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NOTE

From:	Presidency
On:	28 January 2014
To:	Working Party on Integration, Migration and Expulsion
No. prev. doc.:	5078/14 MIGR 2 RECH 5 EDUC 4 CODEC 15
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]

Examination of Presidency compromise suggestions

The Presidency compromise suggestions are set out in the Annex to this Note.

Also, please be aware that:

For addition of new text: ➲ **addition in bold** ➲

For deletion of text: ➲ **[…]**➲

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

- Recital (4)
- Recital (9)
- Recital (9a)
- Recital (10)
- Recital (11)
- Recital (12)
- Recital (15)
- Recital (21)
- Recital (22)
- Recital (23)
- Recital (25)
- Recital (26)
- Recital (28)
- Recital (29)
- Recital (30)
- Recital (33)
- Recital (34a)
- Recital (37)

- Recital (41)
- Recital (42)
- Article 1 (b) (ba)
- Article 2 (2) (f)
- Article 3 (d) (e) (f) (l) (la) (lc) (q) (w)
- Article 5 (1)
- Article 5a
- Article 6 (4)
- Article 6 (4a)
- Article 6a
- Article 6a (1)
- Article 8 (3)
- Article 9 (1) (b) (c)
- Article 10 (1) (c) (d)
- Article 10a (1)
- Article 11 (1) (a) (c) (d) (f)
- Article 12 (1) (a) (b) (ba) (c) (d)
- Article 12 (2)
- Article 13 (1) (a) (b) (c) (d)

- Article 14 (1) (a) (b) (c)
- Article 14 (6)
- Article 16 (1)
- Article 16 (2)
- Article 16 (3)
- Article 16 (5)
- Article 16 (6)
- Article 16 (7)
- Article 16 (8)
- Article 16 (9)
- Article 17 (1)
- Article 17 (2)
- Article 18 (1) (aa) (c) (d) (e) (f)
- Article 18 (2) (a) (b) (c)
- Article 19 (1) (c) (d)
- Article 19 (1a) (a) (c) (f)
- Article 21 (2)
- Article 24 title

- Article 24 (1)
- Article 24 (2a)
- Article 24 (3)
- Article 29 (1a)
- Article 29 (2)
- Article 30
- Article 32 (2)
- Article 33 (1)
- Article 33 (2)
- Article 33 (3)
- Article 37

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 ⇦ [1]

[1] **AT, NL, CZ, HU, PL, PT, LV, SI, EE, SE, BE, BG, LU, IT, SK, FI, EL, LT, RO, ES, FR**: general scrutiny reservations. **AT, CZ, HU, PL**: parliamentary scrutiny reservations. **SE, IT, SK, LT**: linguistic reservations.
Delegations' position concerning the groups included in this proposal:
- **Researchers**:
* Delegations are in favour of or do not object to this group being mandatory.
- **Students**:
* Delegations are in favour of or do not object to this group being mandatory.
- **School pupils**:
* Reservation against becoming mandatory: **PL, DE, BE, NL, EL.**
* Scrutiny reservation: **FI, IT, AT, ES.**
- **Unremunerated trainees**:
* Reservation against becoming mandatory: **NL, LV, EL, AT, DE, PL.**
* Scrutiny reservation: **ES, BE, PT, SE, FI, CY.**
- **Remunerated trainees**:
* Reservation against inclusion: **DE, RO, PT, AT, SI, EL, CZ, HU, PL, CY.**
* Support inclusion: **LU, IT.**
* Scrutiny reservation: **FR, FI, LV, EE, BE, SK, LT, ES, SE.**
- **Volunteers**:
* Reservation against becoming mandatory: **BE, NL, DE, LV, FI, AT, ES, CY, PL.**
* Scrutiny reservation: **FR, IT.**
***** Support becoming mandatory: **EL**.
- **Au-pairs**:
* Reservation against inclusion: **DE, HU, NL, LV, FI, SI, PT, AT, EL, ES, CZ.**
* Support inclusion: **LU, IT, FR.**
* Support becoming optional: **BE, NL, PL.**
* Scrutiny reservation: **RO, EE, SK, CY.**

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

[RECAST][2]

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty ⌦ on the Functioning of the European Union ⌫ ~~establishing the European Community~~, and in particular point~~s~~ ~~(3)~~ (a) ⌦ and (b) ⌫ ~~(4)(b)of the first subparagraph~~ of Article ~~63~~ ⌦ 79(2) ⌫ 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:[3]

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2 **AT, CZ** questioned why to put so very different groups together in one single legislative act, both preferring to keep two different directives like it is currently the case. Furthermore, **CZ** considered that a new directive is not necessary to increase attractiveness of employment in fields that require higher education and research. Alternatively, **CZ** was of the opinion that 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** also had doubts about whether Article 79 of the TFEU is a sufficient legal base or whether Article 153 should not be a better legal base. **Council's Legal Service** replied that Article 79 provides a sufficient and appropriate legal base and that this approach has been followed regarding ICT and SW Directive proposals. **AT, DE, CY** stated that Member States should retain control over their labour markets.

3 **ES** suggested the inclusion of a new recital, covering cases in which Member States conclude agreements that do not fall within the scope of this proposal.

⇩ new

➲ Council

(1) A number of amendements 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[4] 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[5]. 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[6] 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.

