays in ↻ [...] ↻ second Member States for a period of up to ↻ [...] ↻ ↻ [...] ↻ 90 days in ↻ [...] ↻ ↻ any ↻ [...] ↻ 180-day ↻ period per Member State. ↻ Long-term mobility for researchers should cover stays in ↻ [...] ↻ **↻ one or several** second Member States for a period of more than ↻ [...] ↻ 90 days per Member State. ↻ ↻ <sup>35</sup>**

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<sup>34</sup> FR: "...issued by the first Member State, which should remain responsible for the third-country national in case of extension of the right of residence as stated in Article 24, might enter...".

<sup>35</sup> FR: it should be stated in the recitals that the mobility scheme is based on specific needs of particular groups.

☞ [...] ☞ **As regards students, in order to ensure continuity of studies during a whole semester, this Directive should** ☞ [...] ☞ **provide for mobility in one or several second Member States for a period of up to 180 days in any 360-day period per Member State.**<sup>36</sup> **This period should be up to 360 days per Member State in cases where the mobility takes place** in the framework of EU or multilateral programmes or an agreement ☞ **between two or more recognised higher education institutions** ☞ [...] ☞ **with a possibility of an extension for another** ☞ [...] ☞ ☞ [...] ☞ **180 days.** ☞ [...] ☞ [...] ☞ ☞ [...] ☞ ☞ ☞ [...] ☞ ☞ [...] ☞ ☞ [...] ☞

☞ [...] ☞

☞ [...] ☞

☞ (31a) ☞ [...] ☞ **While the specific mobility scheme established by this Directive should set up autonomous rules regarding entry and stay for the purpose of research or studies in Member States other than the one that issued the authorisation, all the other rules governing the movement of persons across borders as laid down in the relevant provisions of the Schengen acquis should continue to apply.** ☞<sup>37</sup>

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<sup>36</sup> **FR:** opposed to mobility of students outside programmes or agreements.

<sup>37</sup> **HU:** the recital is in contradiction with Article 26A.

➔ (31b) Where the authorisation is issued by a Member State not applying the Schengen acquis in full and the researcher or his/her family members or the student, in the framework of intra-EU mobility, crosses an external border within the meaning of Regulation (EC) No 562/2006 of the European Parliament and of the Council a Member State should be entitled to require evidence proving that the researcher or the student is moving to its territory for the purpose of research or studies or that the family members ➔ [...] ➔ are ➔ moving to its territory for the purpose of accompanying or joining the researcher<sup>38</sup>. Besides, in case of crossing of an external border within the meaning of Regulation (EC) No 562/2006, the Members States applying the Schengen acquis in full should consult the Schengen information system and should refuse entry or object to the mobility for persons for whom an alert for the purposes of refusing entry or stay, as referred to in Regulation (EC) No 1987/2006 of the European Parliament and of the Council has been issued in that system. ➔

↓ new

➔ Council

(32) **Union immigration policy rules, on the one hand, and ➔ [...] ➔ EU ➔ [...] ➔ [...] ➔ policies and programmes favouring mobility of researchers and students at EU level, on the other hand,** should complement each other more. ➔ [...] ➔ Researchers and students covered by such ➔ [...] ➔ programmes should be entitled to ➔ [...] ➔ receive authorisations covering the whole duration of their stay in the Member States concerned, without prejudice to mobility rules, as provided for in this Directive. ➔<sup>39</sup> ➔ [...] ➔

<sup>38</sup> FR: "... in the framework of long-term mobility."

<sup>39</sup> AT, DE, PL: in relation to Article 16(4), Member States should be competent to decide the maximum period of stay for students and researchers.



↓ 2004/114/EC recital 18 (adapted)

⇒ new

↻ Council

(33) In order to allow ~~⊗~~ ↻ [...] ↻ ~~⊗~~ students ~~who are third-country nationals~~ to  
⇒ ↻ [...] ↻ ⇐ cover part of the cost of their studies ↻ and, if possible, to gain practical  
experience ↻, they should be given ↻ [...] ↻ access to the labour market under the  
conditions set out in this Directive ⇒, meaning a ↻ [...] ↻ ⇐ ↻ certain minimum amount  
of hours as specified in this Directive ↻. The principle of access for students to the labour  
market ~~under the conditions set out in this Directive~~ should be a general rule. However,  
↻ [...] ↻ Member States should be able to take into account the situation of their national  
labour markets ⇒ ↻ [...] ↻ ⇐.

↻ (33a) **In case of mobility the second Member States should be able to check the  
amount of hours per week or days or months per year that a student has worked in the  
first Member State in order to ensure that this does not exceed the maximum allowed  
under its national law.** ↻<sup>40</sup>

↻ [...] ↻

<sup>40</sup> PL proposed the following wording stating that the recital is too detailed and overly complex: "*Economic activities of students and researchers should be taken up only in one Member State at a time. Moreover, they must be performed in accordance with the national laws, collective agreements and/or practices of that Member State.*"

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↓ new

→ Council

(34) As part of the drive to ensure a well-qualified workforce for the future, Member States should<sup>41</sup> allow students who graduate in the Union to remain on their territory with the intention to identify work opportunities or to set up a business for → [...] → the period specified in this Directive → after expiry of the initial authorisation. They should<sup>42</sup> also allow researchers to do so upon completion of their research → [...] → activity → as defined in the hosting agreement. This should not amount to an automatic right of access to the labour market or to set up a business. They may be requested to provide evidence in accordance with → [...] → the requirements of this Directive. →<sup>43</sup>

→ (34a) This Directive does not aim to harmonise national laws or practices of Member States → [...] → with respect to worker's status. → [...] →<sup>44</sup>

(35) The provisions of this Directive are without prejudice to the competence of the Member States to regulate the volumes of admission of third-country nationals for the purpose of work.

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<sup>41</sup> **CY:** replace "should" with "*could*".

<sup>42</sup> **CY:** replace "should" with "*could*".

<sup>43</sup> **ES:** insert the following: "... They should also allow researchers to do so upon completion of their research activity as defined in the hosting agreement *or in the employment contract...*". **BG:** insert the following: "... the requirements of this Directive *and Directive 2011/98/EU*".

<sup>44</sup> **AT:** concerns about the inclusion of temporary agencies.

(36) To make the Union more attractive for third-country national researchers, students, pupils, ~~and~~ remunerated or unremunerated ~~and~~ trainees, volunteers and au pairs, it is important to ensure their fair treatment in accordance with Article 79 of the Treaty. ~~and~~ [...] ~~and~~ ~~and~~ Students should continue to be covered by ~~and~~ Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State<sup>45</sup> ~~and~~ with the possible exceptions that apply under that Directive ~~and~~ . More favourable rights to equal treatment with nationals of the host Member State as regards branches of social security as defined in Regulation No 883/2004 on the coordination of social security schemes should be maintained for ~~and~~ [...] ~~and~~ researchers, in addition to the rights granted under Directive 2011/98/EU. Currently the latter foresees a possibility for Member States to limit equal treatment with regard to branches of social security, including family benefits<sup>46</sup>, and this possibility of limitation could affect researchers. ~~and~~ Equal treatment under Directive 2011/98/EU, with the possible exceptions that apply under that Directive, should also apply to other categories of third-country nationals falling under the scope of this Directive, when they are authorised to work under Union or national law. ~~and~~ In addition, independently on whether Union or national law of the host Member State gives ~~and~~ [...] ~~and~~ school pupils, volunteers, unremunerated ~~and~~ and remunerated ~~and~~ trainees and au-pairs access to the labour market, they should enjoy equal treatment rights with nationals of the host Member State as regards access to goods and services and the supply of goods and services made available to

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<sup>45</sup> OJ L 343, 23.12.2011, p. 1.

<sup>46</sup> AT: delete "including family benefits."

↓ 2004/114/EC recital 23

↻ Council

- (37) ↻ [...] ↻ The residence permits provided in this Directive shall be issued by the competent authorities of the Member State using the uniform format as laid down in ↻ Council Regulation (EC) No 1030/2002 of 13 June 2002 ↻ [...] ↻<sup>48</sup>.

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<sup>47</sup> **CZ:** equal treatment should be granted to researchers only, not the other groups. **ES:** not in favour of the recognition of equal treatment for social rights of third-country nationals. **EE:** this recital does not contribute to making the EU more attractive to the groups involved. **FI:** compatibility with the corresponding text in the Single Permit Directive should be ensured. **CION:** this recital is in line with the existing Researchers Directive and Single Permit Directive. **BG** suggests the following wording: “To make the Union more attractive for third-country national researchers, students, pupils, remunerated or unremunerated trainees, volunteers and au pairs, it is important to ensure their fair treatment in accordance with Article 79 of the Treaty. Students should continue to be covered by Directive 2011/98/EU of the European Parliament and of the Council, with the possible exceptions that apply under that Directive. *The right to equal treatment* with nationals of the host Member State as regards branches of social security as defined in Regulation No 883/2004 on the coordination of social security schemes and Regulation No. 1231/2010 should be *applicable* for researchers *and other categories of third-country nationals falling under the scope of this Directive, when they are authorised to work under Union or national law. For these categories Member States should be allowed to limit equal treatment with regard to branches of social security, including family benefits in accordance to the practice, established by Directives 2011/98 and 2009/50.* In addition, independently on whether Union or national law of the host Member State gives researchers, students, school pupils, volunteers, unremunerated and remunerated trainees and au-pairs access to the labour market, they should enjoy equal treatment with nationals of the host Member State as regards access to goods and services and the supply of goods and services made available to the public. “

<sup>48</sup> OJ L 157, 15.6.2002, p. 1.

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↓ 2005/71/EC recital 22 (adapted)

~~This Directive should not affect in any circumstances the application of Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals<sup>49</sup>.~~

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↓ 2004/114/EC recital 4 (adapted)

⇒ new

(38) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union⇒, as referred to in Article 6 of the Treaty on European Union ⇐.

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↓ 2005/71/EC recital 25 (adapted)

~~This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.~~

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<sup>49</sup> OJ L 157, 15.6.2002, p. 1.

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↓ 2004/114/EC recital 5

↻ Council

(39) The Member States should give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinions, membership of a national minority, property, birth, disability, age or sexual orientation.

↻ (39a) When laid down in national law and in accordance with the principle of non-discrimination as set out in Article 10 of the Treaty on the Functioning of the European Union, Member States are allowed to apply more favourable treatment to nationals of specific third countries when compared to the nationals of other third countries when implementing the optional provisions of this Directive. <sup>50</sup>

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↓ 2005/71/EC recital 24 (adapted)

~~Member States should 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.~~

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<sup>50</sup> **EE:** the decision of one Member State may affect another Member State and consequently it should be an obligation to inform the other Member States. **CION** (supported by **AT**): reservation on the inclusion of this recital even if there is a similar one in the Seasonal Workers Directive. **CION:** this recital opens the possibility of adding conditions in an arbitrary fashion.

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↓ new

(40) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.<sup>51</sup>

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↓ 2004/114/EC recital 24 (adapted)

⇒ new

⇒ Council

(41) Since the objective of this Directive, namely to determine the conditions of admission ⊗ entry and residence ⊗ of third-country nationals for the purposes of ⊗ research ⊗ ⊗ [...] ⊗ and studies, as mandatory provisions and ⊗ [...] ⊗ pupil exchange, unremunerated ⇒ or remunerated ⇐ training, voluntary service ⊗ [...] ⊗ ⇒ or au pairing ⇐ ⊗, as optional provisions ⊗, cannot be sufficiently achieved by the Member States and can, by reason of its scale or effects, be better achieved at Community ⊗ Union ⊗ level, the Community ⊗ Union ⊗ may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.<sup>52</sup>

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<sup>51</sup> LV : it is premature to consider "the transmission of such documents to be justified" since the assessment has not been carried out yet.

<sup>52</sup> CY: against the insertion of references to mandatory and optional provisions.

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↓ 2005/71/EC recital 23 (adapted)

~~The objectives of this Directive, namely the introduction of a special admission procedure and the adoption of conditions of entry and residence applicable to third-country nationals for stays of more than three months in the Member States for the purposes of conducting a research project under a hosting agreement with a research organisation, cannot be sufficiently achieved by the Member States, especially as regards ensuring mobility between Member States, and can therefore be better achieved by the Community. The Community is therefore entitled to take measures in accordance with the subsidiarity principle laid down in Article 5 of the Treaty. In accordance with the principle of proportionality set out in that article, this Directive does not go beyond what is necessary to achieve those objectives.~~

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↓ 2004/114/EC recital 22 (adapted)

↻ Council

- (42) Each Member State should ensure that ↻ [...] ↻ ↻ [...] ↻ ↻ **adequate,** ↻ regularly updated ↻ , ↻ information is made available to the general public, notably on the Internet, ☒ ↻ [...] ↻ ☒ ↻ [...] ↻ ↻ **concerning** ↻ ☒ information about ☒ the establishments ↻ , research organisations and institutions ↻ defined in this Directive, ↻ [...] ↻ ↻ the conditions and procedures for admission of third-country nationals to the territory of the Member States for the purpose of this Directive ↻ **in full respect of the data protection requirements in accordance with national and European legislation.** ↻



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↓ 2005/71/EC recital 10 (adapted)

~~Each Member State should ensure that the most comprehensive information possible, regularly kept up to date, is made publicly available, via the Internet in particular, on the research organisations, approved under this Directive, with which researchers could conclude a hosting agreement, and on the conditions and procedures for entry and residence on its territory for the purposes of carrying out research, as adopted under this Directive.~~

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↓ 2005/71/EC recital 28 (adapted)

↻ Council

- (43) ↻ In accordance with Articles 1, 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty of the European Union and the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom and Ireland are not taking part in the adoption of this Directive and are not bound by it or subject to its application. ↻ ↻ [...] ↻<sup>53</sup>

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<sup>53</sup> Please note that the amendment of this recital is linked with Article 36.

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↓ 2005/71/EC recital 29 (adapted)

(44) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty ~~establishing~~  on the Functioning of  the European  Union  ~~Community~~, Denmark does not take part in the adoption of this Directive, and is not bound by it or subject to its application.

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↓ 2004/114/EC recital 17 (adapted)

~~In order to allow initial entry into their territory, Member States should be able to issue in a timely manner a residence permit or, if they issue residence permits exclusively on their territory, a visa.~~

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↓ 2004/114/EC recital 19 (adapted)

~~The notion of prior authorisation includes the granting of work permits to students who wish to exercise an economic activity.~~

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↓ 2004/114/EC recital 20 (adapted)

~~This Directive does not affect national legislation in the area of part-time work.~~

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↓ 2004/114/EC recital 21 (adapted)

~~Provision should be made for fast-track admission procedures for study purposes or for pupil exchange schemes operated by recognised organisations in the Member States.~~

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↓ 2004/114/EC recital 25 (adapted)

~~In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, and without prejudice to Article 4 of the said Protocol, these Member States are not taking part in the adoption of this Directive and are not bound by it or subject to its application.~~

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↓ 2004/114/EC recital 26 (adapted)

~~In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.~~

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↓ 2005/71/EC recital 1 (adapted)

~~With a view to consolidating and giving structure to European research policy, the Commission considered it necessary in January 2000 to establish the European Research Area as the lynchpin of the Community's future action in this field.~~

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↓ 2005/71/EC recital 2 (adapted)

~~Endorsing the European Research Area, the Lisbon European Council in March 2000 set the Community the objective of becoming the most competitive and dynamic knowledge-based economy in the world by 2010.~~

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↓ 2005/71/EC recital 3 (adapted)

~~The globalisation of the economy calls for greater mobility of researchers, something which was recognised by the sixth framework programme of the European Community<sup>54</sup>, when it opened up its programmes further to researchers from outside the European Union.~~

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↓ 2005/71/EC recital 4 (adapted)

~~The number of researchers which the Community will need by 2010 to meet the target set by the Barcelona European Council in March 2002 of 3 % of GDP invested in research is estimated at 700000. This target is to be met through a series of interlocking measures, such as making scientific careers more attractive to young people, promoting women's involvement in scientific research, extending the opportunities for training and mobility in research, improving career prospects for researchers in the Community and opening up the Community to third-country nationals who might be admitted for the purposes of research.~~

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<sup>54</sup> ~~Decision No 1513/2002/EC of the European Parliament and of the Council of 27 June 2002 concerning the sixth framework programme of the European Community for research, technological development and demonstration activities, contributing to the creation of the European Research Area and to innovation (2002 to 2006) (OJ L 232, 29.8.2002, p. 1). Decision amended by Decision No 786/2004/EC (OJ L 138, 30.4.2004, p. 7).~~

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↓ 2005/71/EC recital 6 (adapted)

~~Implementation of this Directive should not encourage a brain drain from emerging or developing countries. Back-up measures to support researchers' reintegration into their countries of origin as well as the movement of researchers should be taken in partnership with the countries of origin with a view to establishing a comprehensive migration policy.~~

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↓ 2005/71/EC recital 7 (adapted)

~~For the achievement of the objectives of the Lisbon process it is also important to foster the mobility within the Union of researchers who are EU citizens, and in particular researchers from the Member States which acceded in 2004, for the purpose of carrying out scientific research.~~

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↓ 2005/71/EC recital 8 (adapted)

~~Given the openness imposed by changes in the world economy and the likely requirements to meet the 3 % of GDP target for investment in research, third-country researchers potentially eligible under this Directive should be defined broadly in accordance with their qualifications and the research project which they intend to carry out.~~

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↓ 2005/71/EC recital 12 (adapted)

~~At the same time, the traditional avenues of admission (such as employment and traineeship) should be maintained, especially for doctoral students carrying out research as students, who should be excluded from the scope of this Directive and are covered by Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service<sup>55</sup>.~~

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↓ 2005/71/EC recital 16 (adapted)

~~This Directive adds a very important improvement in the field of social security as the non-discrimination principle also applies directly to persons coming to a Member State directly from a third country. Nevertheless, this Directive should not confer more rights than those already provided in existing Community legislation in the field of social security for third-country nationals who have cross-border elements between Member States. This Directive furthermore should not grant rights in relation to situations which lie outside the scope of Community legislation like for example family members residing in a third country.~~

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<sup>55</sup> OJ L 375, 23.12.2004, p. 12.

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↓ 2005/71/EC recital 17 (adapted)

~~It is important to foster the mobility of third-country nationals admitted for the purposes of carrying out scientific research as a means of developing and consolidating contacts and networks between partners and establishing the role of the European Research Area at world level. Researchers should be able to exercise mobility under the conditions established by this Directive. The conditions for exercising mobility under this Directive should not affect the rules currently governing recognition of the validity of the travel documents.~~

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↓ 2005/71/EC recital 18 (adapted)

~~Special attention should be paid to the facilitation and support of the preservation of the unity of family members of the researchers, according to the Council Recommendation of 12 October 2005 to facilitate the admission of third-country nationals to carry out scientific research in the European Community<sup>56</sup>.~~

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↓ 2005/71/EC recital 19 (adapted)

~~In order to preserve family unity and to enable mobility, family members should be able to join the researcher in another Member State under the conditions determined by the national law of such Member State, including its obligations arising from bilateral or multilateral agreements.~~

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<sup>56</sup> See page 26 of this Official Journal.



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↓ 2005/71/EC recital 20 (adapted)

~~Holders of residence permits should be in principle allowed to submit an application for admission while remaining on the territory of the Member State concerned.~~

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↓ 2005/71/EC recital 21 (adapted)

~~Member States should have the right to charge applicants for the processing of applications for residence permits.~~

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↓ 2005/71/EC recital 26 (adapted)

~~In accordance with paragraph 34 of the Interinstitutional agreement on better law-making, Member States will be encouraged to draw up, for themselves and in the interest of the Community, their own tables, which will, as far as possible, illustrate the correlation between this Directive and the transposition measures, and to make them public.~~

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↓ 2005/71/EC recital 27 (adapted)

~~In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and the Treaty establishing the European Community, Ireland has given notice by letter of 1 July 2004 of its wish to participate in the adoption and application of this Directive.~~

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↓ new

(45) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment compared to the earlier Directives. The obligation to transpose the provisions which are unchanged arises under the earlier Directives.

(46) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and the dates of application of the Directives set out in Annex I, Part B,

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↓ 2004/114/EC (adapted)

⇒ new

☉ Council

HAS ADOPTED THIS DIRECTIVE:

## CHAPTER I

### GENERAL PROVISIONS

Article 1

**Subject matter**<sup>57</sup>

This Directive determines:

- (a) the conditions ~~for admission~~ of entry to and residence as well as the rights<sup>58</sup> of third-country nationals and, where applicable, of their family members [...] in the territory of the Member States for a period exceeding ~~three months~~ 90 days for the purposes of research, studies, pupil exchange scheme or educational project, remunerated and unremunerated training, voluntary service or au pairing;

~~(b) the rules concerning the procedures for admitting third-country nationals to the territory of the Member States for those purposes.~~

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<sup>57</sup> **EL:** this proposal is not in full compliance with the subsidiarity principle since the regulation of remunerated trainees and au-pairs at EU level does not seem to have a significant added value. The existing national provisions for remunerated trainees, on the one hand, and the absence of national provisions for au-pairs, on the other hand, lead to the conclusion that there is no actual need for the adoption of common EU rules. This proposal does not comply sufficiently with the proportionality principle. In particular, the modification of the current optional categories into binding categories reduces the degree of flexibility that is necessary for the Member States which should be left to decide whether to implement the EU legislation for the categories provided as optional by the current Directives.

<sup>58</sup> **ES:** reservation. **CY** (supported by **ES**) suggested to insert the following "...as well as the rights and obligations of third-country nationals..".