4 OJ L 375, 23.12.2004, p. 12.
5 OJ L 289, 3.11.2005, p. 15.
6 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 as well as a lack of harmonization, ➲ […] ➲ ➲ **concerning inter-alia the admission of certain** ➲ groups, such as volunteers, school pupils and unremunerated trainees ➲ […] ➲ ➲ **were** ➲ optional ➲ **rules for the** ➲ ➲ […] ➲ Member States. Subsequent wider consultations have also pointed ➲ […] ➲ ➲ **out** ➲ the need for better job-seeking possibilities for researchers and students and better protection of au-pairs and remunerated trainees ➲ **by the extension of the scope of** ➲ ➲ […] ➲ the current instruments ➲ **for those two categories** ➲ .[7]

🡻 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.~~

[7] **ES**: scrutiny reservation. **AT, NL** considered the use of the word "weaknesses" inappropriate due to the fact that delegations want some of the categories, mandatory, in this proposal to be made optional. **AT** suggested to delete the recital.

↓ 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.~~

⇩ 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.

↓ 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.~~

↓ 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,~~.[8] ⇨ should promote the generation and acquisition of knowledge and skills. ⇦ ⌦ 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.

[8] **CY** did not agree with this deletion.

⇩ 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 knowldedge and technology circulate freely.

🡻 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.~~

↓ 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.).~~

↓ 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 ⇦ an 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 ~~policing~~ ⌦ policy ⌫. Research organisations approved in advance by the Member States should be able to sign a hosting agreement[9] with a third-country national for the purposes of carrying out a research ➲ […] ➲ ➲ activity[10] ➲ . Member States should issue ~~a residence permit~~ ⇨ an authorisation ⇦ on the basis of the hosting agreement if the conditions for entry and residence are met.[11]

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9 **ES** suggested an addition allowing researchers to carry out their research activity not only on the basis of a "hosting agreement" but also on the basis of a "*employment contract*".

10 **AT** preferred "research project", since it is narrower, in order to limit abuse as much as possible.

11 **AT, FI, ES**: scrutiny reservation.

➲ (9a) ➲ **[…]** ⊂ Member States should ➲ **[…]** ⊂ have the possibility to apply, in addition to the general procedures of admission of students, school pupils, remunerated or unremunerated trainees or volunteers, a fast track procedure, when these categories of third-country nationals are recruited by ➲ **[…]** ⊂ an approved host entity ➲ **[or third party where applicable]** ⊂ for the purposes of entry to the first Member State ⊂[12]

🡻 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 [13]⊂ ➲ **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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[12] **CZ, DE, IT, NL, AT, FI**: scrutiny reservation. **FR** pointed out that where these agents are located, within the EU or elsewhere in third countries, is an important question. It would prove difficult to approve this agents if there were located in a third country. **CZ** wanted agents to be also in charge of recruiting remunerated trainees. **IT** proposed to further reflect on this and to have a discussion among delegations on the accreditation of the agents in the territory concerned. **NL** pointed out that **PRES** has not taken **NL**'s proposal in its integrity, specially concerning how Article 6a has been drafted. ES presented a reservation on the application of the fast-track procedure. **CION** introduced a reservation on this recital and other provisions dealing with the notion of agent. **CION** stated that they can consider accepting agents to be the only channel for au-pairs entering the EU, but it is against being the only channel for the other categories.

[13] **AT**: scrutiny reservation. **AT, DE** did not like the use of the term "should" here. They maintained that if "should" is going to be kept, then the wording "*where appropriate*" need to be added.

↓ 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[14], ⇦ ~~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[15] ⇦.

⇩ new
➲ Council

(12) Where appropriate, Member States should be encouraged to ➲ […] ➲ **consider** ➲ ➲ doctoral[16] ➲ ➲ […] ➲ ➲ **students** ➲ as researchers.[17]

14 OJ L 251, 3.10.2003, p. 12.

15 **AT, SK**: scrutiny reservation concerning right of researcher's family members to have access to the labour market. **CY** preferred the application of the provisions of national law regarding family reunification.

16 **ES, AT**: scrutiny reservation. **AT** was of the opinion that "doctoral candidates" is better than the original "PhD candidates", but since rules are different in Member States this could lead to confusion. **SE** stated that the term "*doctoral students*" is clearer and better than "doctoral candidates" as suggested by PRES.

17 **IT** suggested to delete this recital in order to prevent the use of such recital for different purposes than those of this proposal. **IT** explained that in the Italian system a doctoral candidate attends a course of study whereas a researcher has his own role or in any case has a precise legal and economic status established by the law.

↓ 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.

⇩ 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[18], 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.

[18] COM(2011) 567 final

⇩ new

➲ Council

(15) The extension and deepening of the Bologna process launched through the Bologna Declaration[19] 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[20] ➲ , and higher education ➲ […] ➲ institutions[21] ➲ 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.[22]

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19 Joint declaration of the European Ministers of Education of 19 June 1999

20 **AT**: scrutiny reservation. **FR** preferred the original term "*academic staff*" over "researchers" as **PRES** had suggested. According to **FR**, "researchers" is a term that is more restrictive than "academic staff" and **FR** preferred that the recital gives at least the possibility for administrative staff to also enjoy the mobility rules. **DE, AT** agreed in principle with the change.

21 **AT, DE, ES**: scrutiny reservation. **FR** welcomed this insertion.

22 **DE** suggested 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 Declaration 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.*"

🡻 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.

🡻 2004/114/EC recital 12
➲ Council

(17) Evidence of acceptance of a student by a ➲ […] ➲ higher education ➲ institution[23] ➲ could include, among other possibilities, a letter or certificate confirming his/her enrolment.

🡻 2004/114/EC recital 13
⇨ new

(18) Fellowships ~~may~~ ⇨ should ⇦ be taken into account in assessing the availability of sufficient resources.

[23] **AT**: scrutiny reservation.

⇩ 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. ➲ […] ⊂] [24]

(20) ➲ […] ⊂[25]

(21) ➲ […] ⊂ ➲ As far as au-pairs are concerned, Member States could decide to apply this Directive ⊂ ➲ **in order** ⊂ to address their specific needs as a ➲ **[…]** ⊂ ➲ **certain** ⊂ group. 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[26] [27].

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[24] **ES, AT, CZ**: scrutiny reservation. **CY** proposed to clarify in this recital the way in which the Directive will be implemented to the groups mentioned. **EE** supported this discretion.

[25] **HU** pointed out that the deleted recital mentioned third-country nationals that come to work in the EU and that previous discussions took place about who to consider a worker. **HU** was of the opinion that with this recital deleted there is a need to insert a new recital in which the issue of when one is to be considered a worker is clarified. **PRES** clarified that the recital was deleted because it made reference to the ICT Directive.

[26] Council of Europe European Agreement on "au pair" Placement, Article 8

[27] **ES, AT, CZ**: scrutiny reservation. **AT** proposed 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 for entry ➲ .[28]

(23) Authorisations should mention the status of the third-country national concerned ➲ […] ➲ . Member States may indicate additional information ➲ **including respective information on** ➲ ➲ **[…]** ➲ EU, bilateral or multilateral programmes that comprise mobility measures[29] ➲ in paper format or electronically, provided this does not amount to additional conditions.

(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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28 **PRES** clarified, following a question from **FR**, that the reason of the addition in this recital is that there are Member States which are not in Schengen that do not produce visas. **DE** requested to make clear in this recital that the "equivalent permit for entry" applies only to Member States that are not part of Schengen. **AT** requested this recital to be put in line with Article 5(2) of this proposal. **EE**: scrutiny reservation. This reservation is also connected to Article 5(2). According to **EE**, the wording of this recital and Article 5(2) clearly limit a Member State's right to consider who is allowed to enter into its territory. In addition, it creates for the third-country national an automatic right to enter the Member State, to which **EE** did not agree. **EE** also pointed 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.

29 **AT, HU, ES**: scrutiny reservation. **AT** proposed the following wording: "*Member States may indicate additional information including respective information on EU, bilateral or multilateral programmes […]*".

(25) Member States may charge applicants for ➲ […] ➲ ➲ handling[30] ➲ applications for authorisations. The ➲ **[…]** ➲ ➲ **level of the fees shall not be disproportionate or excessive** ➲ .

(26) The rights granted to third-country nationals ➲ **[…]** ➲ should not depend on ➲ **[…]** ➲ ➲ **the form of authorisation each Member State grants for the purposes of this Directive** ➲ .

🡻 2004/114/EC recital 8
➲ Council

(27) ➲ […] ➲[31]

[30] **AT** asked what was the background for the inclusion of the new wording "handling". **PRES** answered that this term is the one used in other directives, so **PRES** wanted to align this proposal with those directives.

[31] **HU, AT**: scrutiny reservation.

↓ 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 ~~or~~, public security ⇨ or public health ⇦ . ~~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.~~[32]

[32] **FR** pointed out that it would be useful to clarify in this recital that public policy also covers the "*threat to the national scientific, technical and logistic potential*".

↓ 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 possible additional evidence with purpose to access the applicant's** ↽ ⌦ intended ⌫ studies ⌦ or training ⌫ , in order to fight against abuse and misuse of the procedure set out in this Directive.

⇩ 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[33] as soon as possible and, at the latest within ⇀ […] ↽ ⇀ the period specified in this Directive ↽ .

[33] **EE** wondered whether "in writing" also covered electronic format as well as paper format. **EE** was of the opinion that Member States should not limit themselves on the means of information to the third-country national.

↓ 2004/114/EC recital 16 (adapted) ⇨ new ➲ Council

(31) ➲ […] ➲ ➲ This Directive aims to facilitate intra-EU mobility of researchers, students [and remunerated trainees[34]] and to reduce the administrative burden associated with their activities in several Member States. For this purpose, this Directive sets up a specific intra-EU mobility scheme whereby the holder of a valid authorisation issued by the first Member State is allowed to enter, stay and carry out research activity, studies [or traineeship] in one or more Member States in accordance with the provisions governing mobility under this Directive. In order to prevent circumvention of the distinction between short-term and long-term mobility, a short-term mobility in the same Member State should be limited to a certain period of time.[35] ➲ ⇨ For researchers, this Directive should ➲ […] ➲ ➲ allow for the short-term mobility on the basis of a ➲ hosting agreement[36] ➲ concluded with the host entity in the first Member State. It should also provide for simplified rules in case of researchers' long-term mobility to the second Member States. ➲ Improvements should be ➲ also ➲ made regarding the situation of students, [and the new group of remunerated trainees], by allowing them ➲ […] ➲ ➲ mobility to the ➲ second Member States ➲ […] ➲ , provided that they fulfil the ➲ […] ➲ ➲ mobility ➲ conditions laid down in this Directive. ➲ […] ➲ ⇦[37] ➲ Short-term mobility for

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34 **RO, PL, DE, AT, ES, EL, SE**: reservation against the extension to remunerated trainees.

35 **AT, DE** stated that even if the idea of this recital is to avoid abuses, abuses can still happen since it is nonetheless possible for students to stay a longer period in the second Member State than in the first Member State in which they obtained the permission for stay.

36 **PL, HU** pointed out that it is not the hosting agreement that makes a person to be entitled to stay in the second Member State, but the authorisation given by the first Member State for staying.