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↓ new

↻ Council

(b) ↻ [...] ↻ the conditions of entry to and residence, and the rights, of researchers and ↻ [...] ↻ students ↻ [...] ↻, referred to in point (a), in Member States other than the Member State which first grants the third-country national an authorisation on the basis of this Directive. ↻,<sup>59</sup>

↻ (ba) the conditions of entry to and residence, and the rights, of family members of researchers, referred to in point (a), in Member States other than the Member State which first grants the third-country national an authorisation on the basis of this Directive. ↻

(c) ↻ [...] ↻

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↓ 2005/71/EC (adapted)

## ~~CHAPTER I~~

### ~~GENERAL PROVISIONS~~

#### ~~Article 1~~

#### ~~Purpose~~

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<sup>59</sup> **CI**ON: against the deletion of the category of remunerated trainees.

~~This Directive lays down the conditions for the admission of third-country researchers to the Member States for more than three months for the purposes of carrying out a research project under hosting agreements with research organisations.~~

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↓ 2004/114/EC (adapted)

↻ Council

## Article 2

### Scope

1. This Directive ↻ shall ↻ apply to third-country nationals who apply to be admitted to the territory of a Member State for the purpose of ☒ research ☒ ↻ and ↻ studies ↻ [...] ↻ .<sup>60</sup>  
  
↻ Member States may also decide to apply this Directive to third-country nationals who apply to be admitted for the purposes of ↻ [...] ↻ ↻ a ↻ pupil exchange ↻ scheme or educational project ↻ , remunerated or unremunerated training, voluntary service or ↻ [...] ↻ au pairing.<sup>61</sup> ↻

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<sup>60</sup> **EE** would like to add "higher institutions lecturers" to be considered as researchers.

<sup>61</sup> **CY, EE, FI**: against the inclusion of all school pupils in the scope. **HU, BE**: against extending the scope to primary school pupils. **DE** (supported by **AT, SE, SK**): reservation on the inclusion of accompanying teachers; cannot see the need for it as no exchange programmes exist for primary school pupils. **DE** suggested to exclude primary school pupils from the scope. **FR**: secondary school pupils can also be accompanied by teachers. **SE**: Member States who wish to cover accompanying staff could do so through provisions in their national law. **Cion**: reservation on these categories being optional.

➔ 1bis. \_\_\_\_\_ ➔ [...] © ©

2. This Directive shall not apply to ☒ third-country nationals ☒ :

- (a) ~~third-country nationals~~ residing in a Member State as asylum-seekers, or under subsidiary forms of protection, or under temporary protection schemes;<sup>62</sup>
- (b) ~~third-country nationals~~ whose expulsion has been suspended for reasons of fact or of law;
- (c) ~~third-country nationals~~ who are family members of Union citizens who have exercised their right to free movement within the Union;
- (d) ~~third-country nationals~~ who enjoy long-term resident status in a Member State in accordance with Council Directive 2003/109/EC<sup>63</sup> ➔ [...] © ;
- (e) ➔ [...] ©

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<sup>62</sup> **HU** suggested to use the terminology of the Qualification Directive: " (a) (...) *seeking for international protection, or are beneficiaries of international protection in accordance with the Directive 2011/95/EU of the European Parliament and of the Council, or beneficiaries of temporary protection in accordance with the Council Directive 2001/55/EC in a Member State.*"

<sup>63</sup> OJ L 16, 23.1.2004, p. 44

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↓ new

↻ Council

(f) who ↻ enjoy ↻, together with their family members, and irrespective of their nationality, ↻ [...] ↻ rights of free movement equivalent to those of citizens of the Union under agreements either between the Union and the Member States or between the Union and third countries;

(g) trainees who come to the Union in the context of an intra-corporate transfer under [Directive 2013/xx/EU on intra-corporate transfers],<sup>64</sup>

↻ (h) who are admitted as highly qualified workers in accordance with Council Directive 2009/50/EC. ↻

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↓ 2004/114/EC (adapted)

### Article 3

#### Definitions

For the purposes of this Directive:

(a) 'third-country national' means ~~any~~ ☒ a ☒ person who is not a citizen of the Union within the meaning of Article ~~17~~20(1) of the Treaty;

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<sup>64</sup> **DE:** the boundaries between trainees in this proposal and "graduate trainees" in the ICT Directive proposal are not clear. **ES:** the reference to "trainee" should be the same as the one used in the ICT Directive. **CION:** the scheme set up in the ICT Directive is a separate scheme which contains objective criteria for the determination of who is to be considered as "graduate trainee" under that Directive. **PL:** no overlap between this proposal and the ICT Directive proposing to delete this point.

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↓ 2005/71/EC (adapted)

~~Article 2~~

~~Definitions~~

~~For the purposes of this Directive:~~

~~(a) ‘third-country national’ means any person who is not a Union citizen within the meaning of Article 17(1) of the Treaty;~~

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↓ 2005/71/EC  
↻ Council

~~(b)(d)~~ ‘researcher’ means a third-country national holding an appropriate higher education qualification, which gives access to doctoral programmes, who is selected by a research organisation for carrying out a research ↻ [...] ↻ ↻ activity ↻ for which the above qualification is normally required;<sup>65</sup>

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<sup>65</sup> **ES:** make clear that post-doctoral students are also covered by the definition of "researcher". **HU** suggests the following wording: “(b) ‘researcher’ means a third-country national holding an appropriate higher education qualification, which gives access to doctoral programmes, who is selected by a research organisation for carrying out, *based on a hosting agreement*, a research activity for which the above qualification is normally required;”



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↓ 2004/114/EC

↻ Council

(c) ~~(b)~~ 'student' means a third-country national accepted by a ↻ [...] ↻ higher education ↻ institution recognised or considered as such according to national legislation ↻ and admitted to the territory of a Member State to pursue as his/her main activity a full-time course <sup>66</sup>of study leading to a higher education qualification recognised by the ↻ respective ↻ Member State, including diplomas, certificates or doctoral degrees in a ↻ [...] ↻ higher education ↻ institution ↻ , which may cover a preparatory course prior to such education according to its national legislation;<sup>67</sup>

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<sup>66</sup> **EE, ES:** concerns about the reference to "full-time course". This may indicate that students shall study during the whole day which would be in contradiction with the provision in Article 23(3) of this proposal stipulating a minimum of hours per week that students are entitled to work.

<sup>67</sup> **FR** suggested the following rephrasing : "“student” means a third-country national *enrolled* by a higher education institution and admitted to the territory of a Member State to pursue as his/her main activity a full-time *higher education, including all types of courses of study or sets of courses, training or training for research, which may cover a preparatory course prior to such education according to its national legislation, and leading to a higher education qualification recognised by the Member State, including degrees, diplomas, or certificates awarded by a higher education institution*".

**EE** suggested "*higher education programme*" instead of a "higher education institution" as in EE there is a recognition system for groups of curricula.

(d) ~~(e)~~ 'school pupil' means a third-country national admitted to the territory of a Member State to follow a [...] recognised and/or State or Regional programme of [...] education in the context of an exchange scheme or educational project operated by [...] an education establishment in accordance with its national legislation or administrative practice;<sup>68</sup>

⊖ (dbis) 'teacher' means a third-country national admitted to the territory of a Member State for the exclusive purpose to accompany school pupils who participate in an exchange scheme or educational project ;<sup>69</sup>

↓ 2004/114/EC (adapted)  
⊖ Council

(e) ~~(d)~~ 'unremunerated trainee' means a third-country national [...] admitted to the territory of a Member State for the purpose to gain knowledge, practice and [...] experience in professional environment in accordance with the national legislation of the Member State concerned<sup>70</sup>, which is related to his/her educational training or profession<sup>71</sup>, for a training period without [...] remuneration ;<sup>72</sup>

<sup>68</sup> **EE:** reservation. **HU:** the definition is not completely clear.

<sup>69</sup> **AT, DE, SE, SK:** against the inclusion of teachers in the scope.

<sup>70</sup> **CION:** the reference to national legislation should be deleted so that it is clear that it does not apply to "admission" as this will be subject to common EU rules.

<sup>71</sup> **LV, SE:** deletion of the words "or profession"; a trainee is someone in transition from education to the labour market and not someone who already has a profession.

<sup>72</sup> **LV:** trainees (remunerated and unremunerated) should be admitted only under licenced educational programmes and provided they are students or pupils. This constitutes a safeguard against abuse so that they would not be used as "cheap labour". **ES:** the notion of "reimbursement of expenses" as provided for in point (h) should also apply to trainees. **DE, SE:** it is not clear whether vocational training is included in the category of trainees. **CION:** training can cover vocational training. **CION:** reservation on this group becoming optional and subject to national law. This would result in a very low level of harmonisation.

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↓ new

→ Council

- (f) 'remunerated trainee' means a third-country national admitted to the territory of a Member State for the purpose to gain knowledge, practice and experience in professional environment in accordance with the national legislation of the Member State concerned<sup>73</sup>, which is related to his/her educational training or profession<sup>74</sup> for a training period in return for which he/she receives remuneration<sup>75</sup>;
- (g) 'volunteer' means a third-country national admitted to the territory of a Member State to participate in a voluntary service scheme;

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<sup>73</sup> **CION:** the reference to national legislation should be deleted so that it is clear that it does not apply to "admission" as this is subject to common EU rules.

<sup>74</sup> **SE:** deletion of the words "or profession"; a trainee is someone in transition from education to the labour market and not someone who already has a profession.

<sup>75</sup> **RO:** against the inclusion of this category; remunerated trainees are considered as workers in **RO**. **LV:** trainees (remunerated and unremunerated) should be admitted only under licenced educational programmes and provided they are students or pupils. This constitutes a safeguard against abuse so that they would not be used as "cheap labour". **AT, DE:** vocational training should not be included in the scope; it should be clearly differentiated from traineeship in the text. **DE** would like to be able to conduct a check as to who has the priority to be included in such scheme. **AT** proposed the following: ".. and experience in a professional environment *other than vocational training, unskilled or semi-skilled labour* in accordance with the national legislation of the Member State concerned, which is related to his/her educational training or profession for a training period *that may be required to be prescribed within a tertiary educational programme* and in return for which he/she received remuneration." **CION:** reservation against this group becoming optional and subject to national law. This will result in a very low level of harmonisation.

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↓ 2004/114/EC (adapted)

→ Council

(h) ~~(f)~~ 'voluntary service scheme' means a programme of → practical → solidarity activities<sup>76</sup>  
→ [...] , based on a ☒ scheme recognised → as such → by the Member ☒ State  
→ concerned → or ☒ the Union ☒ a Community scheme, pursuing objectives of general  
interest → for a non-profit cause , in which the activities are not remunerated, except for  
reimbursement of expenses → ;<sup>77</sup>

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↓ new

→ Council

(i) 'au pair' means a third-country national who is → [...] received by a → host family in  
the territory of a Member State → in order to improve his/her linguistic skills and his/her  
knowledge of the host country → in exchange for light housework and taking care of children  
→ [...] ;

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<sup>76</sup> **RO**: reservation on "practical solidarity activities".

<sup>77</sup> **BE** suggested to use the wording of Directive 2004/114: "Voluntary service scheme means a programme of activities of practical solidarity". **CION**: against the inclusion of "practical"; no added value.

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↓ 2005/71/EC

(j) ~~(b)~~ 'research' means creative work undertaken on a systematic basis in order to increase the stock of knowledge, including knowledge of man, culture and society, and the use of this stock of knowledge to devise new applications;

(k) ~~(c)~~ 'research organisation' means any public or private organisation which conducts research and which has been approved for the purposes of this Directive by a Member State in accordance with the latter's legislation or administrative practice;<sup>78</sup>

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↓ 2004/114/EC (adapted)

↻ Council

(l) ~~(d)~~ 'education' ~~(e)~~ [...] ~~(f)~~ establishment' means a public or private ~~(g)~~ [...] ~~(h)~~ education ~~(i)~~ establishment recognised by the host Member State and/or whose courses of study are recognised in accordance with its national legislation or administrative practice ~~(j)~~ on the basis of transparent criteria ~~(k)~~ and which participates in an exchange scheme or ~~(l)~~ educational project ~~(m)~~ for the purposes set out in this Directive;

↻ (l<sup>bis</sup>) "educational project" means a set of educative actions developed by a Member State's education establishment in cooperation with similar establishments in a third country, with the purpose of sharing cultures and knowledge without ~~(g)~~ necessarily ~~(h)~~<sup>79</sup> requiring a mutual exchange of pupils; ~~(i)~~

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<sup>78</sup> ES suggests the following wording: "'research organisation' means any public or private organisation which conducts research and *recruits researchers*."

<sup>79</sup> AT: why has "necessarily" been inserted?

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↓ new

→ Council

→ (la) 'higher education institution' means any type of higher education institution which, in accordance with national law or practice, offers recognised → higher education ◯ degrees or other recognised tertiary level qualifications, whatever such establishments may be called, or any institution which, in accordance with national law or practice, offers vocational education or training at tertiary level. ◯<sup>80</sup>

→ (lb) → [...] ◯ ◯

→ (lc) 'host entity' means → [...] ◯ a research organisation, a higher education institution, an education establishment, an organisation responsible for a voluntary service scheme, an enterprise, a vocational training establishment → [...] ◯ → , an organisation mediating au pairs ◯<sup>81</sup> established in the territory of the Member State concerned, regardless of its legal form, in accordance with national law, to which the third-country national is assigned for the purposes of this Directive ; ◯<sup>82</sup>

(m) → [...] ◯

(n) 'employment' means the exercise of activities covering whatever form of labour or work regulated under national law or → applicable collective agreements or ◯ → in accordance with ◯ established practice for → [...] ◯ → or ◯ under the direction and → /or ◯ supervision of an employer;

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<sup>80</sup> **ES:** the definition is too broad wondering whether business schools would also be included and suggesting to insert a recital clarifying this.

<sup>81</sup> **AT:** does this term refer to au pair agencies or temporary work agencies? **SK:** a definition of an organisation mediating au pairs should be added.

<sup>82</sup> **ES, PL:** a very broad notion mixing together different notions. **CY, FR** reservation: "regardless of its legal form" is unclear. **SE:** against including a list in the definition that would exclude other possibilities.

- (o) 'first Member State' means the Member State which first grants a third-country national an authorisation on the basis of this Directive;
- (p) 'second Member State' means any Member State other than the first Member State;
- (q) ' [...] or multilateral<sup>83</sup> programmes that comprise mobility measures' mean [...] programmes funded by the Union [...] or by [...] Member States promoting [...] mobility of third-country nationals [...] in the Union or in the Member States participating in the respective programmes<sup>84</sup>;
- (r) 'authorisation' means a residence permit [...] or [...], if provided for in national law, a long-stay visa issued for the purposes of this Directive;
- (ra) 'residence permit' means an authorisation issued using the format laid down in Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals entitling its holder to stay legally on the territory of a Member State;

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<sup>83</sup> **DE, PL** reservation: this proposal should not regulate the mobility programmes of multilateral nature. **ES**: reservation on multilateral programmes. **DE, EE**: do "multilateral programmes" include programmes with the participation of a third country? **CY** opposes the inclusion of multilateral programmes when these involve agreements between private higher institutions.

<sup>84</sup> **EE, FR** wondered whether national programmes of Member States are also covered by this provision.

(s) 'long-stay visa' means an authorisation issued by a Member State as provided for in Article 18 of the Schengen Convention or issued in accordance with the national law of Member States ~~⤵ [...] Ⓞ ⤵ not implementing Ⓞ the Schengen acquis ⤵ in full Ⓞ~~ .

(t) ~~⤵ "family members" means third country nationals as defined in Article 4(1) of Directive 2003/86/EC<sup>85</sup> Ⓞ~~

~~⤵ (u) 'host family' means the family temporarily receiving the au-pair and sharing its daily family life in the territory of a Member State on the basis of an agreement concluded between the host family and the au-pair; Ⓞ~~

~~⤵ (v) 'employer' means any natural person or any legal entity, for or under the direction and/or supervision of whom or which the employment is undertaken; Ⓞ<sup>86</sup>~~

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↓ 2004/114/EC

~~(g) 'residence permit' means any authorisation issued by the authorities of a Member State allowing a third country national to stay legally in its territory, in accordance with Article 1(2)(a) of Regulation (EC) No 1030/2002.~~

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↓ 2005/71/EC (adapted)

~~(e) 'residence permit' means any authorisation bearing the term 'researcher' issued by the authorities of a Member State allowing a third country national to stay legally on its territory, in accordance with Article 1(2)(a) of Regulation (EC) No 1030/2002.~~

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<sup>85</sup> OJ L 251, 3.10.2003, p. 12.

<sup>86</sup> **SK:** add "*legislation of the Member State concerned*".



~~Article 3~~

**Scope**

~~1. This Directive shall apply to third country nationals who apply to be admitted to the territory of a Member State for the purpose of carrying out a research project.~~

~~2. This Directive shall not apply to:~~

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

~~(b) third country nationals applying to reside in a Member State as students within the meaning of Directive 2004/114/EC in order to carry out research leading to a doctoral degree;~~

~~(c) third country nationals whose expulsion has been suspended for reasons of fact or law;~~

~~(d) researchers seconded by a research organisation to another research organisation in another Member State.~~

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↓ 2005/71/EC (adapted)

~~Article 4~~

**More favourable provisions**

~~1. This Directive shall be without prejudice to more favourable provisions of:~~

~~(a) bilateral or multilateral agreements concluded between the Community or between the Community and its Member States on the one hand and one or more third countries on the other;~~

~~(b) bilateral or multilateral agreements concluded between one or more Member States and one or more third countries.~~

~~2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for persons to whom it applies.~~

↓ 2004/114/EC (adapted)

⇒ new

⇒ Council

#### Article 4

### More favourable provisions

1. This Directive shall be without prejudice to more favourable provisions of:
  - (a) bilateral or multilateral agreements  concluded  between the ~~Community~~  Union  or the ~~Community~~  Union  and its Member States and one or more third countries; or

(b) bilateral or multilateral agreements ~~⊗~~ concluded ~~⊗~~ between one or more Member States and one or more third countries.

2. This Directive shall be without prejudice to the right of Member States to adopt or maintain provisions that are more favourable to the persons to whom it applies ~~⇒ with respect to Articles 16, 21, 22, 23, 24, 25 and 29 [...]~~.<sup>87</sup>

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<sup>87</sup> **DE, ES, FI, NL** reservation, it is important to keep parallel national schemes for researchers and students. **ES** requires an Article similar to Article 4(2) of the Blue Card Directive: "*This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for persons to whom it applies ...*". **DE** currently applies more favourable admission criteria. **DE, RO**: this proposal should bring a minimum level of harmonisation and let Member States decide the more favourable provisions to be applied. **NL**: the possibility of applying more favourable admission criteria to better attract researchers and students and suggests the following deletion in paragraph 2: "*This Directive shall be without prejudice to the right of Member States to adopt or maintain provisions that are more favourable to the persons to whom it applies with respect to Articles 21, 22, 23, 24, 25 and 29, especially in the context of Mobility Partnerships.*" Furthermore, it should be possible to apply more favourable provisions to the Articles related to intra-EU mobility (26 to 26F) to enable Member States to apply more flexible provisions. **NL**: the provision about more favourable provisions in Directives 2004/114 and 2005/71 is not limited to certain Articles. It is contrary to the aim of this proposal (stimulating the admission of researchers and students and the other categories) to restrict that possibility of more favourable treatment. **FI**: delete "with respect to Articles 16, 21, 22, 23, 24, 25 and 29". **CI**: against parallel schemes. Admission conditions should be harmonised in the EU, but Member States can apply more favourable rights.

## CHAPTER II

### ~~CONDITIONS OF ADMISSION~~

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↓ 2004/114/EC

↻ Council

#### *Article 5*

#### **Principle ↻ s ↻**

1. The admission of a third-country national under the ↻ [...] ↻ ↻ terms ↻ of this Directive shall be subject to the verification of documentary evidence ↻ [...] ↻ ↻ attesting ↻ that he/she meets the general conditions laid down in Article 6 and the specific conditions in whichever of Articles 7 to ~~11~~ 14 applies to the relevant category.

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↓ new

→ Council

2. Once all the general and specific conditions for admission are fulfilled, applicants<sup>88</sup> shall be entitled to → an authorisation ← → [...] ← . If a Member State issues residence permits only on its territory → [...] ← and all the admission conditions laid down in this Directive are fulfilled, the Member State concerned shall → grant ← → [...] ← the third-country national → every facility to obtain<sup>89</sup> ← the requisite visa → or an equivalent permit → [...] ← allowing entry to<sup>90</sup> the territory of the Member State concerned ← .<sup>91</sup>

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<sup>88</sup> **PL:** it should be clarified who the applicant is.

<sup>89</sup> **DE:** against "facilitation". **PL:** unclear how "facilitation" relates to the Schengen Visa Code. This "facilitation" should relate to long-stay visas not to short-term visas.

<sup>90</sup> **DE:** request for a clear reference to non-Schengen Member States.

<sup>91</sup> **CZ:** third-country nationals should primarily apply for a residence permit, if the legislation of the Member State allows it, and maintain the national responsibility on the issuance of long-term visas. **EE:** against restricting the right of Member States to consider whether access of a third-country national to the EU should be granted and suggested "*may be issued*" instead of "shall be entitled" or to delete the first sentence of the paragraph. **CY:** reservation; a reference to the volumes of admission is necessary, since third-country nationals are given the possibility to work in the territory of the Member States. **CION:** the provision on stay after the end of research/study gives a right to "job-seeking" rather than "access" to the labour market. Member States will therefore retain full control of access to their labour market.