37 **FR, PL, DE, BE, ES**: scrutiny reservation on the mobility model. **DE, ES, EL** stated that they preferred the mobility model to be agreed upon first for ICT proposal and then further discuss how to apply such mobility model to the present proposal. **CION**

researchers [and remunerated trainees] should cover stays in the second Member States for a period of up to 90 days in [180-day] period per Member State. In order to ensure the continuity of studies during the whole semester, students' short-term mobility in the second Member States should last for up to 180 days in 360-day period per Member State. Long-term mobility should cover stays in the second Member States for more than 90 days per Member State in case of researchers [and remunerated trainees] and for more than 180 days per Member State in case of students. [38]

38 stated that in principle it agrees to discuss this mobility model, but pointed out that the ICTs provisions will have to be adjusted to the specific needs of this proposal.
FR, HU did not agree with the distinction between short-term mobility of students and researchers.

➲ (31a) The Member States should have the right to consult the Schengen information system in the framework of a mobility where the authorisation has been issued by a Member State not implementing the Schengen acquis in full and not having access to that system. In such case, the Member States should refuse the entry or object to the mobility for persons for whom an alert has been issued in the Schengen information system. ➲[39]

⇩ new
➲ Council

(32) Union immigration rules and ➲ […] ➲ EU, ➲ bilateral and multilateral ➲ programmes ➲ […] ➲ that comprise ➲ mobility measures 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. ➲[40] ➲ […] ➲

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39 **SE**: scrutiny reservation.

40 **PL, DE, AT, ES** : scrutiny reservation. **PL, DE, AT** were of the opinion that, in relation to Article 16(4), Member States should decide the maximum period of stay for students and researchers and this proposal should not deal with this. They also agreed that this proposal should not cover programmes with mobility measures established among Member States. These provisions seem to state that Member States have to use mobility rules agreed upon by other Member States programmes, bilateral or multilateral.

↓ 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 ⇨ increased ⇦ 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 ⇨ ➲ […] ➲ ⇦ .[41]

[41] **ES**: scrutiny reservation. **CZ** wondered whether it is necessary to estipulate a minimum number of hours of work per week in this proposal since this raises the question on how to consider the work of students with a duration lower than that minimum. **FR** pointed out that it was in favour of establishing a "*maximum number of hours*" of work per week.

⇩ new

➲ Council

(34) As part of the drive to ensure a well-qualified workforce for the future, Member States should[42] 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[43] 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 ➲ [44]

➲ (34a) This Directive does not aim to harmonise national laws or practices of Member States related to treatment of third-country nationals covered by this Directive with respect to worker's status. ➲ **[…]** ➲ [45]

(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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42 **CY** proposed to replace "should" with "*could*".

43 **CY** proposed to replace "should" with "*could*".

44 **ES, AT**: scrutiny reservation.

45 **AT, FI, DE, IT**: scrutiny reservation. **PL**: reservation**. PL** pointed out that changes in this recital, and in Article 21(1), does not clarify too much as far as worker's status is concerned. **ES** presented a reservation since it does not agree with the recognition of equal treatment with nationals of third countries. **AT** requested clarification about whether cross-border cases are included in this recital and expressed concerns about whether temporary agencies are covered. **FI** wondered whether the second sentence is necessary and whether it should not be deleted. **IT** pointed out that it is difficult to determine "intention" as this recital requests: "[…] or intend to be in an employment relationship […]". **CZ** suggested this recital to be deleted since it covers aspects of employment relationship. **CION** also presented a scrutiny reservation on the drafting of this recital.

(36) 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 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[46] ➲ , with the possible exceptions that apply under that Directive ➲ . 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 ➲ […] ➲ 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, and this possibility of limitation could affect researchers. ➲ 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. ➲ In addition, independently on whether Union or national law of the host Member State gives ➲ […] ➲ school pupils, volunteers, unremunerated ➲ and remunerated ➲ 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 the public.[47]

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[46] OJ L 343, 23.12.2011, p. 1.

[47] **DE, AT, FR, SI, SK, PL, IT, ES**: scrutiny reservation. **CZ** only supports social rights equal treatment for researchers, not the other groups. **ES** was not in favour of the recognition of equal treatment for social rights of third-country nationals. **CION** did not agree with recouping rights already established in the current Researchers Directive. According to **CION** this recital is in line with the existent Researchers Directive and Single Permit Directive.

↓ 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 ➲ […] ⊂ [48].

↓ 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[49].~~

↓ 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 ⇦.

[48] OJ L 157, 15.6.2002, p. 1.
[49] ~~OJ L 157, 15.6.2002, p. 1.~~

↓ 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.~~

↓ 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.[50]

➲ (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. ➲[51]

[50] **NL** pointed out that in its opinion the words "property" and "age" could give rise to legal problems, so it suggested to delete such terms from the recital.

[51] **AT, EE**: scrutiny reservation. **EE** was of the opinion that 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** expressed its reservation on this recital being included in the proposal. It had doubts that this recital is needed in this proposal even if there is a similar one in the Seasonal Workers Directive proposal. **AT** agreed with **CION** on this.

↓ 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.~~

⇩ 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.[52]

[52] **LV** considered premature the inclusion of the statement that the "transmission of such documents to be justified" for this Directive, since the assessment has not been carried out yet.

↓ 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.[53]

[53] **ES, AT**: scrutiny reservation. **DE** was of the opinion that this recital does not properly reflect the position that some categories should remain optional, and therefore it should be changed accordingly. **CZ** stated that it is up to the Member States to decide to include some of these categories and **CZ** wanted this recital to better reflect this. **AT** agreed with **DE, CZ**.

↓ 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.~~

↓ 2004/114/EC recital 22 (adapted)
➲ Council

(42) Each Member State should ensure that the fullest possible set of 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.** ⊂ .[54]

[54] **AT**: scrutiny reservation.

↓ 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.~~

↓ 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. ➲ […] ➲[55]

↓ 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~~.~~.

[55] Please note that the amendment of this recital is linked with Article 36.

↓ 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.~~

↓ 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.~~

↓ 2004/114/EC recital 20
(adapted)

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

↓ 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.~~

↓ 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~~.

↓ 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,~~

↓ 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.~~

↓ 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.~~

↓ 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[56], when it opened up its programmes further to researchers from outside the European Union.~~

↓ 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.~~

56 ~~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).~~

↓ 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.~~

↓ 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.~~

↓ 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.~~

↓ 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[57].~~

↓ 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.~~

57 ~~OJ L 375, 23.12.2004, p. 12.~~

↓ 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.~~

↓ 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[58].~~

↓ 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.~~

[58] ~~See page 26 of this Official Journal.~~

↓ 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.~~

↓ 2005/71/EC recital 21 (adapted)

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

↓ 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.~~

↓ 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.~~

⇩ 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,

🡻 2004/114/EC (adapted)
⇨ new
➲ Council

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter[59]

This Directive determines:

[59] **EL** stated that 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. **EL** emphasised that 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. **EL** also stated that 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. **ES** suggested that reference to family members should be made in a separate point within this article. **IT** suggested that Article 1, in the light of the Recommendation of the European Parliament and of the Council 2005/761/EC of 28 September, should apply also to *short term research,* i.e. for researchers from third countries travelling within the Community for the purpose of carrying out scientific research for period of time of less than 90 days. According to **IT**, this will implement point 6 of the Recommendation 2005/761/EC which envisages the possibility of incorporating the provisions of this Recommendation in an appropriate legally binding instrument. Visa Code does not include any specific reference to this matter, with the exception of the gratuity of visas. **CION** did not agree with **IT** suggestion of including researchers that stay less than 90 days.

(a) the conditions ~~for admission~~ ⇨ of entry ➲ to ⇦ and residence ➲ as well as the rights[60] ⇦ ⇦ of third-country nationals ➲ and, where applicable, of their family members[61] ⇦ ➲ […] ⇦ ➲ in ⇦ ➲ the ⇦ territory of the Member States for a period exceeding ~~three months~~ ⇨ 90 days ⇦ for the purposes of ⌦ research ⌫ , studies, pupil exchange, ⇨ remunerated and ⇦ unremunerated training ~~or~~ , voluntary service ➲ or ⇦ ⇨ au pairing ⇦ ; [62]

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

⇩ 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. ⇦ ;[63]

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60 **ES**: reservation. **CY** suggested to insert in the text the word "*obligations*" after "rights" as to read "*rights and obligations of third-country nationals*".

61 **FR** requested clarification and **PRES** stated that it refers to family members of researchers. **ES** stated that family members of researchers are not part of the subject matter of this proposal and therefore it suggested to be taken out from here and be inserted someplace else in the proposal. **NL** pointed out that Article 1 of the Blue Card Directive makes reference to family members.

62 **ES**: reservation. **AT**: scrutiny reservation. **NL** did not agree with the change to "90 days", preferring the mention to "3 months". **CION** explained that the term "90 days" is expected to be established upon adoption of the amended Schengen Borders Code. **FR** questioned whether the newly added wording "entry and residence" is really more appropriate than the original "admission". **IT** was in favour of broadening the coverage of the proposal also to researchers staying less than three months.

63 **AT**: scrutiny reservation. **CION** was against the deletion of the category of remunerated trainees in this point.

➲ **(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) ➲ […] ➲

↓ 2005/71/EC (adapted)

~~CHAPTER I~~

~~GENERAL PROVISIONS~~

~~Article 1~~

~~Purpose~~

~~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.~~

↓ 2004/114/EC (adapted) ➲ Council

Article 2

Scope[64]

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 ➲ […] ➲ .

➲ Member States may also decide to apply this Directive to third-country nationals who apply to be admitted for the purposes of [pupil exchange, remunerated or unremunerated training, voluntary service or] au pairing. ➲[65]

64 **AT, CZ** preferred to maintain strict rules at national level to prevent the possibility of abuses. **CZ** pointed out that at the very least these new categories should not be made mandatory. **FR** deplored the fact that "*teachers*" are not part of the proposal's scope, although they could be relevant stakeholders either as accompanying adults in pupil exchange schemes or as direct beneficiaries of exchange programs. **FR** suggested that new provisions should be included in this proposal to cover the teachers.

65 - In favour of these categories to be optional: **NL, FI, CZ, SK, BE, DE, PL, AT, ES, PT, EE, IT, LV, SI, EL**
- In favour of these categories to be mandatory: **FR, SE, LU, CION**
- In favour to extend the scope to all pupils, including primary school pupils: **FR, RO, ES, LV, HU**
- Against extending the scope to all pupils, including primary school pupils: **FI, CZ, SK, BE, DE, PL, AT, PT, EE, IT, SE, SI, LU, EL, CY**
- In favour to extend the scope to teachers: **FR, ES, EE, IT**
- Against extending the scope to teachers: **FI, CZ, SK, BE, DE, RO, PL, AT, PT, LV, SE, SI, LU, HU, EL, CY**

2. This Directive shall not apply to ⌦ third-country nationals ⌫ :[66]

(a) ~~third-country nationals~~ residing in a Member State as asylum-seekers, or under subsidiary forms of protection, or under temporary protection schemes;

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

(c) ~~third-country nationals~~ who are 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[67] ➲ […] ➲ ;[68]

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66 **FR** proposed the introduction of an additional exclusion point concerning those falling within regulated professions as defined in Directive 2005/36 on the recognition of professional qualifications. **CION** explained that Directive 2005/36 only applies to nationals of the Member States and that therefore it was no necessary to introduce this new exclusion point.