➡ 3. [This Directive shall be without prejudice to the right of Member States to issue residence permits other than those regulated by this Directive for any purpose referred to in Article 2 for third-country nationals who fall outside the scope of this Directive] ©<sup>92</sup>

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↓ 2004/114/EC ➡ Council
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➡ Article 5a

### Volumes of admission

This Directive shall not affect the right of a Member State to determine the volumes of admission of third-country nationals referred to in Article 2(1), with the exception of students<sup>93</sup>, when they are in an employment relationship with an employer established in the Member State concerned. On this basis and for the purposes of this Directive, an application for authorisation may either be considered inadmissible or be refused. ©<sup>94</sup>

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<sup>92</sup> **HU:** need to clarify further "who fall outside the scope of this Directive". **ES:** reservation on this paragraph. **DE:** no added value since Member States will apply their rules if a person does not fall within the scope of this Directive. More favourable national rules could also be applicable.

<sup>93</sup> **ES:** exclude "*volunteers*" from the volumes of admission.

<sup>94</sup> **CY, DE:** wording too general; needs further clarification. It has to be specified to what groups the volumes of admission applies. **ES** reservation: should not apply to volunteers and students. **FI:** clarify that the determination of volumes of admission relates to the evaluation of labour market needs.

Article 6<sup>95</sup>

General conditions<sup>96</sup>

1. **1.** A third-country national who applies to be admitted for the purposes set out in this Directive shall:

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<sup>95</sup> **CZ** proposed, inspired by Article 7 of Directive 2003/86/EC, to add a new article, for example after Article 6 on general conditions, allowing Member States to require third-country nationals to comply with integration measures, in accordance with national law. It has established preparatory one-day, free of charge, courses for adaptation and integration of newly arrived third-country nationals during the first 6 months (or at the latest during the first year) of stay. These courses are an important tool of integration/adaptation for third-country nationals.

<sup>96</sup> **NL:** include the notion of "*conditionality*". The JHA Council Conclusions of June 2011 on the EU strategy on Readmission use the concept of "conditionality" as an instrument to press third countries to fulfil their international-legal obligations regarding the re-admission of their nationals. **NL** suggests the inclusion of a new paragraph as follow:

*"Member States may refuse the application for admission of a third-country national covered by the Articles 7 to 11 when the relevant authorities of the country of origin of the third-country national do not re-admit their illegally-staying nationals on the territory of the Member State concerned or do not cooperate sufficiently with regard to their re-admission."*

This new paragraph is a concrete implementation of the concept of "conditionality". On the basis of this new paragraph, Member States may connect the granting of a residence permit for the purposes of this proposal to the efforts of the country of origin of the applicant regarding the re-admission of illegally staying nationals. The rationale of this proposal is that if a third country does not cooperate sufficiently in the area of re-admission, there is a greater risk that a third-country national will stay illegally after his legal stay in a Member State. **NL** also points out that this is a "may" clause so Member States are not obliged to apply it.

**DE:** add the following new provision, either in this article or in Article 18:

*"When examining an application Member States shall verify whether the third country national does not present a risk of illegal immigration."*

**LV:** include under Article 6 a requirement for a working agreement as one of the admission conditions in cases where, according to the national legislation, a third country national is in employment relationships. The existence of a working agreement would provide for better legal protection of the worker and would reduce the risk of undeclared work.

- (a) present a valid travel document as determined by national legislation  $\Rightarrow$  and, if required, an application for a visa  $\ominus$  ; Member States may require the period of validity of the travel document to cover at least the duration of the planned stay;
- 

↓ 2004/114/EC (adapted)

- (b) if he/she is a minor under the national legislation of the host Member State, present a parental authorisation  $\boxtimes$  or equivalent  $\langle \boxtimes \rangle$  for the planned stay;
- (c) have sickness insurance ~~in respect of~~  $\boxtimes$  for  $\langle \boxtimes \rangle$  all risks normally covered for ~~its own~~ nationals ~~in~~  $\boxtimes$  of  $\langle \boxtimes \rangle$  the Member State concerned;<sup>97</sup>

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<sup>97</sup> **CZ:** insert “*cost of repatriation for medical reasons and repatriation of remains*” as a criterion for admission. Since these costs are not covered by public health insurance, because they do not fall under the “risks normally covered for nationals of the Member State concerned”. **CZ:** set a clear indication that health insurance is arranged without the participation of the insured person and for the whole period of his/her residence in the territory of the State concerned. **BE** supports adding that health insurance should be “*for the whole period of his/her residence in the territory of the State concerned.*” **PL:** include a reference to “travel health insurance”. **LT** suggests the following wording: “have sickness insurance for all risks normally covered for nationals of the Member State concerned *for the whole period of his/her residence in the territory of that Member State*”.



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▼ 2004/114/EC

➔ Council

- (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<sup>98</sup> on the basis of Article 2031.

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↓ new

➔ Council

➔ [...] ➔ (f) provide the evidence requested by the Member State concerned that during his/her stay he/she will have sufficient resources to cover his/her subsistence and return travel costs and will not have recourse to the Member State's social assistance system  
➔ [...] ➔ . ➔

➔ 2. Member States may require the applicant<sup>99</sup> to provide, at the latest at the time of the issuance of the authorisation<sup>100</sup>, the address of the third-country national concerned in the territory of the Member State. ➔

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<sup>98</sup> **SE:** "for handling the *notification or application*..".

<sup>99</sup> **PL:** it should be clarified who the applicant is.

<sup>100</sup> **CY:** replace "issuance of the authorisation" by "*issuance of residence permit*".

- ➔ 3. Where a certain category of third-country nationals covered by this Directive are or<sup>101</sup> intend to be<sup>102</sup> in an employment relationship with an employer established in the Member State concerned, the Member State may take into account the situation of its labour market while deciding on applications for admission of these third-country nationals. ☹<sup>103</sup>
- ➔ 4. Member States may lay down a reference amount which they regard as constituting “sufficient resources” as referred to under paragraph (1)(f), which<sup>104</sup> may take into account the level of minimum national wages, and, where applicable, the number of family members. The assessment of the sufficient resources shall be based on an individual examination of the case. ➔ [...] ☹ ☹
- ➔ 4a. ➔ [...] ☹ ☹
- ➔ 5. Applications from third-country nationals wishing to be admitted for the purpose set out in this directive shall be considered and examined when the third-country national concerned is residing outside the territory of the Member State to which he or she wishes to be admitted. ☹
- ➔ 6. By way of derogation from paragraph 5, Member States may accept, in accordance with their national legislation, an application submitted when the third-country national concerned is already legally present in their territory. ☹




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<sup>101</sup> **BE:** delete "are or" since a third-country national applying to be admitted under this Directive cannot be already employed in a MS.

<sup>102</sup> **BG:** deletion of "intend to be".


<sup>103</sup> **ES** reservation: the employment element should not be included. **DE:** against inclusion of "take into account". **HU:** clarify further whether this will cover all categories or only certain categories and which activities are considered as employment activities. **PRES** pointed out that it is difficult to say since in some Member States some categories are considered as workers and in other Member States are not. **CION** reservation: this paragraph as currently worded could apply to students who should not be subject to a labour market test.

<sup>104</sup> **SE** suggested to insert "*where applicable*" since not all Member States have set a minimum wage.

~~7. Member States shall determine whether applications for authorisations , or for notifications in the case of mobility,  are to be made by the third-country national and/or by the host entity or the host family concerned. ~~


~~8.  [...]  ~~

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 2004/114/EC (adapted)

~~2. Member States shall facilitate the admission procedure for the third-country nationals covered by Articles 7 to 11 who participate in Community programmes enhancing mobility towards or within the Community.~~

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 2005/71/EC (adapted)

### ~~CHAPTER III~~

#### ~~ADMISSION OF RESEARCHERS~~

##### ~~Article 7~~

##### ~~Conditions for admission~~

~~1. A third-country national who applies to be admitted for the purposes set out in this Directive shall:~~

- ~~(a) present a valid travel document, as determined by national law. Member States may require the period of the validity of the travel document to cover at least the duration of the residence permit;~~
- ~~(b) present a hosting agreement signed with a research organisation in accordance with Article 6(2);~~
- ~~(c) where appropriate, present a statement of financial responsibility issued by the research organisation in accordance with Article 6(3); and~~
- ~~(d) not be considered to pose a threat to public policy, public security or public health.~~

~~Member States shall check that all the conditions referred to in points (a), (b), (c) and (d) are met.~~

~~2. Member States may also check the terms upon which the hosting agreement has been based and concluded.~~

~~3. Once the checks referred to in paragraphs 1 and 2 have been positively concluded, researchers shall be admitted on the territory of the Member States to carry out the hosting agreement.~~

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↓ new

→ Council

→ Article 6a<sup>105</sup>

Approval of the host entity → [...] ←

1. Member States may → decide to ← provide → for an approval procedure for any host entity<sup>106</sup>

→ [...] ← → to which third-country nationals are assigned as ← → [...] ← pupils,

remunerated and unremunerated trainees → [...] ← →, ← volunteers → or au pairs ←<sup>107</sup>

→ [...] ← → [...] ← for the purposes of admission according to this Directive.

2. The approval of the host entity shall be in accordance with → the ← procedures set out in the

national law or administrative practice of the Member State → [...] ← concerned. ←<sup>108</sup>

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<sup>105</sup> **CI**ON: reservation; this Article should not mean that the approved host entity is the only route for acceptance of third-country nationals under this Directive.

<sup>106</sup> **NL**: add "...or be involved in the exchange of..".

<sup>107</sup> **CZ, ES**: reservation on the inclusion of au pairs even as an optional category. **LV**: not in favour of including au pairs but if they should be referred to in this paragraph. However, it is not clear whether au pairs can only be received through approved host entities.

<sup>108</sup> **AT, ES** do not support a *shall*-clause. **BE**: the text should reflect clearly the fact that the approval procedure is optional for Member States. **BE** also asked whether the approval procedure would have to be applied to other categories as well if it is applied to one or is it optional regarding every category.

## Article 7

### Specific conditions for researchers<sup>109</sup>

1. In addition to the general conditions laid down in Article 6, a third-country national who applies to be admitted for the purpose of **carrying out a research activity**<sup>110</sup> shall:
  - (a) present **either a hosting agreement or a contract**<sup>111</sup> signed with a research organisation in accordance with Article 9(1) and Article 9(2);
  - (b) where appropriate, present a statement of financial responsibility issued by the research organisation **as referred to in Article 8** (3).<sup>112</sup>
- 1bis.** **Member States may determine whether the third-country national should present a hosting agreement or a contract as referred to in point (a) of Article 7(1).**
2. Member States may **require** the terms upon which the hosting agreement **or** **the contract** has been based and concluded **to meet requirements established in national law or practice**.

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<sup>109</sup> **DE:** the conditions imposed on researchers are overly restrictive.

<sup>110</sup> **AT:** reservation on the use of "research activity" instead of the original "research project".

<sup>111</sup> **AT:** would cross-border contracts be covered? **IT** suggests to insert "a *scientific cooperation* contract". **AT, PL:** the difference between a hosting agreement and a contract is not clear. **FR:** add a reference to national law here and delete 1bis. Also, the definition of both terms should be included in the text.

<sup>112</sup> **FR:** Article 7(1)(b) overlaps with Article 6(f) "on sufficient resources" and therefore it is redundant. **CION** considers this provision necessary as Article 7(1)(b) links to Article 8(3) and 9(3) where Member States may require an undertaking by the host organisation to reimburse the costs of return and others.

3.  [...] 

4.  [...] 

5.  [...] 

6.  [...] 

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↓ 2005/71/EC (adapted)

## ~~CHAPTER II~~

### ~~RESEARCH ORGANISATIONS~~

*Article ~~58~~*

**Approval  of research organisations <sup>113</sup>**

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↓ 2005/71/EC

 Council

1. Any research organisation wishing to host a researcher under the admission procedure laid down in this Directive shall first be approved for that purpose by the Member State concerned.

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<sup>113</sup> **ES** proposes the following options for redrafting the Article: keeping the *shall*-clause in paragraph 1 and including the "*private sector*" in paragraph 2a OR changing the *shall*-clause into a *may*-clause in paragraph 1.

2. The approval of the research organisations shall be in accordance with procedures set out in the national law or administrative practice of the Member States. Applications for approval by both public and private organisations shall be made in accordance with those procedures and be based on their statutory tasks or corporate purposes as appropriate and on proof that they conduct research.

The approval granted to a research organisation shall be for a minimum period of five years. In exceptional cases, Member States may grant approval for a shorter period.

⇒ 2a. ⇒ [...] ☹ Member States may decide to exempt public research organisation or other respective research body of the public sector, from the approval procedure ⇒ [...] ☹  
⇒ referred to in ☹ paragraph 1 ☹

3. Member States may require, in accordance with national legislation, a written undertaking of the research organisation that in cases where a researcher remains illegally in the territory of the Member State concerned, the said organisation is responsible for reimbursing the costs related to his/her stay<sup>114</sup> and return incurred by public funds. The financial responsibility of the research organisation shall end at the latest six months after the termination of the hosting agreement.<sup>115</sup>

⇒ In case the right of residence of the researcher is extended in accordance with the provisions of Article 24, the responsibility of the research organisation shall be limited

⇒ [...] ☹ until the moment the third-country national submits his/her application for the purposes of job searching or entrepreneurship. ☹<sup>116</sup>

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<sup>114</sup> **CZ** suggests the following addition: "[...] the said organisation is responsible for reimbursing the costs related to his/her stay, *including all of the costs of healthcare*, and return incurred by public funds. [...]". The organisation should be required to pay all the costs of healthcare received, and not only the ones which are covered by public health insurance, for example healthcare provided by non-contracting providers of medical services not covered by public health insurance.

<sup>115</sup> **PL**: does the fact that no reference in this Article is made to the contract mean that an approved research organisation can only conclude hosting agreements?

<sup>116</sup> **IT** suggests the following wording: "In case the right of residence of the researcher is extended in accordance with the provisions of Article 24, the responsibility of the research organisation shall *last until the date of the request of the residence permit*."



4. Member States may provide that, within two months of the date of expiry of the hosting agreement<sup>117</sup> concerned, the ~~the~~ host entity shall provide the competent authorities designated for the purpose by the Member States with confirmation that the work has been carried out for each of the research ~~activities~~ activities in respect of which a hosting agreement has been signed pursuant to Article ~~69~~.

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↓ 2005/71/EC (adapted)

→ Council

5. The competent authorities in each Member State shall publish and update ~~regularly~~ lists of the research organisations approved for the purposes of this Directive  whenever ~~the~~ a research organisation is enlisted or removed from the list ~~is~~.<sup>118</sup>

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↓ 2005/71/EC

→ Council

6. A Member State may, among other measures, refuse to renew or decide to withdraw the approval of a research organisation which no longer meets the conditions laid down in paragraphs 2, 3 and 4 or in cases where the approval has been fraudulently acquired or where a research organisation has signed a hosting agreement<sup>119</sup> with a third-country national fraudulently or negligently. Where ~~the~~ an application for renewal has been refused or where the approval has been withdrawn, the organisation concerned may be banned from reapplying for approval up to five years from the date of publication of the decision on ~~the~~ non-renewal ~~or~~ or withdrawal.

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<sup>117</sup> **PL:** why is there no reference to a contract here?

<sup>118</sup> **ES:** this should be a *may*-clause.

<sup>119</sup> **PL:** why is there no reference to a contract here?

↓ 2005/71/EC (adapted)

↻ Council

*Article ~~69~~*

**Hosting agreement** ↻ [...] ©<sup>121</sup>

1. A research organisation wishing to host a researcher shall sign ↻ [...] © a hosting agreement ↻ [...] © with the latter ↻ without prejudice to © ~~whereby the researcher undertakes to complete the research project and the organisation undertakes to host the researcher for that purpose without prejudice to Article~~ ☒ ↻ [...] © Articles 6 and ☒ 7 ☒ ↻ [...] © ☒.<sup>122</sup>

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<sup>120</sup> *Moved to Article 9(6).*

<sup>121</sup> **ES, DE:** as much flexibility for Member States as possible, since even minimum mandatory requirements could harm the recruitment of researchers. **DE:** research organisations in its territory do not use hosting agreements and this Article could bring some problems for them. **DE:** the complex admission procedure could have negative effects for the admission of researchers. **AT:** prefers to go back to the old version as proposed by **CION**. **BE:** these provisions are too flexible. **BE:** concerned about the mobility implications. **CION** said that it prefers its original proposal. There are already some elements which are obligatory in the current Directive on researchers, so it does not agree to reduce the minimum binding provisions.

<sup>122</sup> **ES:** the notions of "financial means" and "health insurance" should also be included in this paragraph.

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↓ new

☞ Council

☞ **2. By way of derogation from paragraph 1, where the researcher is bound by a contract with the research organisation, Member States may waive the requirement to sign a hosting agreement, provided that the contract contains the elements referred to in paragraph 3.** ☹

☞ **3.** ☹ ☞ [...] ☹ ☞ ☞ [...] ☹ ☞ The hosting agreement ☞ [...] ☹ ☞ shall ☞ [...] ☹ ☞ contain ☹<sup>123</sup> :

(a) the title ☞ [...] ☹ ☞ or ☹ ☞ purpose of the research ☞ [...] ☹ ☞ ☞ activity ☹ ☞ ;

(b) ☞ [...] ☹ ☞ ☞ an undertaking by the researcher to endeavour to complete the research activity for which she or he has been admitted; ☹ ☞

(c) ☞ ☞ an undertaking by the organisation to host the researcher for the purpose of completing the research activity; ☹<sup>124</sup>

(d) the start and end date ☞ ☞ or the estimated duration ☹ ☞ of the research ☞ [...] ☹ ☞ ☞ activity ☹ ☞ ;

☞ ☞ (dbis) information on the intended mobility in one or several second Member States if the mobility is known at the time of application in the first Member State. ☹ ☞

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<sup>123</sup> **DE:** a mere agreement should suffice; requests of titles and further information have no added value. The paragraph should either be deleted or made optional.

<sup>124</sup> **SE** prefers the text originally proposed by the **CION**.

4. Member States may also require the hosting agreement [...] to contain:

(a) information on the legal relationship between the research organisation and the researcher;

(b) information on the working conditions of the researcher in accordance with the national law or applicable collective agreements or practice<sup>125</sup> of the Member States concerned.<sup>126</sup>

(c) information [...] on the source of the financial means [...] that will be employed for the research.<sup>127</sup>

↓ 2005/71/EC  
Council

5. Research organisations may sign hosting agreements or contracts only if [...] the research [...] activity has been accepted by the relevant authorities in the organisation, after examination of:

(i) the purpose and estimated duration of the research, and the availability of the necessary financial resources for it to be carried out;

<sup>125</sup> LU considers "or practice" superfluous; the term brings no added value and can even create confusion.

<sup>126</sup> BG: delete point f) or add the following: "information on the working conditions of the researcher that is specified in the hosting agreement or a specific agreement between the host entity and the researcher".

<sup>127</sup> CION: reservation on this requirement as it constitutes a burden and it runs against the principle of attractiveness of the scheme for researchers.

- (ii) the researcher's qualifications in the light of the research objectives, as evidenced by a certified copy of his/her qualification in accordance with Article ~~3~~ ~~[...]~~
- ~~(d)(b);~~

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↓ 2005/71/EC (adapted)

- ~~(b) during his/her stay the researcher has sufficient monthly resources to meet his/her expenses and return travel costs in accordance with the minimum amount published for the purpose by the Member State, without having recourse to the Member State's social assistance system;~~
- ~~(c) during his/her stay the researcher has sickness insurance for all the risks normally covered for nationals of the Member State concerned;~~
- ~~(d) the hosting agreement specifies the legal relationship and working conditions of the researchers.~~

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↓ 2005/71/EC  
↻ Council

↻ [...] ↻

6. The hosting agreement ~~↻ [...] ↻~~ shall automatically lapse when the researcher is not admitted or when the legal relationship between the researcher and the research organisation is terminated.

7. Research organisations shall promptly inform the authority designated for the purpose by the Member States of any occurrence likely to prevent implementation of the hosting agreement ~~or the contract~~ .

**8. Member States may determine in their national legislation the consequences of the withdrawal of the approval or refusal to renew the approval for the existing hosting agreements<sup>128</sup>, concluded in accordance with this Article, as well as the consequences for the residence permits of the researchers concerned.**

↓ 2004/114/EC (adapted)

→ Council

*Article ~~7~~10*

### **Specific conditions for students<sup>129</sup>**

1. In addition to the general conditions laid down in Article 6, a third-country national who applies to be admitted for the purpose of study shall:
- (a)  provide evidence that he/she has ~~not~~  ~~have~~ been accepted by a ~~...~~  higher education institution  to follow a course of study;
  - (b) ~~(d)~~ provide evidence, if the Member State so requires, that he/she has paid the fees charged by the ~~...~~  higher education institution  ;

<sup>128</sup> **PL:** why is there no reference to a contract here?

<sup>129</sup> **ES:** include a specific reference to "*means of subsistence*" in this Article.

~~(b) provide the 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. Member States shall make public the minimum monthly resources required for the purpose of this provision, without prejudice to individual examination of each case;~~<sup>130</sup>

(c) provide evidence, if the Member State so requires, of sufficient knowledge of the language of the course to be followed by him/her; ~~...~~ ~~If the student cannot prove that he/she~~ ~~...~~ ~~fulfils~~ ~~this requirement and when Member States foresee it according to~~ ~~...~~ ~~their national legislation, the student~~ ~~...~~ ~~may benefit from~~ ~~...~~ ~~language training in the~~ ~~...~~ ~~Member State concerned. In this case,~~ ~~...~~ ~~Member States~~ ~~...~~ ~~may~~ ~~require from the student a written undertaking that he/she will follow the~~ ~~...~~ ~~language training.~~<sup>131</sup>

~~(d) provide evidence, if the Member State so requires,~~ ~~...~~ ~~that he/she will have sufficient resources to cover his/her study costs.~~<sup>132</sup>

2. Students who automatically qualify for sickness insurance ~~in respect of~~  for  all risks normally covered for the nationals of the Member State concerned ~~according to the criteria applied in its national system,~~ ~~as a result of enrolment at a~~ ~~...~~ ~~higher education institution~~ shall be presumed to meet the condition laid down in Article 6(1)(c).

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<sup>130</sup> **AT:** this content is now in Article 6(1)(f) and it is not consistent with other migration instruments, like the Seasonal Workers Directive in which, for instance, the concept of "*not having recourse to social assistance*" is included, while in Article 6(1)(f) is lacking.

<sup>131</sup> **SE** prefers the deletion of the second sentence and insists on the deletion of the last sentence. **CION:** what is the added-value of this addition since Member States can already offer language courses without it being mentioned in this proposal.

<sup>132</sup> **HU** disagrees and points out that Article 6 covers every category while in this point we are dealing with study costs which only applies to those who want to study in education institutions, which should remain in the specific conditions. **CION** wondered whether this point (d) is not already covered by Article 6.

➡ *Article 10a*

Approval of higher education institutions<sup>133</sup>

1. The Member States may ➡ [...] Ⓒ decide to ➡ [...] Ⓒ ➡ provide for Ⓒ an approval procedure for any higher education institution wanting to host a student under the admission procedure laid down in this Directive.<sup>134</sup>
2. The approval of ➡ [...] Ⓒ public or private higher education institutions shall be in accordance with procedures set out in the national law or administrative practice of the Member State ➡ [...] Ⓒ concerned and ➡ [...] Ⓒ shall be ➡ [...] Ⓒ based on their statutory tasks.
3. By way of derogation, Member States may decide to exempt higher public education institutions from the approval procedure of paragraph 1. Ⓒ

~~Article 8~~

~~Mobility of students~~

~~1. Without prejudice to Articles 12(2), 16 and 18(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 to complement them with a related course of study in another Member State, shall be admitted 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:~~

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<sup>133</sup> **FI:** this Article should be removed as the Directive is not a tool for setting up a national approval procedure.

<sup>134</sup> **BE** wants the text to reflect clearly the fact that the approval procedure is optional for Member States. **CION** reiterated that this scheme should not be the only way in for students and stated that this Article seems to contradict Article 6a.



~~(a) meets the conditions laid down by Articles 6 and 7 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; and~~

~~(c) participates in a Community or bilateral exchange programme or has been admitted as a  
student in a Member State for no less than two years.~~

~~2. The requirements referred to in paragraph 1(c), shall not apply in the case where the student, in  
the framework of his/her programme of studies, is obliged to attend a part of his/her courses in an  
establishment of another Member State.~~

~~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 student in the territory of the first Member State.~~

↓ 2004/114/EC (adapted)

↻ Council

### *Article ~~9~~11*

#### **Specific conditions for school pupils ↻ and teachers ↻**

↻ 1bis. The provisions of this Article apply to pupils and teachers who exclusively  
accompany them within the framework of a pupil exchange scheme or an educational  
project. ↻<sup>135</sup>

<sup>135</sup> **AT, BE, DE, SE:** no real need for such a provision as not aware of the existence of such programmes. **BE** also asked what such accompanying consists of and whether it is considered paid work. **FR:** there might be no need to include young pupils in the scope of the Directive. **ES:** it is difficult to understand the role of the teachers. **NL:** why should primary school pupils be a separate category?

1. ~~Subject to Article 3, a~~ A third-country national who applies to be admitted ~~as a school pupil~~ in a pupil exchange scheme ~~or an educational project~~ shall, in addition to the general conditions ~~stipulated~~ laid down ~~in~~ Article 6:

↓ 2004/114/EC

↻ Council

- (a) not be below the minimum ~~[...]~~ nor above the maximum age ~~or grade~~ set by the Member State concerned ~~,~~ insofar as this has been established by the Member State. For the purpose of ~~[...]~~ defining the grade, reference may be made by the Member States to the education levels of International Standard Classification of Education (ISCED) ~~;~~ ;
- (b) provide evidence of acceptance by an ~~[...]~~ education establishment;
- (c) provide evidence of participation in a ~~[...]~~ ~~recognised and/or State or Regional programme of education in the context of an~~ ~~[...]~~ exchange scheme ~~or educational project~~ ~~[...]~~ operated by a ~~[...]~~ ~~host entity~~ ~~[...]~~ in accordance with ~~[...]~~ ~~Member State's~~ national legislation or administrative practice;<sup>136</sup>
- (d) provide evidence that the ~~[...]~~ ~~host entity~~ ~~[...]~~ , or – as far as provided for by national law - a third party<sup>137</sup> ~~[...]~~ ~~accepts responsibility for him/her throughout his/her period of presence in the territory of the Member State concerned, in particular as regards~~ ~~[...]~~ ~~study costs~~ ~~;~~ ;

<sup>136</sup> **DE** would like to introduce the notion of "reciprocity". **CION** points out that in the Member States where this optional provision has been transposed no relevant issues have arisen.

<sup>137</sup> **AT, CY, ES, FR, PL, PT** request clarification of the term "third party" and eventually a definition. **PL**: reservation concerning this term since it increases the number of entities involved and goes against the clarity of the text. **FR**: reservation until the term is not defined.

(e) be accommodated throughout his/her stay by a family or a special accommodation facility within the education establishment or – as far as provided for by national law - any other facility meeting the conditions set by the Member State concerned and selected in accordance with the rules of the pupil exchange scheme or educational project in which he/she is participating.

(f) provide evidence, if the Member State so requires, of sufficient knowledge of the language of the course to be followed by him/her. [...] If the pupil [...] cannot prove that he/she fulfils [...] this requirement and [...] when Member States foresee [...] it in their national legislation, the pupil [...] may benefit from [...] language training in the [...] Member State concerned.<sup>138</sup>

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

(2bis) A third-country national who applies to be admitted as an [...] accompanying teacher in a pupil exchange scheme or educational project shall in addition to the general conditions laid down in Article 6:<sup>139</sup>

(a) provide evidence of acceptance by an education establishment that hosts pupils in the context of an exchange scheme or educational project;

(b) provide evidence of participation in a recognised and/or State or Regional programme of education in the context of an exchange scheme or educational project operated by a host entity in accordance with Member State's national legislation or administrative practice;

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<sup>138</sup> **SE** prefers the deletion of the second sentence. **CION**: what is the added-value of this addition since Member States can already offer language courses without it being mentioned in this proposal?

<sup>139</sup> **FR**: the same conditions should apply to pupils and teachers as they travel together. The conditions should be in the same provision. **PRES**: there are some conditions that only apply to pupils.

- (c) be accommodated throughout his/her stay by a special accommodation facility within the education establishment or – as far as provided for by national law - any other facility meeting the conditions set by the Member State concerned and selected in accordance with the rules of the pupil exchange scheme or educational project;
- (d) provide evidence, if the Member State so requires, of ↻ [...] ⌚ knowledge of the language of the respective course. ⌚<sup>140</sup>

↓ 2004/114/EC (adapted)

⇒ new

↻ Council

*Article ~~10~~12*

**Specific conditions for ~~unremunerated~~ ↻ unremunerated and remunerated ⌚ trainees<sup>141</sup>**

1. ~~Subject to Article 3, a~~ A third-country national who applies to be admitted as an unremunerated ⇒ or remunerated ⇐ trainee shall, in addition to the general conditions laid down in Article 6:

<sup>140</sup> **DE:** cannot see the added value of such a provision.

<sup>141</sup> **LV** can support the admission of trainees only under licensed education programmes and providing they are students or pupils. **RO** objects to the merging of unremunerated and remunerated trainees in the same category since the former is a category closer to students and the latter is a category closer to employees, which have access to the labour market. **LT** and **PL** point out that it is very difficult to differentiate remunerated trainees from employees. **PL:** remunerated trainees should be subject to the labour market test. **BE** proposes that accommodation and assumption of responsibility by the organisation should also be added as conditions.

- (a) have signed a [...] trainee agreement, which provides for a theoretical and practical training and is approved, if [...] required, by the [...] competent authority [...] of the Member State concerned in accordance with its national legislation or administrative practice, for ~~an unremunerated~~ a [...] [...] traineeship with a host entity. <sup>142</sup> The agreement shall describe the training programme, including the educational objective or learning components, its duration, the placement and supervision conditions of the traineeship, the traineeship hours, the legal relationship between the trainee and the host entity as well as, in case of a remunerated trainee, the remuneration granted to him/her. Member States may require the terms upon which the trainee agreement has been based and concluded to meet requirements established in national law or practice. <sup>143</sup>

↓ new

☞ Council

- (b) [...] provide evidence, if the Member State so requires, that they have previous relevant education or relevant qualifications [...] to benefit from the [...] traineeship. <sup>144</sup>

- ☞ (ba) provide evidence requested by the Member State that during his/her stay he/she will have sufficient resources to cover his/her training costs <sup>145</sup> ;

<sup>142</sup> **DE:** clarification of the meaning of: "[...] in accordance with its national legislation or administrative practice [...]".

**CY:** can a labour market test be done under this wording; what is the meaning of "relevant authority" and will vocational training be included as a form of traineeship?

<sup>143</sup> **ES** reservation, since this last part should not be included.

<sup>144</sup> **DE:** it is not clear whether a labour market test can be performed. **DE,** supported by **CY** and **LT:** trainees with low-level qualifications are not admitted. **AT:** the mere evidence of relevant education or relevant qualifications or experience, as required in this point, may not exclude the use of unskilled workers as "trainees", in particular when the underlying agreement is not an education agreement, but merely a training programme which may include any practical activity.

<sup>145</sup> **FR:** reservation regarding the requirement of sufficient resources.

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↓ 2004/114/EC

~~(b) provide the 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;~~

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↓ 2004/114/EC

↻ Council

- (c) ↻ provide evidence that he/she has received or will ☹ receive, if the Member State so requires, ↻ [...] ☹ ↻ appropriate ☹ language training so as to acquire the knowledge needed for the purposes of the ↻ [...] ☹ ↻ traineeship ☹ .<sup>146</sup>
- ↻ (d) provide evidence, if the Member States so required, that the host entity accepts responsibility, in particular as regards costs and accommodation for him/her throughout his/her period of stay in the territory of the Member State concerned. ☹
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↓ new

↻ Council

↻ [...] ☹

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<sup>146</sup> **DE:** it is not clear whether the third-country national is required to have already some knowledge of the language.

2. ~~⌚ [...] ⌚~~ ~~⌚ Member States may require the training programmes referred to in paragraph 1 to be certified in accordance with national law. ⌚~~<sup>147</sup>

~~⌚ 2bis. Member States may require the host entity to submit a declaration from the competent authority of the Member State concerned that the third-country national does not fill a vacant post. ⌚~~<sup>148</sup>

↓ 2004/114/EC (adapted)  
⌚ Council

*Article ~~11~~13*

**Specific conditions for volunteers**

~~Subject to Article 3, a~~ ~~⌚ 1~~ ~~⌚~~ A third-country national who applies to be admitted to a voluntary service scheme shall, in addition to the general conditions laid down in Article 6:

~~(a) not be below the minimum age nor above the maximum age set by the Member State concerned;~~ ~~⌚ (a) ⌚ [...] ⌚~~ ~~⌚ [...] ⌚~~ not be below the minimum age of 18 years<sup>149</sup>.  
Member States may determine a maximum age limit for third-country nationals who apply to be admitted to a voluntary service scheme⌚;

<sup>147</sup> **AT, DE, SI:** this provision is insufficient to prevent abuses; a labour market test should be possible under this provision. **CION** against this paragraph, which opens too widely the possibility for Member States to have parallel schemes.

<sup>148</sup> **CION:** such a provision no longer appears in the ICT Directive and it should be deleted here too.

<sup>149</sup> **DE, LU:** against the minimum age of 18 years, it should be left for Member States to define.

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↓ 2004/114/EC

↻ Council

↻ [...] ↻ ~~(b)~~ ↻ (b) ↻ [...] ↻ provide ↻ an agreement with the ↻ [...] ↻ host entity ↻ or, as far as provided for by national law, other institution<sup>150</sup> ↻ [...] ↻ responsible in the Member State concerned for the voluntary service scheme in which he/she is participating ↻ [...] ↻ . The agreement shall describe the voluntary service scheme, its duration, the placement and supervision conditions, of the voluntary service scheme, the volunteering ↻ hours, ↻ [...] ↻ the obligation of the host entity ↻ [...] ↻ or, as far as provided for by national law, other institution ↻ [...] ↻ to cover his/her ↻ accommodation ↻ [...] ↻ costs ↻ and ↻ a minimum sum of money<sup>151</sup> as ↻ pocket money throughout his/her stay and, if ↻ [...] ↻ provided so ↻ , the training he/she will receive to help him/her perform his/her service;<sup>152</sup>

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<sup>150</sup> **AT, ES:** this is quite a broad and vague concept. **DE**, supported by **FR**, considers that the host entity and the entity with which the volunteer has an agreement are not always the same, so this needs to be reflected in the text.

<sup>151</sup> **AT:** a broad and vague concept to be clarified in a recital.

<sup>152</sup> **ES:** reservation, it should not be mandatory. **SE:** same wording of Article 12(1)(e).



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↓ 2004/114/EC

↻ Council

↻ [...] ~~(e)~~ ↻ (c) ↻ provide evidence that the ↻ [...] ↻ host entity ↻ [...] ↻ or, as far as provided for by national law, other institution ↻ [...] ↻ responsible for the voluntary service scheme in which he/she is participating has subscribed to a third-party insurance policy ↻ accepting ↻ [...] ↻ responsibility for him/her throughout his/her stay, in particular as regards his/her subsistence ↻ ; ~~and accepts full responsibility for him/her throughout his/her stay, in particular as regards his/her subsistence, healthcare and return travel costs;~~<sup>153</sup>

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↓ 2004/114/EC

↻ Council

~~(d)~~ ↻ [...] ↻ ↻ (d) ↻ provide evidence ↻ , if the host Member State ↻ [...] ↻ requires ↻ [...] ↻ ↻ so ↻ , ↻ that he/she has received or will ↻ receive a basic ↻ [...] ↻ ↻ ↻ [...] ↻ introduction<sup>154</sup> to the language, history ↻ [...] ↻ ↻ , ↻ political and social structures of that Member State.

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<sup>153</sup> **AT, RO:** the insurance should cover more (subsistence, healthcare and return travel costs).  
**PL:** the third-party insurance policy should be optional. **AT, RO:** the deleted part should be reinserted. **CION:** the provision should be reworded as it now gives an impression that subsistence is also covered by insurance.

<sup>154</sup> **AT** prefers the previous wording of "knowledge" asking what form would the introduction .  
**CION:** the idea is that someone with no prior knowledge of the language could also come as a volunteer.

↓ (new)

→ Council

#### Article 14

#### Specific conditions for au-pairs<sup>155</sup>

→ 1. → A third-country national who applies to be admitted → either by a host family or by an organisation mediating au pairs, as far as provided for by national law, → for the purpose of working as an au-pair shall, in addition to the general conditions laid down in Article 6:

→ [...] → (a) → [...] → provide → an agreement between the au-pair and the host family defining his/her rights and obligations, including specifications about → [...] → a minimum sum of money as → pocket money<sup>156</sup> to be received, → [...] → adequate arrangements allowing him/her to attend courses → referred to in Article 3(i) and the maximum hours of → [...] → participation in day-to-day family duties;

→ [...] → (b) → [...] → fulfil → [...] → the age between eighteen (18) and thirty (30). → [...] → In exceptional cases, Member States may allow the admission of a third-country national, as an au-pair, who is above the maximum age limit; →<sup>157</sup>

<sup>155</sup> **PL:** linguistic reservation concerning the term "au-pairs". **AT:** reservation due to problems with the subsidiarity principle and the legal basis, as well as to the fact that experience shows that this group is prone to abuse and circumventing activities. **AT:** Member States need to have the opportunity to refuse to grant a residence permit when the purpose of stay actually pursues a different aim than the one foreseen in this proposal.

<sup>156</sup> **SE** does not agree with the use of the term "pocket money" and requests it to be replaced by another concept, for example "*allowance*" or "*remuneration*".

<sup>157</sup> **AT, DE:** the maximum age limit should be left for Member States to define. **NL** supported by **AT:** suggests the following wording: "*Member States may determine a maximum and a minimum age limit [...]*".

☞ [...] ☞ (c) ☞ provide evidence that the host family ☞ [...] ☞ ☞ [...] ☞<sup>158</sup> ☞ or an organisation ☞ [...] ☞ mediating au pairs, as far as provided for by national law, ☞ accepts responsibility for him/her throughout his/her ☞ [...] ☞ ☞ stay ☞ in the territory of the Member State concerned, in particular with regard to ☞ [...] ☞ ☞ living expenses, ☞ accommodation ☞ [...] ☞ and ☞ [...] ☞ accident risks;

☞ 2. Member States may require the third-country national who applies to be admitted as an au-pair to provide evidence:

(a) ☞ of basic knowledge of the language of the host country; or

(b) ☞ that she or he has secondary education, professional qualifications or, where applicable, fulfils the conditions to exercise a regulated profession, as required by the national law of the Member State concerned.

3. ☞ Member States may require the members of the host family to be of different nationality than the third-country national who applies to be admitted for the purpose of working as an au-pair and not to have any family links with the third-country national concerned.<sup>159</sup>

4. ☞ The maximum length of performance of the au-pair duties by the third-country national, as foreseen in the agreement referred to in the paragraph 1 (a), shall not exceed 25<sup>160</sup> hours per week. The third-country national shall have at least one day per week free of au-pair duties.

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<sup>158</sup> **DE:** insert "*or -as far as provided for by national law - a third party*".

<sup>159</sup> **BE, SE:** the issues of nationality should be deleted since it could raise some legal questions. **DE** is in favour of keeping this provision. **HU:** against the concepts of "nationality" and "family link". It asked more information about what "family link" exactly means.

<sup>160</sup> **DE, LU** prefer 30 hours per week. **ES, FR** suggest to leave it to the national law.

5. Member States shall <sup>161</sup> set a minimum sum of money as pocket money to be paid to the third-country national according to the paragraph 1 (a). ◀

↪ 6. ↪ [...] ◀ ◀

162

↓ 2005/71/EC

~~Article 9~~

### ~~Family members~~

~~1. When a Member State decides to grant a residence permit to the family members of a researcher, the duration of validity of their residence permit shall be the same as that of the residence permit issued to the researcher insofar as the period of validity of their travel documents allows it. In duly justified cases, the duration of the residence permit of the family member of the researcher may be shortened.~~

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<sup>161</sup> DE: reservation on "shall".

<sup>162</sup> NL proposes to add a new paragraph 7 as follows: "7. Member States may determine that an au-pair can be admitted to its territory only once for the purpose of au pairing." NL: au-pairs are a category of migrants which are vulnerable to misuse and abuse as cheap domestic workers. This risk of misuse and abuse increases when the au-pair is allowed to reside on the territory of a Member State for a longer period which might give au-pairs the possibility of circulating from family to family during several years. NL wishes to prevent this by admitting the au-pair only once and for a maximum period of one year. Such a restricted admission is more in conformity with the real purpose of au-pairing: to learn more of the culture of the country of destination. According to NL, supported by AT, by adding this new paragraph, an application can be refused on the grounds of Article 18(1). Given that this proposal contains a 'may-clause' Member States are free to apply this provision.

~~2. The issue of the residence permit to the family members of the researcher admitted to a Member State shall not be made dependent on the requirement of a minimum period of residence of the researcher.~~

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↓ new

↻ Council

## CHAPTER III

# AUTHORISATIONS AND DURATION OF RESIDENCE

### Article 15

#### Authorisations<sup>163</sup>

- ↻ 1. When the authorisation is in form of a residence permit, under the heading "type of permit", in accordance with point (a) 6.4 of the Annex to Regulation (EC) No 1030/2002, Member States shall enter "researcher", "student", "volunteer", "school pupil"<sup>164</sup>, "remunerated trainee", "unremunerated trainee" or "au pair". ↻

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<sup>163</sup> Concerning the inclusion of codes (numerical, acronyms):

- In favour: **CZ**

- Against: **AT, DE, IT, NL, SE, CION**

**DE**, supported by **AT**: against new wording; it prefers the original wording. **CION**: its proposal does not refer to a new type of permit and the original proposed text was already clear that the permit was not a new one. **FR**: in favour of the extension of the target audiences of this proposal, in order to regularize the situation of young people working in the context of a "youth exchange programs for non-academic accomplishments" and of "youth workers for training visits and networking".

<sup>164</sup> **HU**: against the mention of "school pupils", since it would like to extend the scope to other types of pupils.

➔ 2. When the authorisation is in form of a long-stay visa<sup>165</sup>, Member States shall enter a reference stating that it is issued to the "researcher", "student", "volunteer", "school pupil", "remunerated trainee", "unremunerated trainee" or "au pair" under the heading "remarks" on the visa sticker. ©

➔ [...] ©

➔ 3. For third-country nationals, researchers and students coming to the Union in the framework of a specific EU or multilateral programme, that comprises mobility measures, **or an agreement between two or more recognised higher education institutions**, the authorisation shall make a reference to that specific programme **or agreement**. ©<sup>166</sup>

➔ 4. When an authorisation for researcher's long-term mobility is issued in the form of a residence permit, Member States shall enter "researcher-mobility" under the heading "type of permit" in accordance with point (a) 6.4 of the Annex to Regulation (EC) 1030/2002. ©

➔ 5. When an authorisation in the form of a residence permit is issued for the purpose of student's mobility, Member States shall enter "student – extended mobility" under the heading "type of permit", in accordance with point (a) 6.4 of the Annex to Regulation (EC) No 1030/2002.<sup>167</sup> ©

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<sup>165</sup> **HU:** this should not be about the entrance visa but rather a long-term visa. It would be useful to have a reference in this article to Article 24(3).