67 OJ L 16, 23.1.2004, p. 44

68 **LV** would like to obtain clarification about whether persons who have acquired EU long-term resident status in accordance with Council Directive 2003/109/EC are included in the scope of this proposal. At the explanatory memorandum concerning Article 2 it is stated that this proposal does not cover persons who are EU long-term residents, however Article 2(2)(d) provides that this proposal will not apply to those persons who enjoy long-term resident status in a Member State in accordance with Council Directive 2003/109/EC and exercise their right to reside in another Member State in order to study or receive vocational training - hence the smaller range of persons than referred in the explanatory memorandum. **LV** would like to receive clarification regarding this point as it seems ambiguous**.** Either this proposal does not apply to the persons who have acquired EU long-term resident status in accordance with Council Directive 2003/109/EC or it does not apply to the persons who have acquired permanent resident status in accordance with Council Directive 2003/109/EC and who at the same time are exercising their right to reside in another Member State in order to study or receive vocational training? If it is a case that only EU long-term residents – students and trainees - are exempted from the scope of the Directive; additional justification for such decision would be welcomed in the explanatory memorandum. **LV** would support inclusion of all categories of EU long-term residents into the scope of the this proposal as Directive 2003/109/EC does not provide equally beneficial provisions for mobility of EU long-term residents (e.g., EU long-term residents do not have a free access to the labour market of other Member States during first 12 months of stay. At the same time, this proposal grants such right to students).

(e) ➲ […] ➲

⇩ 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];[69]

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

69 **DE** considered the boundaries between trainees in this proposal and "graduate trainees" in the ICT Directive proposal unclear. **ES** pointed out that the reference to "trainee" should be the same one used in the ICT Directive proposal. **CION** replied that the scheme set up in the ICT Directive proposal is a separate scheme which contains objective criteria for the determination of who is to be considered as "graduate trainee" under the ICT Directive proposal. On the other hand, **PL** did not see an overlap between both this proposal and the ICT Directive proposal and therefore proposed the deletion of this point.

↓ 2004/114/EC (adapted)

Article 3

Definitions[70]

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;

70 **FR** stated that the inclusion of stays of less than 90 days within the scope of this proposal would be relevant since many exchange travels fall outside the regular provisions of the scholar scheme, for example in case of sporting or animation activities. In the case that the scope of the proposal was to be further broadened to stays of less than 90 days, **FR** asked for the addition of two new definitions recording the entrance of two new categories in the possible target audiences of the directive: "*youth exchange programs for non-academic accomplishments*" (i bis) and "*youth workers for training visits and networking*" (i ter) :
i bis) ""youth exchange programs for non-academic accomplishments" means a reciprocal or non-reciprocal exchange involving young third country nationals, in the context of a non-formal exchange scheme, operated by a youth organization or any organization recognised for that purpose by the Member State or the European Union."
i ter) ""youth workers for training visits and networking" means third country nationals working in youth and social professional environments, taking part to projects involving youth exchanges, networking and training, or working in the context of a non-formal educational program recognised for that purpose by the Member State or the European Union."
FR also suggested, bearing in mind that European specific exchange programs such as Erasmus Mundus involve a substantial number of stakeholders and, most of the time, the participation of more than one or two countries, to add a new paragraph defining at least a "*third Member State*".

↓ 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;~~

↓ 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;[71]

[71] **ES, AT**: scrutiny reservation. **ES** would like to include the possibility for the researchers to sign contracts. **HU** pointed out that this definition should also include *hosting agreements* since if there are no hosting agreements included in the definition, researchers who comply with the definition but has no hosting agreement could not be admitted according to Article 5(3) of this proposal. In other words, according to **HU**, in order to comply with Article 5(3), hosting agreements should be included in this definition.

↓ 2004/114/EC ➲ Council

(c) ~~(b)~~ 'student' means a third-country national accepted by a ➲ […] ➲ higher education ➲ institution recognized 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 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;[72]

[72] **ES, LV, EE, FI, SE, CY, AT**: scrutiny reservation. **NL, BE, ES** expressed concerns about the reference in this point to "full-time course". This reference might indicate that the students should study during the whole day which would be in contradiction with the provision in Article 23(3) of this proposal that stipulates a minimum of hours per week that students are entitled to, in order to carry out economic activities. **CION** explained that the reference to a "full-time course" does not mean that courses have to encompass the whole day, for example a half-a-day course could be considered a full-time course. Therefore, there is no contradiction with the provision on allowing a minimum of hours per week for economic activities.
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 study, 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"*
IT pointed out that at present the wording of the text seems to refer only to third-country students enrolled in a course of study in a EU University in order to obtain an educational qualification. According to **IT**, since such wording might prevent credit mobility (for three months, a semester or an academic year) of third-country students promoted in the future European schedules for international mobility (Erasmus plus), it is necessary to check with the Commission the compatibility of this community measure with the Erasmus plus Regulations which will be soon approved.
Furthermore, **IT** might promote the amendment of such definition of student and refer again to the definition used in Erasmus plus.

(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[73] ➲ operated by ➲ […] ➲ ➲ a host entity ➲ ➲ […] ➲ in accordance with its national legislation or administrative practice;[74]

[73] **AT**: scrutiny reservation.