<sup>166</sup> **AT:** there must a clear reference on the authorisation clarifying that this is a special residence permit allowing the third-country national to stay in a second Member State for the duration of one year.

<sup>167</sup> **PL:** this paragraph should be erased as authorisations for extended mobility are no longer provided for in the Directive.

↓ 2005/71/EC (adapted)

⇒ new

⇒ Council

Article 16

Duration of [...] authorisation permit<sup>168</sup>

1. Member States shall issue or renew, if applicable, an authorisation for a third-country national for whom the competent authorities have taken a positive decision in accordance with the relevant provisions of this Directive, when there are no relevant grounds provided for in Articles 18 and 19. **When deciding the period of validity of the authorisation issued to researchers and students, Member States shall take account of the planned mobility into other Member States, in accordance with Articles 26A, 26B and 26C.**

2. The period of validity of [...] an authorisation for researchers shall be of [...] at least one year or for the duration of the research activity, in case this is shorter. **In both cases, [...] the authorisation shall be renewed, [...] if the conditions laid down in Articles 6, and 7 and 9 are still met. [...]**<sup>169</sup>

<sup>168</sup> SE: this Article should be revised in order to harmonise the different paragraphs.

<sup>169</sup> RO: this paragraph is in relation with Article 4(2) and wonders whether the new wording should respect the national rules stipulating that Member State can give an authorisation for the duration of the research activity. PRES: the changes in paragraphs 2 and 3 are structural and not intended to change the substance and, as long as the conditions are met, the authorisation can be renewed. IT: this paragraph should take into account the principle that links the validity period of documents necessary for staying in the EU to the length of the course of study that the student commits himself/herself to complete, irrespective of the profit checks which are necessary for the confirmation of the residence permit.

↓ new

→ Council

→ [...] → 3. The period of validity of → [...] → an authorisation for students → [...] → shall be → of at least one year<sup>170</sup> → or for the duration of studies, in case this is shorter, and the authorisation shall be renewed, → [...] → if the conditions laid down in Articles 6 → [...] → , → 10 → and, **where applicable**, 10a → are still met → [...] → <sup>171</sup> .

→ 3a. Member States may determine that the total time of residence for studies shall not exceed the maximum duration of studies as defined in national legislation. →

→ 4. By way of derogation from paragraphs (2) and (3), researchers and students who are covered by EU → [...] → or multilateral programmes that comprise mobility measures<sup>172</sup>, shall be issued an authorisation<sup>173</sup> covering the whole duration of their stay<sup>174</sup> in the Member State participating in the programme. →

<sup>170</sup> **CY** suggests to make reference to "*academic year*" or "*semester*" instead of "one year".

<sup>171</sup> **AT, DE**: reference to Article 19 should be added.

<sup>172</sup> **ES**: reservation on multilateral programmes that comprise mobility measures. **PL**: include agreements between universities too.

<sup>173</sup> **SE**: reservation related to intra-EU mobility.

<sup>174</sup> **AT, DE, ES, FI, SE**: Member States should have more flexibility in determining the duration of the authorisation. It should be possible to have a shorter authorisation and then give the possibility of an extension. An authorisation that covers several years takes away the possibility for Member States to check whether the conditions (e.g. the required sufficient resources or accommodation) are still fulfilled after several years. **AT, DE, PL**: Member States should be able to establish the maximum duration of the authorisation. **IT**: the duration of the authorisation could be tied to the duration of the stay. **SE**: does the fact that Article 6(1)(a) seems not to apply mean that permits should be granted that are valid longer than travel documents? Furthermore, if the first Member State has to issue a permit covering the stay also in the second Member State, does the latter have to assess whether the conditions of Article 6 also apply in relation to the second Member State?



5. The period of validity of an authorisation for school pupils and accompanying teachers shall be of equal duration to the exchange scheme or the educational project, in case those are shorter than one year, or for a maximum of one year. Member States may decide to allow the renewal of the [...] authorisation of the school pupils and accompanying teachers once for the time period needed to complete the pupil exchange scheme or the educational project [...] , if the conditions laid down in Articles 6 and 11 are still met [...] <sup>175</sup>

6. The period of validity of an authorisation for au pairs shall be of a maximum period of one year.<sup>176</sup> [...] Member States may decide to allow the renewal of the authorisation once and for the maximum period of six months, after a justified request by the host family [...], if the conditions laid down in Articles 6 and 14 are still met. <sup>177</sup>

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<sup>175</sup> **CY**: the length of the residence permit should match the period of study. **DE, SE**, prefer the text in the existing Directive and the originally proposed **CIION** text ("*Member States shall issue an authorisation for a maximum period of one year*"). **SE**: there is no need to grant permits longer than one year. **AT** underlines the link of this paragraph with Article 19 of this proposal.

<sup>176</sup> **ES**: reservation on the duration of residence for au-pairs; since it does not agree with the inclusion of this category in the proposal. **DE** supported by **AT**: one year is too much since au-pairs are allowed to stay significantly less time in **DE**.

<sup>177</sup> **DE**: the stay of au-pairs should not be extendable. **HR**: renewal should be left for Member States to regulate in their national legislation. **DE, FR, NL**: neither in favour of the possibility to extend the period, nor the period of 6 months. **AT**: cannot support the period of 6 months asking what constitutes a justified request and what kind of permit would be given in the case of extension. **SE**: there is no need to grant permits longer than one year.

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↓ 2004/114/EC (adapted)

⇒ new

⇒ Council

⇒ [...] 7. The period of validity of an ~~residence permit~~ ⇒ authorisation ⇐ ⇒ [...] for ~~unremunerated~~ ⇒ unremunerated and remunerated trainees shall ⇒ [...] be of equal duration to the training period, in case this is shorter than one year, or for a maximum of one year.<sup>178</sup> ⇒ If the duration of the relevant training programme is longer than one year, the duration of the validity of the authorisation may correspond to the period concerned according to national law ⇒ [...] .

⇒ Member States may decide to allow the renewal of the authorisation ⇒ [...] once ⇒ [...] ⇒ ⇒ [...] and exclusively for ⇒ [...] ⇒ the time period ⇒ [...] needed to ⇒ [...] ⇒ complete the traineeship, insofar as this is provided for in national ⇒ [...] law and the conditions laid down in Articles 6 and ⇒ [...] ⇒ 12 ⇒ are still met ⇒ [...] <sup>179</sup>

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<sup>178</sup> **AT:** it would be acceptable only as a may-clause, otherwise cannot accept a maximum duration of 1 year.

<sup>179</sup> **AT** underlines the link of this paragraph with Article 19 of this proposal.

8. The period of validity of an ~~authorisation~~ ~~residence permit~~ for volunteers shall be of equal duration to the voluntary service scheme, in case this is shorter than one year, or for a maximum period of one year.<sup>180</sup> If the duration of the relevant programme is longer than one year, the duration of the validity of the ~~residence permit~~ ~~authorisation~~ may correspond to the period concerned according to national law.<sup>181</sup>

9. Member States may determine that, in case the validity of the travel document of the third-country national is shorter than one year, the validity of the requested authorisation shall not exceed the validity of the travel document.

10. In cases where Member States allow entry and residence during the first year on the basis of a long-stay visa, an application for a residence permit shall be submitted before the expiry of the long-stay visa. The residence permit shall be issued if the conditions laid down in Article 6 and, where relevant, Articles 6a, 7, 8, 9, 10, 10a, 11, 12, 13 or 14 are still met.

<sup>182</sup>

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<sup>180</sup> **AT:** it would be acceptable only as a may-clause, otherwise cannot accept a maximum duration being set in this Directive.

<sup>181</sup> **AT** underlines the link of this paragraph with Article 19 of this proposal.

<sup>182</sup> **CY:** long-stay visa should remain a matter for the Member States to regulate. **HU:** this paragraph refers to long-stay visas and not to entry visas, which are linked to residence permits, and asks whether this provision applies to non-Schengen countries. **CION** would like to keep the text as proposed. **CION** would also like to distinguish between an application to enter the territory and an application to renew the authorisation. **CION:** reservation on the deletion of the last part of the paragraph.

## Article 17

### Additional information<sup>183</sup>

1. Member States may provide that additional information shall be either indicated in paper format, or stored in electronic format, as referred to in Article 4 of Regulation (EC) No 1030/2002 and point (a) 16 of the Annex thereto. This information may be relating to the residence and, in cases covered by Article 23, the economic activities of the third-country national and include in particular the full list of Member States that the researcher or student intends to go to or a specific EU or multilateral programme that comprises mobility measures or an agreement between two or more recognised higher education institutions<sup>184</sup>, in cases covered by Articles 26 and 28E.
2. Member States may also determine that the information referred to in paragraph 1 shall be indicated on a long-stay visa, as referred to in point 12 of the Annex to Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas.

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<sup>183</sup> **AT:** include a reference to recital 23 in this Article.

<sup>184</sup> **ES:** reservation.

## CHAPTER IV

### ~~RESIDENCE PERMITS~~ ☒ GROUND(S) FOR REFUSAL, WITHDRAWAL OR NON-RENEWAL OF AUTHORISATIONS ☒

#### ~~Article 12~~

##### ~~Residence permit issued to students~~

~~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 6 and 7. Where the duration of the course of study is less than one year, the permit shall be valid for the duration of the course.~~

~~2. Without prejudice to Article 16, renewal of a residence permit may be refused or the permit may be withdrawn if the holder:~~

~~(a) does not respect the limits imposed on access to economic activities under Article 17;~~

~~(b) does not make acceptable progress in his/her studies in accordance with national legislation or administrative practice.~~

~~Article 13~~

~~**Residence permit issued to school pupils**~~

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

~~Article 14~~

~~**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 shall be 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 national legislation or administrative practice, provided the holder still meets the conditions laid down in Articles 6 and 10.~~

~~Article 15~~

~~**Residence permit issued to volunteers**~~

~~A residence permit issued to volunteers shall be issued for a period of no more than one year. In exceptional cases, 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.~~

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↓ new

→ Council

### Article 18

Grounds for → [...] → rejection → [...] → <sup>185</sup>

1. Member States shall → [...] → reject → [...] → an application in the following cases:

(a) where the general conditions laid down in Article 6 → , 6a or → [...] → the relevant specific conditions laid down in Articles 7, → [...] → 8, 9, → 10 to → 14 or → 16 are not met;

→ (aa) → [...] → ; →

(b) where the documents presented have been fraudulently acquired, falsified or tampered with;<sup>186</sup>

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<sup>185</sup> **DE:** inclusion of an optional ground for refusal similar to the one in Article 19(1a)(d), in case that there are reasonable doubts from the beginning that the applicant will be able to complete his or her studies.

**IT:** inclusion of: "*if clear elements clear evidence of incoherence and circumvention of specific immigration rules also emerge*".

<sup>186</sup> **LU** suggests adding the following wording in line with the Directive 2003/86/EC on Family Reunification: "*where false or misleading information, false or falsified documents or authorisations were used, fraud was otherwise committed or other unlawful means were used to enter or reside on the territory or for the purpose of enabling a third person to enter or reside in the Member State*".

(c) where the host entity [...] was established [...] for the main [...] purpose of facilitating the entry of third-country nationals falling under the scope of this Directive ;<sup>187</sup>

1a) [...] where [...] the host entity [...] has been sanctioned in conformity with national law for undeclared work and/or illegal employment. [...] ;<sup>188</sup>

[...]

[...]

2. Member States may [...] reject [...] an application in the following cases:

(a) [...]

(aa) Where [...] applicable, if the volumes of admission as defined in Article 5a [...] have been exhausted<sup>189</sup> ;

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<sup>187</sup> **RO:** merge points (b) and (c).

<sup>188</sup> **ES:** reservation. **AT:** include also the possibility when the family members have been sanctioned. **LV** cannot support the addition of points (e) and (f) since such provisions go beyond the principle of proportionality. Neither do they appear in other migration directives. **SE:** this should be either a "may-provision" or it should be made clear that the proportionality principle as stated in recital 28 applies.

<sup>189</sup> **AT** suggested the following instead: "Where applicable, *on the basis of the volumes of admission as referred to in Article 5a*".



(b) where the host entity [...] or another institution in accordance with Article 13(1)(b) and (c) or a third party in accordance with Article 11 (1)(d) or an organisation mediating au pairs<sup>190</sup> in accordance with Article 14(1) has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions [...];<sup>191</sup>

(c) where [...] the host entity 's business is being or has been wound up under national insolvency laws or [...] no economic activity is taking place [...];

(cbis) where the host entity or the host family do not have adequate financial resources to grant satisfying conditions [...] of residence to the third-country national.<sup>192</sup>

(ccbis) where there [...] are reasonable [...] grounds to believe that the third-country national intends to reside or carry out an activity for purposes other than those for which he/she applies to be admitted;

(cccbis) where [...] a member of the host family [...] has been sanctioned in conformity with national law for breach of the conditions and/or objectives of au-pair placements . [...];<sup>193</sup>

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<sup>190</sup> **PL:** there is no need to refer to "an organisation mediating au pairs" as it is already covered by the definition of a host entity.

<sup>191</sup> **DE:** inclusion of "*infringement against labour rights*". **DE, SE:** against the deletion of a reference to the terms and conditions of employment according to applicable laws, collective agreements or practices. **SE** thus suggested the following new ground of rejection in order to protect trainees: "*(bbis) where the terms of employment according to applicable laws, collective agreements or practices in the Member State where the host entity is established are not met*".

<sup>192</sup> **SE:** how should it be determined whether the host family has sufficient resources?

<sup>193</sup> **ES:** reservation. **SE** suggested to add the following: "... objectives of au-pair placements or where there are reasonable grounds to believe that the au pair would be subjected to threats, violence or some other violation if an authorisation is granted."

(d) → [...] ↻<sup>194</sup>

(e) → [...] ↻<sup>195</sup>

→ (3) → [...] ↻ ↻

↓ 2004/114/EC (adapted)

→ new

→ Council

Article ~~16~~ 19

⇒ Grounds for ↻ Wwithdrawal ~~or non-renewal~~ → or non-renewal ↻ of residence permits ⇒ of an authorisation ↻<sup>196</sup>

1. Member States ~~may~~ → shall ↻ withdraw ~~or refuse to renew~~ → or refuse to renew ↻ 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 laid down in Article 6 and in whichever of Articles 7 to 11 applies to the relevant category. ⇒ an authorisation → [...] ↻ : ↻<sup>197</sup>

<sup>194</sup> **CY** against the deletion.

<sup>195</sup> **CY** against the deletion.

<sup>196</sup> **AT, CY**: a reference to volumes of admission is missing.

<sup>197</sup> **AT, HU**: against the deletion of part of paragraph.

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↓ new

→ Council

- (a) → where the holder no longer meets the general conditions laid down in Article 6, except for Article 6(1)(d), 6a or the relevant specific conditions laid down in Articles 7, → 8, 9, ← 10 to 14 or 16 were not met or are no longer met; ←<sup>198</sup>
- (b) ← where authorisations → [...] ← → or ← documents presented have been fraudulently acquired, falsified or tampered with;<sup>199</sup>
- [...] ←→ (c) ← where the third-country national → [...] ← → resides or carries out an activity<sup>200</sup> ← for purposes other than<sup>201</sup> those for which he/she was authorised to reside;
- [...] ←→ (d) ← where the host entity was established → [...] ← for the → main ← → [...] ← purpose of facilitating entry → of third-country nationals falling under the scope of this Directive ←;

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<sup>198</sup> **BE:** a reference to Article 24 should be added. **AT** asked why why paragraph 6(1)(d) has been excluded pointing out that it should be a shall-clause.

<sup>199</sup> **LU:** text to be added in line with the Directive 2003/86/EC on Family Reunification: "*where false or misleading information, false or falsified documents or authorisations were used, fraud was otherwise committed or other unlawful means were used to enter or reside on the territory or for the purpose of enabling a third person to enter or reside in the Member State*".

<sup>200</sup> **CION** questions the added-value of the addition of this wording and points out that the drafting is unclear.

<sup>201</sup> **DE:** add "*mainly*" as follows: "[...] *mainly* for purposes other than [...]".

➔ (dbis) if the host entity ➔ [...] ☒ or another institution ➔ [...] ☒ in accordance with Article 13(1)(b) and (c) or a third party in accordance with Article 11(1)(d) ➔ or an organisation mediating au pairs<sup>202</sup> in accordance with Articles 14(1) ☒ has been sanctioned in conformity with national law for undeclared work and/or illegal employment.<sup>203</sup> ☒

(d) ➔ [...] ☒

(e) ➔ [...] ☒

(f) ➔ [...] ☒

➔ 1a. ➔ [...] ☒ ☒

➔ [...] ☒

➔ 1a a. Member States may withdraw or refuse to renew an authorisation ➔ [...] ☒:<sup>204</sup>

(a) if the host entity ➔ [...] ☒ has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions ➔ [...] ☒.<sup>205</sup>

(b) where ➔ [...] ☒ the host entity ➔ 's business ☒ is being or has been wound up under national insolvency laws or ➔ [...] ☒ no economic activity is taking place ➔ [...] ☒ ;

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<sup>202</sup> **PL:** there is no need to refer to "an organisation mediating au pairs" as it is already covered by the definition of a host entity.

<sup>203</sup> **ES:** reservation. **SE:** this should be either a "may-provision" or it should be made clear that the proportionality principle as stated in recital 28 applies.

<sup>204</sup> **PL:** add "where *the third-country national does not provide proof that is looking for a job or have a good chance to find one*".

<sup>205</sup> **ES:** reservation.

➔ (bb) where the host entity ➔ or the host family do ➔ [...] ➔ not have adequate financial resources to grant satisfying conditions of stay or residence to the third-country national; ➔

(c) ➔ [...] ➔

(d) for students, where the time limits imposed on access to economic activities under Article 23 are not respected or if the respective student does not make sufficient progress in the relevant studies in accordance with national ➔ [...] ➔ law or administrative practice;

(e) where the terms of employment according to applicable laws, collective agreements or practices in the Member State where the host entity is established are not met ➔ [...] ➔ ➔

➔ (f) where the student does not fulfil the condition set out by the written undertaking in accordance with Article 10.1(c); ➔<sup>206</sup>

➔ (fbis) if a member of the host family ➔ [...] ➔ has been sanctioned in conformity with national law for breach of the conditions and/or objectives of au-pair placements. ➔<sup>207</sup> ➔

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<sup>206</sup> **CI**ON: against the need to produce a written undertaking for the language course.

<sup>207</sup> **ES**: reservation. **SE** suggested to add the following: "... objectives of au-pair placements or where there are reasonable grounds to believe that the au pair would be subjected to threats, violence or some other violation if an authorisation is granted."

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↓ 2004/114/EC

⇒ new

⇒ Council

⇒ 2. In case of withdrawal, when assessing the progress<sup>208</sup> in the relevant studies, as referred to in paragraph 1a(d), a Member State ⇒ [...] ⇒ may consult with<sup>209</sup> ⇒ the host entity. ⇒

⇒ [...] ⇒ 3. ⇒ Member States may withdraw ~~or refuse to renew~~ ⇒ or refuse to renew ⇒ a residence permit ⇒ an authorisation ⇐ for reasons of public policy, public security or public health.<sup>210</sup>

⇒ 4. ⇒ [...] ⇒

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↓ 2005/71/EC

#### Article 10

##### ~~Withdrawal or non-renewal of the residence permit~~

~~1. Member States may withdraw or refuse to renew 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 by Articles 6 and 7 or is residing for purposes other than that for which he was authorised to reside.~~

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<sup>208</sup> **CION:** the wording "assessing the progress" is too vague. **PL:** the "lack of progress" should be considered as a ground for non-renewal.

<sup>209</sup> **CION** prefers the previous wording "shall consult with".

<sup>210</sup> **CZ** drafting suggestion: "[...] possible threat to public policy, public security or public health". **AT:** this should be a shall-clause.

~~2. Member States may withdraw or refuse to renew a residence permit on grounds of public policy, public security or public health.~~

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↓ new

↻ Council

*Article 20*

### Grounds for non-renewal of an authorisation

↻ [...] ↻

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↓ 2005/71/EC (adapted)

## CHAPTER V

### ~~RESEARCHERS'~~ RIGHTS

*Article ~~12~~ 21*

**Equal treatment<sup>211</sup>**

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<sup>211</sup> **AT, BG, CZ, ES, FI:** reservation. **CZ** against the inclusion of equal treatment rights in social security for non-economically active groups since, due to the lack of economic activity, they do not contribute to the national social security systems. **AT:** full equal treatment seems to be exaggerated in view of the temporary nature of the activities. **PL:** the Article should be drafted more clearly. **CION:** the rights stemming from this Article are relatively limited and should not affect significantly the social security systems of the Member States.

↓ new

☞ Council

☞ 1. Unremunerated and remunerated trainees, ☞ [...] ☞ volunteers and au-pairs, when they are in an employment relationship with an employer established in the Member State concerned or are allowed to work<sup>212</sup> by virtue of the national law of the Member State concerned, and students shall<sup>213</sup> enjoy equal treatment as provided for by Directive 2011/98/EU. ☞<sup>214</sup>

<sup>212</sup> **FI:** delete "or are allowed to work" in order to align the text to the Single Permit Directive.

<sup>213</sup> **AT** prefers a "may" clause.

<sup>214</sup> **ES:** reservation on this paragraph, which deals with employment relationships. **DE, ES, FI, IT:** this paragraph should be brought in line with the Single Permit Directive. **CZ:** does not agree with the extensive approach to equal treatment on social security; equal treatment should be granted for researchers only. **AT:** insert the following: "... enjoy equal treatment as provided for by Directive 2011/98/EU *with the exception of family benefits*". **FR, NL:** the paragraph should be simplified by setting out the general principle of equal treatment in the case of those who are in an employment relationship without listing the different categories. **FR** proposed the following wording: "*When they are, according to the national law of the Member State concerned, in an employment relationship with an employer established in this Member State, and by way of derogation from Article 12(2)(b) of Directive 2011/98/EU, the third-country nationals mentioned in Article 2 shall enjoy equal treatment as provided for by Article 12 of Directive 2011/98/EU. In the event of mobility between Member States, Council Regulation (EU) No 1231/2010 shall apply accordingly.*" **HU:** the general principle should be set out according to which only those who are in an employment relationship and who are insured would qualify for equal treatment. **NL:** does the absence of national rules mean that no equal treatment should be granted? **DE:** this paragraph should contain the main principle according which those who are in an employment relationship qualify for equal treatment. Au pairs should be excluded as it was the case in the Single Permit Directive. **PT** supported the general principle of equal treatment with no exceptions but expressed doubts about the possibility of volunteers, au pairs and trainees being covered by the social security system. **FI, SE:** should students enjoy equal treatment if they are not working but have the right to work? **LV** opposed the granting of equal treatment to those who are not in employment as they do not pay contributions. **CION:** this proposal is different from the proposals on seasonal workers and intra-corporate transferees due to the different categories included which are not all covered by the Single Permit Directive (covering only workers and third-country nationals authorised to work).



➔ [...] ➔ 2. ➔ By way of derogation<sup>215</sup> from Article 12(2)(b) of Directive 2011/98/EU,  
 ➔ [...] ➔ researchers shall<sup>216</sup> be entitled to ➔ [...] ➔ equal treatment with nationals of the  
 host Member State as regards ➔ provisions in national law regarding the ➔ branches of social  
 security, ➔ [...] ➔ as ➔ defined in ➔ Article 3 of ➔ Regulation ➔ (EC) ➔ No  
 883/2004<sup>217</sup> ➔ [...] ➔ and without prejudice ➔ [...] ➔ to ➔ bilateral agreements.  
 Member States may decide to exclude researchers<sup>218</sup> residing in a Member State for a period  
 less than six months from the right to family benefits.<sup>219</sup> In the event of mobility between  
 Member States Council Regulation (EU) No 1231/2010 shall apply accordingly.<sup>220</sup> ➔ 221

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- 215 **CZ:** expression "by way of derogation" is unclear. **CION** taking into account the changes in the text, this expression may not be needed anymore.  
 216 **AT, LV:** this should be a "may-clause".  
 217 **DE:** "...Article 3(1) of Regulations (EC) No 883/2004.."  
 218 **CION** does not agree with this exclusion of researchers; it would mean a step backwards for this proposal.  
 219 **BG:** this sentence should be displayed in a separate paragraph.  
 220 **BG:** the last sentence of the paragraph should read instead: "In the event of intra-EU mobility as stipulated in Chapter VI of this Directive, Council Regulation (EU) No 1231/2010 shall apply accordingly ."  
 221 **DE, FI, HU, PL:** the relationship of this paragraph with the Single Permit Directive is unclear. **BG:** the procedure applicable to researchers should be similar to the Blue Card Directive. **AT, DE, IT, LT, LV, MT:** against the inclusion of family benefits in this provision. **DE:** according to the Single Permit Directive, equal treatment, including family benefits, applies only to researchers residing in the territory over 6 months. **CY:** suggests the following wording: "*Member States may decide not to grant equal treatment to researchers residing in a Member State for a period less than six months in relation to the right to family benefits.*" **AT:** delete "residing in a Member State for a period less than six months" in the second sentence of the paragraph. A legal and permanent residence in AT that is necessary for entitlement to family benefits depends on the specific circumstances of each and every case. **SE:** does this mean that bilateral agreements can still be concluded. **FR** suggested the following: "*2. When they are, according to the national law of the Member State concerned, in an employment relationship with an employer established in this Member State, and by way of derogation from Article 12(2)(b) of Directive 2011/98/EU, the third-country nationals mentioned in Article 2 shall enjoy equal treatment as provided for by Article 12 of Directive 2011/98/EU. In the event of mobility between Member States, Council Regulation (EU) No 1231/2010 shall apply accordingly. However, Member States may exclude researchers, when they are in an employment relationship with an employer for less than six months, from the right to family benefits.*" **CION** the aim is to keep the same level of rights for researchers as in the current Researchers Directive, the current version of the Article is not in line with Recital 36 which reconfirms this aim.

☞ [...] ☞ 3. ☞ ☞ [...] ☞ Volunteers, ☞ remunerated or ☞ unremunerated trainees and au-pairs, irrespective of whether they are allowed to work in accordance with Union or national law, ☞ and school pupils ☞ shall be entitled to equal treatment in relation to access to goods and services and the supply of goods and services made available to the public, ☞ [...] ☞ as provided for by national law.<sup>222</sup>

☞ By way of derogation, Member States may decide not to grant equal treatment to school pupils, volunteers, remunerated or unremunerated trainees and au-pairs in relation to procedures for obtaining housing, study and vocational training grants and loans and / or services provided by public employment services in accordance with national law. ☞<sup>223</sup>

↓ 2005/71/EC (adapted)

☞ Council

Article ~~11~~ 22

### Teaching ☒ by researchers ☒

~~11~~ Researchers admitted under this Directive may ☞ **in addition to research-related activities,** ☞ teach in accordance with national legislation.~~2~~ Member States may set a maximum number of hours or of days for the activity of teaching.<sup>224</sup>

<sup>222</sup> **ES:** reservation. **CION:** reservation on the text at the end of the paragraph. **AT:** deletion of the paragraph. **DE:** exclusion of study and vocational training grants from the scope of this paragraph. **LV:** the exclusion of employment services. **BE:** exclusion of disability benefits. **SE:** add at the end of the paragraph: "*The rights in this paragraph do not include study and vocational training grants and loans*".

<sup>223</sup> **CION:** reservation. **SE:** add at the end of the first paragraph: "*The rights in this paragraph do not include study and vocational training grants and loans*" and delete "study and vocational training grants and loans" in the second paragraph. **PL:** delete "by way of derogation" as there is no such general principle.

<sup>224</sup> **ES** suggests the following wording: "*Third-country nationals* admitted under this Directive may teach in accordance with national legislation *if they carry out a research activity as researchers or as PhD students*. Member States may set a maximum number of hours or of days for the activity of teaching."

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↓ 2004/114/EC (adapted)

⇒ new

↻ Council

## ~~CHAPTER IV~~

### ~~TREATMENT OF THE THIRD-COUNTRY NATIONALS CONCERNED~~

Article ~~17~~ 23

#### **Economic activities by students**

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>225</sup>. The situation of the labour market in the host Member State may be taken into account.<sup>226</sup>
2. Where necessary, Member States shall grant students and/or employers prior authorisation in accordance with national legislation.

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<sup>225</sup> **CY:** further clarification of "students [...] may be entitled to exercise self-employed economic activity".

<sup>226</sup> **EL:** Member States should check the situation of the national labour market, as a mandatory clause, having the right not to, as an optional derogation.

~~23.~~ Each Member State shall determine the maximum number of hours per week or days or months per year allowed for such an activity, which shall not be less than ~~10~~  hours per week, or the equivalent in days or months per year<sup>228</sup>.

~~3. Access to economic activities for the first year of residence may be restricted by the host Member State.~~<sup>229</sup>

4. Member States may require students to report, in advance or otherwise, to an authority designated by the Member State concerned, that they are engaging in an economic activity. Their employers may also be subject to a reporting obligation  . **The second Member State may require the student exercising mobility to its territory in accordance with Articles 26B and 26C, and wishing to work on its territory, to provide information about his/her working activities and the number of hours worked in the first Member State.**

5. In case of mobility  **to one or several Member States in accordance with Articles 26B and 26C, if the student has already reached or exceeded, in the first Member State, the maximum number of hours per week or days or months per year that he/she is allowed to work in the second Member State, the second Member State may deny him/her access to its labour market.**

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#### Article 24

<sup>227</sup> ES, NL: reservation. AT, BG, CZ, ES, LV, MT, NL, RO insist on "...10 hours per week...". This is a minimum so Member States still enjoy a degree of flexibility. SE: further flexibility is needed. CION: in favour of 20 hours per week.

<sup>228</sup> FR: "... or the equivalent in days or months per year, and shall not exceed a maximum duration of 20 hours per week, or the equivalent in days, or months per year."

<sup>229</sup> AT, CY: reservation on the deletion, Member States should be able to set a minimum time period after which students are allowed to work.

➔ Extension of the right of residence for the purposes of job-searching [...] or entrepreneurship for researchers and students<sup>230</sup>

➔ 1. After [...] the completion of research or studies in the Member State, [...] third-country nationals shall<sup>231</sup> [...] have the right to apply<sup>232</sup> to stay on the territory of the Member State for a period of at least [6]<sup>233</sup> [...] months in order to [...] seek employment or set up a business, if the conditions laid down in Article 6(1) points (a) and (c) to (f) [...] are still fulfilled. This right shall be applied, without prejudice to Member States' right to take into account their labour market, followed by a positive evaluation of the host entity<sup>234</sup> for the completion of the research activity in case of researchers<sup>235</sup> or by evidence of having obtained a higher education diploma, certificate or other evidence of formal qualifications in case of students<sup>236</sup>.

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<sup>230</sup> **CY:** against the extension of the residence for the purposes of job-searching for researchers and students. **HU:** how to check whether in practice the fact somebody is doing the necessary to set up a business? **FR:** researchers benefiting from mobility in a second Member State should not have the automatic right to stay on the territory of the Member State for the purposes of job-searching. **EL:** against this provision being mandatory. **EL:** strong concerns regarding the right of third-country nationals to have an automatic right to seek job or set up a business. Member States should have the right to decide whether they will grant that right of extra residence period for that purpose while taking into account the situation in the national labour market. In this spirit, **EL** opposes the proposed distinction between "job seeking" and "access to the labour market".

<sup>231</sup> **AT, HR, IT:** this should be a "may" clause. **CIION** prefers the originally proposed "shall be entitled to stay", once the conditions are fulfilled.

<sup>232</sup> **CIION:** it should be redrafted to say that the person has the right to stay on the territory of the Member State.

<sup>233</sup> **DE:** can support a period of 18 months as in its legislation. **CZ:** prefers 3 months; this provision should be optional. **CY:** accepts 12 months for researchers, but not for students, au-pairs and the other categories. Alternatively, it should be left to the Member States to decide.

<sup>234</sup> **DE:** this obligation is an excessive burden on host entities.

<sup>235</sup> **ES:** unnecessary administrative burden.

<sup>236</sup> **BE:** Member States should be able to decide whether this right is granted after obtaining a Bachelors or a Master's degree.

<sup>237</sup> **AT:** the paragraph is not clear, it should be split in two.

In a period of more than 3 and less than 6 months, Member States may require third-country nationals [...] to prove that they seek employment or have a genuine chance of being engaged or are in the process of setting up a business.<sup>238</sup>

After a period of 6 months<sup>239</sup> and in case of Member States have granted a period of more than six months, Member States may require<sup>240</sup> third-country nationals [...] to prove that they have a genuine chance of being engaged or of launching a business.<sup>241</sup>

Member States may require that the employment the third-country national is seeking or the business he/she is in the process of setting up corresponds to the area or level<sup>242</sup> of research or the field of studies completed or the skills gained by the third-country national.<sup>243</sup>

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<sup>238</sup> **AT:** Member States should be able to provide the intervals after which evidence of trying to find employment is checked.

<sup>239</sup> **DE:** against 6 months and any time limitations; MS should be able to set the deadline.

<sup>240</sup> **AT** suggests to explicitly indicate as the need to provide for an application for family members, before the authorisation expires.

<sup>241</sup> **MT:** access to benefits should be excluded.

<sup>242</sup> **SE:** delete "or level" sine it is difficult to determine whether an employment corresponds to the level of research or studies.

<sup>243</sup> **IT:** delete this provision since it would hold back and restrict the chance of finding a job as well as it would confer excessive discretionary powers to the competent authorities.

➔ 2. For the purpose of stay referred to in paragraph 1, provided that conditions laid down in Article 6(1) points (a) and (c) to (f) are fulfilled, Member States shall issue or renew an authorisation other than foreseen in Article 15<sup>244</sup> to the third-country national and, where relevant, to his family members according to their national law. ◀<sup>245</sup>

➔ 2a. For the purpose of stay referred to in paragraph 1, provided that conditions laid down in Article 6(1) points (a) and (c) to (f) are fulfilled, Member States may require that the application of the respective third-country national and, where applicable, the members of his/her family, ➔ [...] ▶ shall be submitted before the expiry of the residence permit. ▶

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<sup>244</sup> **PL** supported by **AT**: "an authorisation other than foreseen in Article 15" should be redrafted, since it can suggest that researchers and students who are allowed to stay on the territory of Member States in order to look for a job or set up a business shall be granted a document other than a visa or a residence permit. The provisions concerning granting the authorisations to family members should be included in Article 25 of the proposal as placing them in this Article suggests that the directive also grants the right to stay to the family members of students.

<sup>245</sup> **AT**: it should be optional for Member State to decide whether to grant a residence permit or a visa. Detailed provisions on the procedure are lacking, for example that the third-country national must lodge his application before the expiry of the valid residence permit as a student or a researcher, or even the necessary submission of an applications itself. **BE**: this paragraph clarifies the question of change of status and the residence permit should not be renewed. **SE**: does the fact that reference is made to an authorisation "other than foreseen in Article 15" mean that it is up to Member States what to write under the heading "type of permit"?

➔ 3. If the conditions provided for in paragraph 1 are no longer fulfilled, Member States shall<sup>246</sup> withdraw the authorisation of the third country national and his/her family members according to their national law. Member States may<sup>247</sup> also withdraw the authorisation if the third-country national is seeking employment or is in the process of setting up a business which does not correspond to the level or area of research or the field of studies finalised or the skills gained by the third-country national. ☹<sup>248</sup>

➔ 4. In case of ➔ [...] ☹ researchers and/or students ➔ who reside in a second Member State in accordance with the provisions of Articles 26A, 26B, 26C and 26D, second Member States, ☹ when applying paragraph 1, ➔ [...] ☹ may restrict the extension of the right of residence for the purposes of job-searching or entrepreneurship to those researchers and/or students for whom the Member States concerned have granted an authorisation. ☹<sup>249</sup>

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<sup>246</sup> **AT:** this should be a may-provision.

<sup>247</sup> **ES:** reservation on "may".

<sup>248</sup> **IT:** this provision creates excessive limits for the completion of studies in a MS and for the seeking of employment afterwards. It is difficult for the authority to check these requirements: it is administratively onerous and can give rise to arbitrary decisions. **FR:** need to pay attention to the degree of detail put in this paragraph, it deals with the withdrawal of authorisation, and if it is too detailed it can give rise to litigation and can be quite an administrative burden. **PL:** the optional ground for the withdrawal of the authorisation suggests that researchers and students are not allowed to seek employment or be in the process of setting a business, which does not correspond to the level of research or studies finalised by the third-country national. Such a requirement is, however, not provided in paragraph 1 of this Article, which determines the prerequisites to grant third-country nationals the authorisation for the purposes of job-searching or setting up a business.

<sup>249</sup> **PL:** why are those staying on the basis of a notification excluded?



## Article 25

### Researchers' family members

1. By way of derogation from Article 3(1) and Article 8 of Directive 2003/86/EC,  $\Rightarrow$  [...]  $\Leftarrow$   $\Rightarrow$  the issuance of the residence permit to the family members of the researcher admitted to a Member State shall not be made dependent on the requirement of a minimum period of residence of the researcher.<sup>250</sup>  $\Leftarrow$  .
2. By way of derogation from the last subparagraph of Article 4(1) and Article 7(2) of Directive 2003/86/EC, the integration conditions and measures referred to in those provisions may only be applied after the persons concerned have been granted family reunification.
3.  $\Rightarrow$  Without prejudice to Article 24(2) and  $\Leftarrow$  by way of derogation from the first subparagraph of Article 5(4) of Directive 2003/86/EC, authorisations for family members shall be granted, where the conditions for family reunification are fulfilled, within 90 days from the date on which the application was lodged  $\Rightarrow$  [...]  $\Leftarrow$  .<sup>251</sup>
4. By way of derogation from Article 13(2)  $\Rightarrow$  [...]  $\Leftarrow$  of Directive 2003/86/EC, the duration of validity of the authorisation of family members shall  $\Rightarrow$  [...]  $\Leftarrow$   $\Rightarrow$  , as a general rule, end on the date of expiry<sup>252</sup> of the  $\Leftarrow$  authorisation  $\Rightarrow$  [...]  $\Leftarrow$   $\Rightarrow$  issued  $\Leftarrow$  to the researcher  $\Rightarrow$  [...]  $\Leftarrow$  .

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<sup>250</sup> **CI**ON: reservation. **BE**: the paragraph refers to Articles 3(1) and 8 of Directive 2003/86 but the content only concerns Article 8.

<sup>251</sup> **AT, IT, LU, SE**: time-limits 90/60 days are too short. **IT**: time-limit set of 180/90 days. **SE**: it would be preferable not to have time-limits in the proposal since it gives Member States less flexibility. **HU**: 60-day time limit applicable in the case of Union programmes including mobility measures deleted in the current version of the text.

<sup>252</sup> **AT** criticised the fact of stating the necessary period here.

5. By way of derogation from the second sentence of Article 14(2) of Directive 2003/86/EC, Member States [...] may not apply any time limit in respect of access to the labour market.<sup>253</sup>

## CHAPTER VI

### MOBILITY BETWEEN MEMBER STATES

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↓ 2005/71/EC

↻ Council

↻ Article 26

Intra-EU mobility<sup>254</sup>

↻ [...] ↻

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<sup>253</sup> **AT:** reservation on the immediate access of family members to the labour market.

<sup>254</sup> **DE:** while an autonomous scheme is justified for students, there is no need to deviate from the Schengen system in the case of researchers. **SE:** the proposed scheme creates burdensome administrative procedures. There is no need to provide for 2 different schemes - one for researchers and another one for students. **BE, PL:** the proposed scheme is too complex both for the applicant and the authorities. **FR:** it should be clarified which Member State assumes the responsibility for following the intra-EU mobility of a third-country national; it should preferably be the Member State of first admission. **AT (reservation):** the proposed scheme is too complex and constitutes an administrative burden.

- ➔ 1. A third-country national who holds ➔ [...] ☹ ➔ a valid ☹ authorisation for the purpose of research or studies issued by the first Member State may enter ➔ and ☹ stay ➔ [...] ☹ ➔ in order to ☹ carry out part of his/her research or studies in one or several second Member States on the basis of that authorisation ➔ [...] ☹ and a valid travel document under the conditions laid down in Articles 26A, 26B ➔ , ☹ ➔ [...] ☹ 26C ➔ , 26D ☹ and subject to Article 26 ➔ [...] ☹ ➔ G ☹ .<sup>255</sup> ☹
- ➔ 2. During the mobility referred to in paragraph 1, researchers may, **in addition to research-related activities**, teach and students may, in addition to their studies, ➔ [...] ☹ ➔ [...] ☹ work , in one or several second Member States in accordance with the conditions laid down in Articles 22 and 23 respectively ➔ [...] ☹<sup>256</sup> .
- ➔ 3. When a researcher moves to a second Member State in accordance with Articles 26A or 26B and in case his/her family was already constituted in the first Member State, the members of his/her family shall be authorised to accompany or join the researcher ➔ [...] ☹ ➔ [...] ☹ ➔ ➔ [...] ☹ under the conditions laid down in Article 26F ☹ .<sup>257</sup> ☹

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<sup>255</sup> **HU:** it should be clarified in which cases the authorisation issued by the first Member State can be used for mobility in other Member States.

<sup>256</sup> **FR** suggested to add the following sentence: "*If the activities take place in different Member States, the maximum duration set by each of them shall not be added up. The first Member State remains responsible for the third-country national in case of extension of the right of residence as stated in Article 24.*"

<sup>257</sup> **DE, FR:** the right of family members to accompany the researcher in the second Member State should be limited to long-term mobility. **LU:** it should be up to Member States to decide whether family members can accompany researchers in the case of short-term mobility.

4. When researcher's family members are authorised to accompany or join the researcher in the second Member State the provisions of Article 25, with the exception of paragraph 2, shall apply.

Article 26 A

Short-term mobility of researchers

[...]

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<sup>258</sup> **SI:** integration measures should not be extended to family members who accompany a researcher in the case of short-term mobility. **AT, HU, MT:** an exception from Article 25(5) should be provided for as against granting family members unlimited access to the labour market of the second Member State, especially as it is likely that the nature of employment of family members in the first Member State is completely different from the one in the second Member State. Thus it should be up to the second Member State to regulate the conditions concerning the access of family members to its labour market. **CZ:** What happens if a family member wants to join a researcher who is already in the second Member State? **Pres:** *the paragraph will be revised together with other provisions concerning family members in this Directive.*

<sup>259</sup> **AT, DE:** short-term mobility of researchers and students should be in line with Article 21 of the Schengen Convention; the procedural issues should be in line with the appropriate provisions of the Visa Code. **AT:** confirmation or documentation of the "accepted" notification should be considered for the purpose of border controls. Only the consulates of Member States should be able to process notifications. **FR** (supported by **AT**): it should be specified that a researcher needs to have spent at least 6 months in the first Member States before he/she can exercise mobility and the stay in the first Member State should be longer than in the second Member State.