[74] **SI, LV, EE, AT**: scrutiny reservation. **FR** stated that it appears quite reductive to limit the scope of this proposal to pupil exchange schemes involving only secondary education pupils and reciprocal exchanges. **FR** requested delegations to take into account its suggestion of also including a mention to "*primary education*" or alternatively including the mention of a *minimum age, for example 6 years-old,* as follows:
*"'school pupil' means a third-country national, from the age of 6 years-old, admitted to the territory of a Member State to follow […]".*This would entail the deletion of the expression "secondary education" throughout the text. **ES** supported **FR** on the extension to primary education. **EE** pointed out that it would also like to cover a broader range of school pupils than what it is the case right now and stated to use internationally recognised standards as a guide (International Standard Classification of Education -ISCED). **HU** stated that it could only accept this definition if the school pupils group will become option in the text of the directive. **AT, NL, DE** did not agree with **FR**'s suggestion of a minimum age of 6. **SE** welcomed the fact of the deletion of the requirement of scheme recognition and reiterated its request for clarification on what it is included in the notion of "secondary education". **RO** requested the notion of recognition of education to be clarified.

↓ 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 professional experience ➲**in accordance with the national legislation of the Member State concerned**[75]**,**⊂ which is related to his/her educational training or profession[76], ⊂ for a training period without ➲ […] ⊂ ➲ remuneration [77] ⊂ ➲ […] ⊂ ;[78]

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75 According to **CION**, national legislation should not be mentioned here but rather "*EU legislation*".

76 **SE** suggested to delete the wording "or profession". It should be clear that there is a education purpose in this traineeship. According to **SE**, if the word "profession" is deleted, it would be clearer that this is not a form of employment.

77 **ES**: scrutiny reservation on "remuneration". **FR** welcomed bringing back the term "remuneration" since it is closer to the French term "gratification".

78 **ES, BE, AT, LV, PT, DE, SE, FI**: scrutiny reservation.
PT had a problem with this since according to its legislation the training period is always paid, and therefore the notion of unremunerated training goes against its legislation. **LV** stated that it would like to allow trainees to be treated as school pupils in order to avoid abuse, so they cannot be used as fake employees. **ES** pointed out that it would like to also apply to trainees the notion of "reimbursement of expenses" as provided for in point (h). **DE, SE, PT, FI** stated that it is not clear whether vocational training is included within the category of trainees. **CION** pointed out that training can also cover vocational training in this proposal.

⇩ 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 professional experience ➲ **in accordance with the national legislation of the Member State concerned**[79]**,** ⊂ which is related to his/her educational training or profession ➲ **for a training period** ⊂ ⊂ in return for which he/she receives ➲ […] ⊂ ➲ remuneration ⊂[80] ⊂ ➲ […] ⊂ ;[81]

(g) 'volunteer' means a third-country national admitted to the territory of a Member State to participate in a ➲ […] ⊂[82] voluntary service scheme;[83]

79 According to **CION**, national legislation should not be mentioned here but rather "*EU legislation*".

80 **ES**: scrutiny reservation on "remuneration". **FR** welcomed bringing back the term "remuneration" since it is closer to the French term "gratification".

81 **ES, BE, CZ, SE, DE, PT, FI, AT**: scrutiny reservation. **ES**: linguistic reservation concerning the Spanish word "aprendiz". **AT** in addition raised the issue of differences between the EN and DE linguistic versions of this provision providing further confusion. **LV** mentioned its system concerning education programmes and questioned whether it could keep its current system – both unremunerated and remunerated trainees are admitted for training only under licensed educational programmes and providing they are students or pupils. **DE, AT** stated that it is important that vocational training does not fall within the scope of this proposal and that vocational training should be clearly differentiated from traineeship in the text.

82 **DE** preferred this point with the word "recognised" so it was against its deletion. **PRES** explained that the word "recognised" already appears in the definition of "voluntary service scheme" and it was therefore deleted since it was not necessary to repeat it twice.

83 **ES, BE, NL, AT**: scrutiny reservation. **NL** insisted on making a reference to national law for such definition.
IT proposed the following definition: *" 'volunteer' means a third-country national admitted into the territory of a Member State in order to take part in a voluntary action and/or in an active citizenship scheme"*.

↓ 2004/114/EC (adapted) ➲ Council

(h)~~(f)~~ 'voluntary service scheme' means a programme of ➲ practical ⊂ ➲ solidarity ⊂ activities[84] ➲ […] ⊂ , 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[85] ⊂ ;[86]

84 **RO**: scrutiny reservation on "practical solidarity activities".

85 **BE** did not agree with the notion of "reimbursement of expenses".

86 **ES, BE, AT**: scrutiny reservation. **DE** expressed that it does not see the added value of regulating volunteers at EU level and questioned whether the subsidiarity principle was taken into account here.
IT proposed a new definition for this point instead of the one in the proposal: *" 'volunteering and active citizenship scheme' means a scheme composed of solidarity and social inclusion initiatives, based on a project acknowledged by the Member State or the European Union, which pursues general interest objectives to be carried out within the organizations performing non-profit, social utility activities, according to the national regulations of each Member State regarding voluntary action and active citizenship "*. **ES** supported **IT**'s wording. **IT** preferred to avoid the use of any wording in the line of "voluntary work" since the word "work" implies an activity with a remuneration whereas "voluntary action" and "volunteering" imply an activity performed free of charge. **IT** proposed that each and every time the proposal refers to "voluntary work" it should be changed into "*voluntary action*" and "*volunteering*" should be included in the text instead of "voluntary scheme service". Also, **IT** proposed to include a reference to "*active citizenship scheme*" each time the proposal refers to "voluntary action" or to "volunteering". Furthermore, **IT** had doubts about the use of the word "service scheme" since the word "service" could imply an activity for remuneration. **CION** had a reservation on the inclusion of the word "practical". It cannot see the added-value of this addition. **SE** asked about what exactly "unpaid" means. According to **SE**, in some cases volunteers receive money. **PRES** explained that the compromise suggestion tried to convey the idea that volunteers should not receive remuneration.