➔ 1. A third-country national who has been admitted as a researcher under this Directive and who holds a valid authorisation issued by the first Member State shall be entitled to ➔ enter and ➔ stay ➔ [...] ➔ ➔ in order to ➔ carry out part of his/her research in any research organisation in one or several second Member States for a period of up to ➔ [...] ➔ **90 days** in any ➔ [...] ➔ **180-day** period per Member State, subject to the conditions laid down in this Article. ➔

➔ 2. The **second Member State may require the** ➔ researcher or the ➔ research organisation in the first Member State ➔ [...] ➔ ➔ [...] ➔ **to notify the competent authorities of the first Member State and of the second Member State of the intention of the researcher to carry out part of his/her research in the research organisation in the second Member State. The notification shall take place ➔ [...] ➔ as soon as the intended mobility to the second Member State is known. The mobility may take place either at any moment within the period of validity of the authorisation or after the notification in case the latter is required by the second Member State.** ➔

➔ 3. The **second Member State may require the notification** ➔ [...] ➔ **to include the transmission of the ➔ [...] ➔ following documents and information:** ➔<sup>260</sup>

➔ (a) a valid travel document, as provided for in point (a) of Article 6(1) **and a valid authorisation issued by the first Member State covering the total period of ➔ the ➔ short-term mobility;** ➔<sup>261</sup>

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<sup>260</sup> **PL** expressed concerns about the ways in which these provisions should be implemented in practice asking especially how third-country nationals or host entities would exchange information with the authorities of the second Member State while being in the first Member State. **Cion** referred to Article 32 in this respect.

<sup>261</sup> **SE:** in case the residence permit issued by the first Member State expires while the researcher is in the second Member State, should the person apply for an extension of the permit in the first member State or a new permit in the second one? **PL:** it is not clear whether the first Member State should grant the researcher a residence permit covering the entire duration of his/her intended stay in second Member States.

➔ (b) the hosting agreement or the contract in the first Member State ➔ as referred to in Article 9 ➔ ➔ [...] ➔

➔ [...] ➔

➔ (c) evidence that the researcher has sickness insurance for all the risks normally covered for nationals of the Member State concerned. ➔

➔ [...] ➔

➔ (d) evidence that during his/her stay the researcher has sufficient resources to cover his/her subsistence as well as return travel costs ➔ to the first Member State ➔ and will not have recourse to the Member State's social assistance system; ➔

➔ (e) ➔ [...] ➔ the address of the third-country national concerned in the second Member State. ➔<sup>262</sup>

➔ Member States may require ➔ [...] ➔ ➔ the researcher or the research organisation in the first Member State ➔ [...] ➔ ➔ to present the documents listed in ➔ [...] ➔ ➔ **paragraph 3** ➔ [...] ➔ in an official language of the Member State concerned. ➔<sup>263</sup>

➔ **4.** ➔ [...] ➔ ➔ **Following** the notification referred to in **paragraph 2** ➔ [...] ➔ ➔ the second Member State may object to the mobility of the researcher to its territory within ➔ [...] ➔ ➔ ➔ 30 ➔ days<sup>264</sup> from having received the ➔ complete ➔ notification, where: ➔<sup>265</sup>

➔ (a) the requirements set out in paragraphs ➔ 2 and ➔ 3 of this Article are not fulfilled; ➔

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<sup>262</sup> **NL:** Article 3(b), (c), (d) and Article 4 (a) and (b) should be replaced with the following: "*evidence as required in Article 6, with the exception of paragraphs 5 and 6, and Article 7, with the exception of paragraph 1(b).*"

<sup>263</sup> **ES:** whose obligation would it be to have the documents translated?

<sup>264</sup> **SE:** the deadline for objection should be 60 days.

<sup>265</sup> **NL** suggested the following instead of the list of requirements: "*one of the grounds for rejection, set out in Article 18 applies;*"

➔ (b) ➔ [...] ➔ ➔ one of the grounds for rejection set out in points ➔ [...] ➔ (b) or (c) of Article 18(1) or in Article 18(1a) or in points ➔ [...] ➔ (b), (c), (cbis) or (ccbis) of Article 18(2) applies ; ➔

➔ (c) the maximum duration of stay as defined in paragraph 1 of this Article has been reached; ➔<sup>266</sup>

➔ (d) the condition laid down in Article 8(1) is not met; ➔

➔ (e) the applicant has not provided proof, if the Member State so requests, that he/she has paid the fee for handling the notification on the basis of Article 31 . ➔

➔ [...] ➔

➔ [...] ➔

➔ 5. Researchers who are considered to pose a threat to public policy, public security or public health shall not be allowed to enter or to stay on the territory of the second Member State. ➔<sup>267</sup>

➔ 6. ➔ The competent authorities of the second Member State shall inform **in writing** without delay the competent authorities of the first Member State and<sup>268</sup> **either** the research organisation in the first Member State ➔ ➔ [...] ➔ **or**<sup>269</sup> the third-country national ➔ [...] ➔ ➔ ➔, depending on who submitted the notification, ➔ ➔ about their objection to the mobility. **In such a case and where the mobility has not yet taken place, the researcher shall not be allowed carry out part of his/her research in the research organisation in the second Member State. Where the mobility has already taken place, Article 26G(4) applies.** ➔

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<sup>266</sup> NL suggested the following instead: "*one of the grounds for rejection, set out in Article 18, with the exception of paragraph 1(a), applies.*"

<sup>267</sup> SK: Articles 26A(6), 26B(5) and 26C(12) could all be in one Article.

<sup>268</sup> NL: "or"

<sup>269</sup> AT: "and/or"

7. Where [...] the second Member State has not raised any written objection to the mobility of the researcher in accordance with paragraph [...] 6, the mobility is considered to be approved [...]

#### Article 26B

#### Long-term mobility of researchers

[...]

1. In relation to a third-country national who has been admitted as a researcher under this Directive and who holds a valid authorisation issued by the first Member State and intends to enter and stay [...] in order to carry out part of his/her research in any research organisation in one or several second Member States for more than [...] 90 days per Member State [...], in accordance with the provisions of Articles 9(1a)(d) and 16(2), the second Member State [...] shall [...] either:

(a) apply Article 26A and allow the researcher to stay and carry out part of his/her research on its territory based on and during the validity of the authorisation issued by the first Member State;

or

(b) apply the procedure provided for in the paragraphs 2 to 5.

[...] The second Member State may define a maximum period of the long-term mobility of a researcher **which shall not be less than 12 months.**



2. [...] When an application for long-term mobility is [...] submitted :

(a) the researcher or the research organisation in the first Member [...] shall present [...] to the second Member State the [...] following documents and information:<sup>270</sup>

(i) a valid travel document, as provided for in point (a) of Article 6(1) and a valid authorisation issued by the first Member State;<sup>271</sup>

(ii) [...] evidence as required [...] points (c) and (f) of Article 6(1);<sup>272</sup>

(iii) evidence to have concluded a hosting agreement or a contract as required in Article 7. The second Member State may require the hosting agreement or the contract to be concluded with the research organisation situated on its territory.

[...]

The second Member State may require the researcher or the research organisation to provide, at the latest at the time of issue of the authorisation, the address of the third-country national concerned in the territory of the second Member State.

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<sup>270</sup> CZ suggested to provide for following possibility: " (a) the researcher shall present at the latest 60 days before *either* the intended mobility to the second Member State *or the end of short-term mobility* the following documents and information:". AT, DE: the deadline should correspond to the procedural time limit of 90 days. AT: it should be clarified what happens if the residence title issued by the first Member State expires in the meantime. BE: the dates and duration of mobility should also be specified in the application. Furthermore, the researcher should demonstrate that the long-term mobility he/she applies for is in the context of a research activity that has already begun. HU: it should be clear that it is up to a Member State to decide whose responsibility it is to notify, as provided for in Article 6(7).

<sup>271</sup> BE: the authorisation must be valid until his/her departure to the second Member States, otherwise the application in the second Member States should be treated as an initial application.

<sup>272</sup> ES: reservation.

Member States may require the researcher or [...] the research organisation in the first Member State [...] to present the documents listed in [...] paragraph 2a in an official language of the Member State concerned.

(b) the competent authorities of the second Member State shall take a decision on the application for long-term mobility and notify in writing [...] either the research organisation in the first Member State or<sup>273</sup> the researcher, depending on who has submitted the application, [...] as soon as possible, but not later than 60 days after the competent authorities of the second Member State has received the complete application and the documents foreseen in point (a). Member States may provide for a shorter deadline for taking the decision on the application;<sup>274</sup>

(c) the researcher shall not be required to leave the territories of the Member States in order to submit the application and shall not be subject to a visa requirement.

3. The competent authorities of the Member States may reject an application for long-term mobility where:<sup>275</sup>

(a) the requirements set out in point (a) of paragraph 2 of this Article are not fulfilled;

[...]

(c) the condition laid down in Article 8(1) is not met;

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<sup>273</sup> **AT**: "and/or".

<sup>274</sup> **SI**: the wording in the corresponding provision in the ICT Directive should be used. **AT, DE, IT**: the time-limit should be 90 days. **IT**: it needs to be specified as to what happens if the second Member State does not comply with this deadline.

<sup>275</sup> **DE** suggested to add the following ground for rejection: "*(c) if applicable, labour and research conditions are not in line with national law, collective agreements and practices.*" **BE, LT, NL**: as this is an application for a new authorisation, the grounds for rejection should be the same as in Article 18.

(d) one of the grounds for rejection set out in [...] points (b) or (c) of Article 18(1) or in Article 18(1a) or in points (aa), (b), (c), (cbis), (ccbis) of Article 18(2) [...] applies.<sup>276</sup>

4. Researchers who are considered to pose a threat to public policy, public security or public health shall not be allowed to enter or to stay on the territory of the second Member State.

5. Where the competent authorities of the second Member State take a positive decision on the application for long-term mobility as referred to in paragraph 2, the researcher shall be issued an authorisation in accordance with Article 15(4).<sup>277</sup>

6. Where the second Member State has, within the deadline provided for in paragraph 2(b) of this Article, not [...] decided on the application for long-term mobility, the researcher is not allowed to enter to and stay in the second Member State [...] for the purposes of this Article.<sup>278</sup>

6bis. The competent authorities of the second Member States may withdraw the authorisation for long-term mobility where:

(a) the requirements set out in paragraph 2(a) of this Article and in [...] Article 8(1) are no longer fulfilled;

(b) one of the grounds of withdrawal or non-renewal of an authorisation, as set out in points (b), (c), (d) or (dbis) of Article 19(1) or in points (a), (b), (bb), (e) of Article 19(1aa) [...] applies.

7. When a Member State takes a decision on long-term mobility, paragraphs 2, 3 and 4 of Article 29 apply accordingly.

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<sup>276</sup> **AT:** "one of the grounds for rejection set out in Article 18, with the exception of paragraph 1a, applies."

<sup>277</sup> **BE, LT:** as the researcher receives a new authorisation in the second Member State, grounds for withdrawal as set out in Article 19 should also apply.

<sup>278</sup> **CZ:** can a long-term mobility be applied for while doing short-term mobility?

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↓ new

☞ Council

☞ Article 26 ☞ [...] ☞ C

☞ [...] ☞

☞ [...] ☞

### ☞ Mobility of students ☞<sup>279</sup>

☞ 1. A ☞ [...] ☞ ☞ ☞ [...] ☞ student admitted ☞ [...] ☞ under this Directive and who ☞ holds a valid authorisation ☞ [...] ☞ issued by the first Member State shall be entitled to **enter and stay in order to** carry out part of his/her studies in any higher education institution in one or several second Member States for a period of up to 180 days in any 360-day period per Member State subject to the conditions laid down in this Article. ☞

☞ [...] ☞

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**FR:** it should be specified that the diploma is awarded by the first Member State and not the second Member State. **SE:** there is no need to have different procedures for students and researchers. There is also no need for special arrangements for Union programmes. The provisions covering short-term and long-term mobility of students could be in two separate Articles which would make it easier to read them. **AT:** the provisions for the mobility of students are overly complicated and are open for circumvention. **DE:** short-term mobility for students should last for up to 180 days which would enable students to study during one semester in one or several second Member States. **FR** (supported by **DE**): mobility on the basis of an authorisation issued by the first Member State should be limited to students participating in study programmes authorised by Member States. It is, furthermore, unlikely that students would need to move for a period of less than 6 months as a semester is normally 9 months long. Students wishing to move to second Member States for study purposes should apply for a long-stay visa in the consulate of the relevant Member State. It should also be specified that the duration of mobility should be shorter than the duration of the initial stay in the first Member State. Mobility on an individual basis could be regulated at a national level.

2. The period referred to in paragraph 1 shall be up to 360 days per Member State<sup>280</sup> for students [...] admitted [...] under this Directive, who hold [...] a valid authorisation issued by the first Member State and [...] are covered by [...] EU or multilateral programmes<sup>281</sup> [...] that comprise mobility measures or by an agreement between two or more recognised higher education institutions, [...] subject to the conditions laid down in this Article<sup>282</sup>.

3. The higher education institution in the first Member State or the student shall notify the competent authorities of the first Member State and of the second Member State of the intention of the student to carry out part of his/her studies in the higher education institution in the second Member State. The notification shall take place at the latest [...] 30 days before the intended mobility. Member States may provide for a shorter deadline for notification.<sup>283</sup>

4. The notification shall include the transmission of [...] the following documents and information:<sup>284</sup>

(a) a valid travel document, as provided for in point (a) of Article 6(1) and a valid authorisation issued by the first Member State covering the total period of mobility;

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<sup>280</sup> **LT**: scrutiny reservation on the 360-day period. **AT**: how would the relevant authorities know that this is legal residence and when the period starts running?

<sup>281</sup> **DE**: "... national or Union programmes...."

<sup>282</sup> **PL**: should mobility programmes for researchers also be covered?

<sup>283</sup> **CZ** suggested the following: "*The second Member State may require the higher education institution in the first Member State to notify the competent authorities...*". **FR**: the deadline should be 60 days. **AT**, **LU**: the deadline should be 90 days. **PL**: it should be specified as to whether the mobility can take place immediately or whether the student has to wait for a decision by the second Member State.

<sup>284</sup> **CZ** suggested the following: "*The second Member State may require the notification to include the transmission of the following documents and information:*". **PL**: similarly to Article 10(1)(b) it should be possible to verify whether the fees charged by the higher education institution are paid. **LT**: Member States should have the possibility not to require the submission of all the listed documents. **NL** suggested to delete points (b)-(e) of paragraph 3 and points (a)-(e) of paragraph 4 and replace them with the following: "(b) evidence as required in Article 6, with the exception of paragraphs 5 and 6, and Article 10, paragraph 1(b)".

➤ (b) evidence that the student has been accepted by a higher education institution to follow a course of study in the second Member State, **or in the cases referred to in paragraph 2, evidence that the student carries out part of his/her studies in the framework of an EU or a multilateral programme that comprises mobility measures or of an agreement between two or more recognised higher education institutions** ➤ [...] ➤

➤ (c) ➤ [...] ➤ the planned duration and dates of the mobility **where not specified under point (b)** ➤; ➤

➤ [...] ➤

➤ (d) evidence that the third-country national has sickness insurance for all the risks normally covered for nationals of the Member State concerned. ➤

➤ [...] ➤

➤ ➤ [...] ➤ 5. Member States may **also** require the applicant to transmit, through the notification ➤ [...] ➤ some or all of the following documents and information: ➤

➤ (a) evidence that during his/her stay the third-country national has sufficient resources to cover his/her subsistence ➤, **his/her study costs**, as well as return travel costs ➤ to the first Member State ➤ **in the cases referred to in Article 26G(4)(b)** ➤ [...] ➤ ;

(b) evidence ➤ [...] ➤ that he/she has paid the fees charged by the higher education institution;

➤ (c) **evidence of attendance of the third-country national in the higher education institution in the first Member State;** ➤

➤ (d) **in the cases referred to in paragraph 1, evidence that the course of study in the second Member State is relevant and complementary to the course already started in the first Member State;** ➤

➤ [...] ◂

➤ (e) **with the exception of cases referred to in paragraph 2**, evidence ➤ [...] ◂ of sufficient knowledge of the language of the course to be followed by him/her. ◂<sup>285</sup>

➤ [...] ◂

( ➤ [...] ◂ f ) ➤ [...] ◂ the address of the third-country national concerned in the territory of the second Member State. ◂ ◂<sup>286</sup>

➤ Member States may ➤ require ◂ the ➤ [...] ◂ ➤ ➤ [...] ◂ higher education institution in the first Member State or the student ◂ to present the documents listed in ➤ [...] ◂ paragraphs ➤ 3 and ◂ 4 in an official language of the Member State concerned. ◂

➤ ➤ [...] ◂ 6. Based on the notification referred to in **paragraph ➤ [...] ◂ 3 ➤ [...] ◂** , the competent authorities of the second Member State may object to the mobility of the student to its territory **within ➤ [...] ◂ ➤ [...] ◂ as soon as possible, but not later than 30 days from the moment of** having received the complete notification<sup>287</sup> , where: ◂

➤ (a) the requirements set out in **paragraph ➤ [...] ◂ 4 and, where applicable, paragraph 5** of this Article and in Article 10a are not fulfilled; ◂

➤ (b) ➤ [...] ◂ one of the grounds for rejections set out in **points (b) ➤ [...] ◂ or (c) of Article 18(1) or in Article 18(1a) or in points (b), (c) ➤ [...] ◂ (cbis) of Article 18(2) applies** ; ◂<sup>288</sup>

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<sup>285</sup> **IT**: criteria for the reference framework for assessing this should be added.

<sup>286</sup> **AT**: the student should also be required to provide evidence of adequate accommodation.

<sup>287</sup> **AT**: a time-limit of 90 days should be provided for. **IT**: "20 *working* days". **FR**: the deadline should be 60 days.

<sup>288</sup> **NL** suggested the following wording instead: "*one of the grounds for rejection, set out in Article 18, with the exception of paragraph 1(a), applies.*" **AT**: excetions could be listed only.

☞ (c) the maximum duration of stay as defined in paragraph 1 ☞ [...] ☞ of this Article has been reached; ☞

☞ (d) the applicant has not provided proof, if the Member State so requests, that he/she has paid the fee for handling the notification on the basis of Article 31. ☞

☞ ☞ [...] ☞ ☞ [...] ☞ 7. Students who are considered to pose a threat to public policy, public security or public health shall not be allowed to enter or to stay on the territory of the second Member State. ☞

☞ ☞ [...] ☞ 8. The competent authorities of the second Member State shall inform without delay ☞ in writing ☞ the competent authorities of the first Member State and ☞ either ☞ the higher education institution in the first Member State ☞, or the student, depending on who has submitted the ☞ [...] ☞ **notification** about their objection to the mobility. ☞

☞ ☞ [...] ☞ 9. Where, **following the notification referred to in paragraph 3, ☞ [...] ☞** the second Member State has not raised any written objection to the mobility of the student, in accordance with paragraph ☞ [...] ☞ 8, the mobility is considered to be approved and may take place in the second Member State. ☞ [...] ☞ ☞

☞ [...] ☞

## ☞ Article 26D

### **Extension of mobility of students** ☞

☞ **1. In the cases referred to in paragraph 2 of Article 26C, the student may extend his/her mobility to a second Member State for a maximum period of 180 days, provided that:**

**(a) the extension takes place within the framework of the approved EU or multilateral programme or of the agreement between two or more recognised higher education institutions;**



**(b) the extension is accepted and authorised by the higher education institution of the second Member State;**

**(c) the authorisation issued by the first Member State is valid for the total period of the extension;**

**(d) the student continues to fulfil the conditions and requirements set out in Article 26C.**

**2. In case of extension, the notification procedure foreseen in Article 26C applies accordingly. The notification shall take place at the latest 30 days before the intended extension.**

**3. For cases not covered by paragraph 1, the student shall submit an application for an authorisation in the second Member State in accordance with Articles 6 and 10.**

**4. By way of derogation from Article 6, students shall not be required to leave the territories of the Member States in order to submit the application for extension and shall not be subject to a visa requirement. ☞**

**☞ Article 26E**

**☞ [...] ☞**

➔ [...] ➔

➔ Mobility of researchers' family members <sup>289</sup> ➔

➔ 1. In case the researcher is accompanied by his/her family members in the framework of a short-term mobility, a notification procedure shall include the transmission ➔, by the researcher or by the family member of the researcher, ➔ [...] ➔ the following documents and information regarding the family members concerned:<sup>290</sup> ➔

➔ (a) a valid authorisation issued by the first Member State covering the total period of ➔ the ➔ short-term mobility; ➔

➔ (b) a valid travel document, as provided for in point (a) of Article 6(1); ➔

➔ (c) evidence that they have sickness insurance for all the risks normally covered for nationals of the Member State concerned; ➔

➔ (d) evidence that the researcher has sufficient resources to cover the subsistence of his/her family members ➔ as well as return travel costs to the first Member State and will not have recourse to the Member State's social assistance system ; ➔ ➔

➔ (e) evidence that they have resided as members of the family of the researcher in the first Member State. ➔

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<sup>289</sup> **FR:** the right of family members to accompany the researcher in the second Member State should be limited to long-term mobility only.

<sup>290</sup> **AT:** family members should also be required to provide evidence of adequate accommodation. **DE, FR:** the right to accompany the researcher should be limited to long-term mobility only. **FR:** if this is not the case, then the conditions for the mobility of family members should be stricter. **HU:** it is not clear whether this is a joint notification procedure or two separate ones advocating the latter option with individual notifications from all the applicants concerned.

Member States may require the applicant to present the documents listed in [...] paragraph 1 in an official language of the Member State concerned.

2. When Member States apply the above paragraph 1, the provisions of paragraphs [...] of [...] to [...] of Article 26A shall apply accordingly.

3. In case the researcher is accompanied by his/her family members in the framework of a long-term mobility, and when Member States apply the procedure laid down in paragraph 1(b) of Article 26B, the application shall be submitted by the researcher or by the family members of the researcher<sup>291</sup> at the latest 60 days before the intended mobility to the second Member State, to the competent authorities of the second Member State, presenting the following documents and information:<sup>292</sup>

(a) a valid authorisation issued by the first Member State<sup>293</sup>

(b) [...] evidence as required in Article 6, with the exception of paragraphs 5 and 6, and in Article 7 ;

[...]

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<sup>291</sup> **HU:** it should be clear that it is up to a Member State to decide whose responsibility it is to notify, as provided for in Article 6(7).

<sup>292</sup> **HU:** Member States should be able to require that the family member provides an address where he or she resides. **AT, DE:** the time-limit should be 90 days. A requirement for the family member to provide evidence that he/she has adequate accommodation should be added. **PL:** the procedure is unclear and contains inconsistencies due to cross-references to other Articles, thus paragraphs 3 to 5 should be redrafted according to Article 19 of the ICT Directive.

<sup>293</sup> **AT:** there should be an explicit reference to a valid travel document too.

⇒ ( ⇒ [...] ⇄ c) evidence that they have resided as members of the family of the researcher in the first Member State. ⇄<sup>294</sup>

⇒ Member States may require the applicant to present the documents listed in ⇒ [...] ⇄ paragraph 3 in an official language of the Member State concerned. ⇄

⇒ 4. When Member States apply the above paragraph 3, paragraphs 2(b), 2(c), 3, 4, ⇒ [...] ⇄ 5 and 6bis of Article 26 B shall apply accordingly. ⇒ The duration of validity of the authorisation of the researchers' family members shall, as a general rule, end on the date of expiry of the researcher's authorisation issued by the Member State concerned.<sup>295</sup> ⇄ ⇄

⇒ 5. Family members of a researcher who are considered to pose a threat to public policy, public security or public health shall not be allowed to enter or to stay on the territory of the second Member State. ⇄

⇒ Article 26 ⇒ [...] ⇄ ⇒ G ⇄

Safeguards ⇒ [...] ⇄ and sanctions ⇄<sup>296</sup>

⇒ [...] ⇄

⇒ 1. Where the authorisation for the purpose of research or studies is issued by the competent authorities of a Member State not applying the Schengen acquis in full and the researcher or student crosses an external border, the competent authorities of the second Member State shall be entitled to require as evidence that the researcher or student is moving to the second Member State either for the purpose of research or studies respectively.<sup>297</sup> ⇄

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<sup>294</sup> **HU:** the address should be requested instead.

<sup>295</sup> **AT:** reference should also be made to the validity of the travel document.

<sup>296</sup> **AT:** the Article should be revised on the basis of the relevant provisions in the ICT Directive. **PL, SE:** the reference to sanctions is not relevant as the Article does not contain any.

<sup>297</sup> **DE:** how would this be implemented in practice?

➔ (a) a copy of the hosting agreement or the contract specifying the details of the mobility of the researcher ➔ [...] ☹ ☹ ☹

➔ or ☹

➔ (b) evidence that the student has been accepted by the higher education institution in the second Member State in accordance with **point (b) of Article 26C(4)** ➔ [...] ☹  
➔ [...] ☹ ☹

➔ In case of the family members of the researcher, the competent authorities of the second Member State shall be entitled to require as evidence a valid authorisation issued by the first Member State and evidence that they have been ➔ [...] ☹ admitted to the Member State concerned. ☹

➔ 2. Where the competent authorities of the first Member State withdraws the authorisation, ➔ [...] ☹ ➔ they ☹ shall inform the authorities of the second Member State immediately. ☹

➔ 3. The host entity of the second Member State ➔ or the researcher/student ☹ shall inform the competent authorities of the second Member State of any modification which affects the conditions on which basis the mobility was allowed to take place. ☹

➔ [...] ☹

➔ 4. In case the researcher or student moves to the second Member State on the basis of the authorisation issued by the first Member State and **does not or no longer fulfils the conditions for mobility** ➔ : ☹

➔ (a) The second Member State may request that the researcher or the student immediately ceases all activities and leaves its territory; ☹

➔ (b) ☹ The first Member State shall, upon request of the second Member State, allow re-entry of the researcher or student without formalities and without delay and, where applicable, of his or her family members<sup>298</sup>. This shall also apply if the authorisation issued by the first Member State has expired or has been withdrawn during the period of mobility within the second Member State.<sup>299</sup> ☹

➔ 5. In cases where the researcher or his/her family members or the student crosses the external border of a Member State applying the Schengen acquis in full, that Member State shall consult the Schengen information system. That Member State shall refuse entry or object to the mobility of persons for whom an alert for the purposes of refusing entry and stay has been issued in the Schengen information system. ☹

➔ 6. Member States may impose sanctions against the host entity established on its territory, where:<sup>300</sup>

(a) the host entity has failed to notify the mobility of the researcher or student in accordance with Article 26A, ➔ [...] ☹ 26C or 26D<sup>301</sup>;

(b) the residence permit has been used for purposes other than that for which it was issued;<sup>302</sup>

(c) the researcher or student no longer fulfils the criteria and conditions on which basis the mobility was allowed to take place and the host entity failed to notify the competent authorities of the second Member State of such a modification. ☹

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<sup>298</sup> **DE:** "... allow re-entry of the researcher or student and, where applicable, of his or her family members without formalities and without delay."

<sup>299</sup> **NL:** the person should be expelled to his country of origin if the authorisation issued by the first Member State has expired.

<sup>300</sup> **AT:** sanctions should be applied also in case employment conditions are not met.

<sup>301</sup> **NL:** reference to 26B should be included.

<sup>302</sup> **SE:** this point can be taken out as it is difficult to implement.

Article 27



Article 28



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↓ 2005/71/EC (adapted)

## ~~CHAPTER V~~

### ~~PROCEDURE AND TRANSPARENCY~~

~~Article 14~~

#### ~~Applications for admission~~

- ~~1. Member States shall determine whether applications for residence permits are to be made by the researcher or by the research organisation concerned.~~
- ~~2. The application shall be considered and examined when the third-country national concerned is residing outside the territory of the Member States to which he/she wishes to be admitted.~~
- ~~3. Member States may accept, in accordance with their national legislation, an application submitted when the third-country national concerned is already in their territory.~~

~~4. The Member State concerned shall grant the third-country national who has submitted an application and who meets the conditions of Articles 6 and 7 every facility to obtain the requisite visas.~~

#### ~~Article 15~~

#### **Procedural safeguards**

~~1. The competent authorities of the Member States shall adopt a decision on the complete application as soon as possible and, where appropriate, provide for accelerated procedures.~~

~~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 of any further information they need.~~

~~3. Any decision rejecting an application for a residence permit 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.~~



## CHAPTER ~~V~~ VII

### PROCEDURE AND TRANSPARENCY

#### Article ~~18~~ 29

##### Procedural guarantees and transparency

~~1. A decision on an application to obtain or renew 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.~~

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↓ new

↻ Council

1. The competent authorities of the Member State ↻ [...] ↻ concerned ↻ shall ↻ [...] ↻ adopt a decision ↻ on the ↻ [...] ↻ application for an authorisation ↻ or a renewal of it ↻ and ↻ [...] ↻ notify the applicant<sup>303</sup> ↻, as defined in Article 6(7), ↻ in writing, in accordance with the notification procedures laid down in the national law of the Member State concerned, as soon as possible ↻ [...] ↻ but no later than ↻ [...] ↻ 90 ↻ days ↻ [...] ↻ of the complete ↻ application ↻ [...] ↻ being ↻ lodged ↻ [...] ↻.<sup>304</sup>

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<sup>303</sup> **PL:** it should be clarified who the applicant is.

<sup>304</sup> **ES, HU:** a shorter deadline. **HU:** 21 days in its national legislation. **CION:** 90 days is too long; it would like to maintain the time limits shorter as originally proposed since they are more in line with the needs of the categories concerned.

1a. By way of derogation from paragraph 1, in case the [...] the admission procedure is related to a research organisation, an approved host entity or an approved higher education institution, as referred to in Articles 6a, 8 and 10a, the time for taking a decision on the complete application shall be at most 60 days<sup>305</sup>.

↓ 2004/114/EC (adapted)

⇒ new

⇒ Council

2. [...] Where the information or documentation supplied in support of the application is [...] incomplete<sup>306</sup>, ~~processing of the application may be suspended and~~ the competent authorities shall [...] notify<sup>307</sup> the applicant within a reasonable period of [...] the additional information [...] that is required ⇒ and [...] set a reasonable deadline [...] for providing it . The period referred to in paragraph s 1 and 1a shall be suspended until the authorities have received the additional information or documents required . If additional information or documents have not been provided within the deadline, the application may be [...] rejected ←<sup>308</sup>.

<sup>305</sup> **HU:** the period is too long. **HU:** 21-day period for researchers, and a 15-day period for students in its legislation. **CIION:** since some MS have shorter deadlines, the figure in this text could even be reduced to 30 days. **DE:** prefers not to specify a time limit and leave MS to decide. **FR:** reservation on the fast-track procedure. **ES:** the fast-track procedure for researchers should be set out in a similar way to the ICT Directive including: (a) *exempting the applicant from presenting some of the evidence referred to in Article (...); and/or b) a fast-track admission allowing the authorisations to be issued within a shorter time; and/or (c) facilitated and/or accelerated procedures in relation to the issuance of the requisite visas.*

<sup>306</sup> **AT** prefers to use another term such as "inappropriate" instead of "incomplete". It prefers the previous wording of paragraph 2.

<sup>307</sup> **IT** prefers "request".

<sup>308</sup> **AT:** against the wording of this paragraph and suggests it should be in line with the other Directives in this field.

3. Reasons for a decision declaring inadmissible or refusing an application for a residence permit or an authorisation or refusing renewal shall be given in writing to the applicant. Reasons for a decision withdrawing an authorisation shall be given in writing to the third-country national. Reasons for a decision withdrawing an authorisation may also be given in writing to the host entity or the host family.
4. Any decision declaring inadmissible or rejecting the application, refusing renewal, or withdrawing an authorization shall be open to a legal challenge in the Member State concerned, in accordance with national law. The written notification shall specify the court and/or administrative authority where an appeal may be lodged and the time-limit for lodging the appeal.

#### *Article 19*

#### **~~Fast track procedure for issuing residence permits or visas to students 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 national legislation or administrative practice.~~

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↓ new

⇒ Council

### Article 30

#### Transparency and access to information<sup>309</sup>

Member States shall make available information on entry and residence conditions for third-country nationals falling under the scope of this Directive, including where applicable the level of the monthly sufficient resources as well as the rights, all documentary evidence needed for an application and the applicable fees. [...]

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↓ 2004/114/EC

⇒ new

⇒ Council

### Article ~~20~~ 31

#### Fees

Member States may require applicants to pay fees for the handling of notifications and applications in accordance with this Directive.<sup>310</sup> The level of such fees shall not be disproportionate or excessive. [...]

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<sup>309</sup> **PL:** difficult to make available the information requested by this article due to the heterogeneity of the groups targeted by this proposal.

<sup>310</sup> **NL** suggested the following: "Member States may require *the host entity or the researcher or student* to pay fees for the handling of *notifications* or applications in accordance with this Directive."

## ~~CHAPTER VI~~

### ~~FINAL PROVISIONS~~

#### ~~Article 16~~

##### ~~Reports~~

~~Periodically, and for the first time no later than three years after the entry into force of this Directive, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary.~~

#### ~~Article 17~~

##### ~~Transposition~~

~~1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 12 October 2007.~~

~~When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.~~

~~2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.~~

~~Article 18~~

~~Transitional provision~~

~~By way of derogation from the provisions set out in Chapter III, Member States shall not be obliged to issue permits in accordance with this Directive in the form of a residence permit for a period of up to two years, after the date referred to in Article 17(1).~~

~~Article 19~~

~~Common Travel Area~~

~~Nothing in this Directive shall affect the right of Ireland to maintain the Common Travel Area arrangements referred to in the Protocol, annexed by the Treaty of Amsterdam to the Treaty on European Union and the Treaty establishing the European Community, on the application of certain aspects of Article 14 of the Treaty establishing the European Community to the United Kingdom and Ireland.~~

~~Article 20~~

~~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 21~~

~~Addressees~~

~~This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.~~

**CHAPTER ~~VI~~ VIII**

**FINAL PROVISIONS**

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new

Council

*Article 32*

**➤ [...] ◂ ◂ Cooperation on information ◂**

1. Member States shall appoint contact points which shall **➤ cooperate effectively and ◂** be responsible for receiving and transmitting the information needed to implement Articles **➤ [...] ◂ ◂ 26A to 26F ◂ . ◂ Member States shall give preference to exchange of information via electronic means. ◂**
2. **➤ Each ◂** Member States shall **➤ [...] ◂ ◂ inform the other Member States, via the national contact points referred to in paragraph 1, of:**
  - (a) the procedures applied to admission and mobility referred to in Articles 6a, 9, 26A to 26F;**
  - (b) where applicable, the maximum number of hours per week or days or months per year that a student is entitled to work on its territory. ◂**

## Article 33

### Statistics<sup>311</sup>

1. Member States shall communicate to the Commission statistics on the numbers of authorisations for the purposes of this Directive and, as far as possible, on the numbers of third-country nationals whose authorisations have been renewed or withdrawn. Statistics on the admitted family members of researchers shall be communicated in the same manner. Those statistics shall be disaggregated by citizenship, and as far as possible by the period of validity of the authorizations.
2. The statistics referred to in paragraph 1 shall relate to reference periods of one calendar year and shall be communicated to the Commission within six months of the end of the reference year. The first reference year shall be [...]
3. The statistics referred to in paragraph 1 shall be communicated in accordance with Regulation (EC) No 862/2007 of the European Parliament and of the Council.

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<sup>311</sup> **AT:** the period for communicating statistics should be in line with Eurostat periods. It also suggests to transmit to **CION** data on authorisations to take up employment.



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↓ 2004/114/EC (adapted)

⇒ new

↻ Council

*Article ~~21~~ 34*

### **Reporting**

Periodically, and for the first time by ☒ [five years after the date of transposition of this Directive] ☒ ~~12 January 2010~~, 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 22*

### ~~Transposition~~

~~Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 12 January 2007. They shall forthwith inform the Commission thereof.~~

~~When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.~~

~~Article 23~~

~~**Transitional provision**~~

~~By way of derogation from the provisions set out in Chapter III and for a period of up to two years after the date set out in Article 22, Member States are not obliged to issue permits in accordance with this Directive in the form of a residence permit.~~

~~Article 24~~

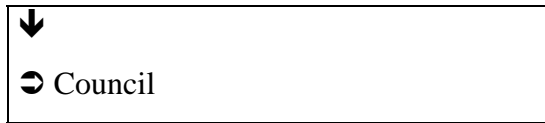
~~**Time limits**~~

~~Without prejudice to the second subparagraph of Article 4(2) of Directive 2003/109/EC, Member States shall not be obliged to take into account the time during which the student, exchange pupil, unremunerated trainee or volunteer has resided as such in their territory for the purpose of granting further rights under national law to the third-country nationals concerned.~~

~~Article 25~~

~~**Entry into force**~~

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



*Article 35*

**Transposition<sup>312</sup>**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [two years<sup>313</sup> after the entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

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. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directives repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

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<sup>312</sup> **LV** referred to the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, which stipulates that Member States undertakes to accompany, in justified cases, the notification of their transposition measures. Recital 40 of this proposal, in its final sentence, says that "with regard to this Directive, the legislator considers the transmission of such documents to be justified". Given that the legislator has not yet made the corresponding assessment, therefore the statement regarding transmission of relevant documents as justified is premature.

<sup>313</sup> **FI** and **SE**: prefer 3 years.

*Article 36*

**Repeal<sup>314</sup>**

Directives 2005/71/EC and 2004/114/EC are repealed **☞ for the Member States bound by this Directive** **☞** with effect from [*day after the date set out in the first subparagraph of Article 35(1) of this Directive*], without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex I, Part B.

**☞ For the Member States bound by this Directive,** **☞** references to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

*Article 37*

**Entry into force**

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

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<sup>314</sup> Please note that the amendment of Recital 43 is linked with this article.

Article ~~26~~ 38

*Addressees*

This Directive is addressed to the Member States in accordance with the ~~Treaty establishing the European Community~~  ~~Treaties~~ .

Done at Brussels,

*For the European Parliament*

*The President*

*For the Council*

*The President*

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## ANNEX I

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### **Part A**

#### **Repealed Directive with list of its successive amendments**

(referred to in Article 37)

Directive 2004/114/EC of the European Parliament (OJ L 375, 23.12.2004, p. 12)  
and of the Council

Directive 2005/71/EC of the European Parliament (OJ L 289, 03.11.2005, p. 15)  
and of the Council

### **Part B**

#### **List of time-limits for transposition into national law [and application]**

(referred to in Article 36)

Directive	Time-limit for transposition	Date of application
2004/114/EC	12.01.2007	
2005/71/EC	12.10.2007	

## ANNEX II

### CORRELATION TABLE

Directive 2004/114/EC	Directive 2005/71/EEC	This Directive
Article 1 (a)		Article 1 (a)
Article 1 (b)		-
-		Article 1 (b) and (c)
Article 2 introductory wording		Article 3 introductory wording
Article 2 (a)		Article 3 (a)
Article 2 (b)		Article 3 (c)
Article 2 (c)		Article 3 (d)
Article 2 (d)		Article 3 (e)
-		Article 3 (f) and (g)
Article 2 (e)		Article 3 (l)
Article 2 (f)		Article 3 (h)
Article 2 (g)		-
-		Article 3 (i)
-		Article 3 (m) to (s)

Article 3 (1)		Article 2 (1)
Article 3 (2)		Article 2 (2) (a) to (e)
-		Article 2 (2) (f) and (g)
Article 4		Article 4
Article 5		Article 5 (1)
-		Article 5 (2)
Article 6 (1)		Article 6 (a) to (e)
-		Article 6 (f)
Article 6 (2)		-
-		Article 7
Article 7 (1) introductory wording		Article 10 (1) introductory wording
Article 7 (1) (a)		Article 10 (1) (a)
Article 7 (1) (b) and (c)		-
Article 7 (1) (d)		Article 10 (1) (b)
Article 7 (2)		Article 10 (2)
-		Article 10 (3)
Article 8		-



-		Article 11
Article 9 (1) and (2)		Article 12 (1) and (2)
Article 10 introductory wording		Article 13 (1) introductory wording
Article 10 (a)		Article 13 (1) (a)
Article 10 (b) and (c)		-
-		Article 12 (1) (b)
-		Article 12 (2)
Article 11 introductory wording		Article 14 (1) introductory wording
Article 11 (a)		-
Article 11 (b)		Article 13 (1) (a)
Article 11 (c)		Article 13 (1) (b)
Article 11 (d)		Article 13 (1) (c)
Articles 12 to 15		-
-		Articles 14, 15 and 16
Article 16 (1)		Article 20 (1) introductory wording
-		Article 20 (1) (a) to (c)

Article 16 (2)		Article 20 (2)
-		Article 21
Article 17 (1) first subparagraph		Article 23 (1)
Article 17 (1) second subparagraph		Article 23 (2)
Article 17 (2)		Article 23 (3)
Article 17 (3)		-
Article 17 (4)		Article 23 (4)
-		Articles 15, 24, 25, 27
-		Article 17
Article 18 (1)		-
-		Article 29 (1)
Article 18 (2), (3) and (4)		Article 29 (2), (3) and (4)
Article 19		-
-		Article 30
Article 20		Article 31
-		Articles 32 and 33

Article 21		Article 34
Articles 22 to 25		-
-		Articles 35, 36 and 37
Article 26		Article 38
-		Annexes I and II
	Article 1	-
	Article 2 introductory wording	-
	Article 2 (a)	Article 3 (a)
	Article 2 (b)	Article 3 (i)
	Article 2 (c)	Article 3 (k)
	Article 2 (d)	Article 3 (b)
	Article 2 (e)	-
	Articles 3 and 4	-
	Article 5	Article 8
	Article 6 (1)	Article 9 (1)
	-	Article 9 (1) (a) to (f)
	Article 6 (2) (a)	Article 9 (2) (a)
	Article 6 (2) (a), (b) and (c)	-

	Article 6 (3), (4) and (5)	Article 9 (3), (4) and (5)
	Article 7	-
	Article 8	Article 16 (1)
	Article 9	-
	Article 10 (1)	Article 19 (2) (a)
	-	Article 19 (2) (b)
	Article 10 (2)	-
	Article 11 (1) and (2)	Article 22
	Article 12 introductory wording	-
	Article 12 (a)	-
	Article 12 (b)	-
	Article 12 (c)	Article 21 (1)
	Article 12 (d)	-
	Article 12 (e)	-
	-	Article 21 (2)
	Article 13 (1)	Article 26 (1)
	Article 13 (2)	Article 26 (1)

	Article 13 (3) and (5)	Article 26 (1)
	Article 13 (4)	-
	-	Article 26 (2), (3) and (4)
	Articles 14 to 21	-

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