⇩ 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 ➲ […] ➲ ;[87]

[87] **BE, AT**: scrutiny reservation. **CZ** asked **CION** whether the possibility of remuneration for au-pairs would not create a risk of confusion with employees. **CION** answered that what au-pairs receive, according to Article 14 of this proposal, that is to say, "pocket money", could not be considered as remuneration as it is understood for employees. **DE** made reference to the subsidiarity principle and asked **CION** to explain why there is a need to include this category in the proposal and how this definition and other provisions within the proposal, like for example the signing of an agreement between the au pair and the host family, may precisely help in the fight against abuse. **CION** answered that au-pairs category fosters cultural exchanges and since this cultural exchanges are considered important for the EU it is necessary to have rules at EU level. **CION** also explained that including this category in the proposal amounts to consider that au-pairs have enforceable rights and this fact, even if does not end single-handedly with abuse, would help fighting against it. **DE** asked whether the tasks of the au-pairs are cumulative, that is to say, they have to carry out light housework and taking care of children, or exclusive, that is to say, carry out light housework or taking care of children. **CION** answered that they are cumulative. **NL** pointed out that there is only "anecdotal" evidence of abuse concerning au pairs and questioned if this "anecdotal" evidence is enough to warrant to include this category in the proposal.

↓ 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;[88]

(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;[89]

↓ 2004/114/EC (adapted)
➲ Council

(l) ~~(e)~~ '⌦ education ➲ […] ➲ ⌫ establishment' means a public or private ➲ ➲ **[…]** ➲ education ➲ establishment recognised by the host Member State and/or whose courses of study are recognised in accordance with its national legislation or administrative practice ⌦ on the basis of transparent criteria ⌫ for the purposes set out in this Directive;

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88 **AT** put forward a reservation on the DE version of the definition which does not correlate with the EN version.

89 **FR** proposed to replace "research organisation" by the wording "*establishment of higher education and research*" and to add the expression "*teaching assignments and research*".

⇩ new

➲ Council

➲ (la) 'higher education institution' means any type of higher education institution ➲ […] ➲ **which, in accordance with** national ➲ […] ➲ **law** or practice, ➲ […] offers recognised ➲ […] degrees or other recognised tertiary level qualifications[90], 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. [91]

➲ (lb) ➲ […] [92]

➲(lc) 'host entity' means the entity 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 ➲ **[…]** ;[93]

(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;[94]

90 **EE** requested clarification about the meaning of the wording "other recognised tertiary level qualifications".

91 **LV, AT, SI, PT, FI, ES, BE**: scrutiny reservation.

92 **RO, CZ, ES, AT, FR, DE, PT, IT, SI, FI**: scrutiny reservation.

93 **AT, SI, FI, FR**: scrutiny reservation. **PL, ES, NL** pointed out that this is a very broad notion so it could be difficult to interpret.

94 **BE, AT, FR:** scrutiny reservation.

(o) 'first Member State' means the Member State which first grants a third-country national an authorisation on the basis of this Directive;[95]

(p) 'second Member State' means any Member State other than the first Member State;[96]

(q) ' ➲ […] ⊂ ➲ EU, bilateral and ➲ **/or** ⊂ multilateral[97] programmes that comprise ⊂ mobility measures' means ➲ […] ⊂ programmes ➲ funded by the Union ➲ **and/** ⊂ or by ➲ **[…]** ⊂ ➲ **one** ⊂ or more Member States ⊂ promoting ➲ […] ⊂ mobility[98] of third country nationals ➲ […] ⊂ ➲ in ⊂ the Union ➲ or in the ➲ **[…]** ⊂ Member States participating in ➲ **[…]** ⊂ ➲ **the respective** ⊂ programmes ⊂ ;[99]

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95 **FR**: scrutiny reservation.

96 **FR**: scrutiny reservation.

97 **AT, ES, BE, SE, FR**: scrutiny reservation. **NL, FI, SK, CZ** had no objection to the inclusion of bilateral/multilateral programmes. **HR** was of the opinion that contracts based on activities financed by the European Union and/or more than one Member Stare are appropriate. **EE** requested clarification on whether "bilateral and multilateral programmes" would include programmes with participation of Norway and Switzerland. **DE, ES, PT** asked whether this new wording would include programmes between just one Member State and a third-country. **PRES** answered that such programmes will not be covered by this definition. **BE** asked whether the concept of bilateral and multilateral is only referring to universities, or also other programmes from the State are included. **PRES** answered that the current wording covers State programmes. **SE** was of the opinion that to include bilateral/multilateral programmes could lead to application problems since many different types of programmes could come in question. **SE** requested further clarification about whether students covered by bilateral/multilateral programmes could be granted a residence permit under the provisions of this proposal, even if such programmes are not mentioned specifically here in point (q). **CY** opposed the inclusion of bilateral/multilateral programmes in the case these would involve agreements between private higher institutions.

98 **FR** stated that it should be better to indicate whether this refers to short or long-term mobility.

99 **FI, AT, DE**: scrutiny reservation. **FR, EE** wondered whether national programmes of the Member States are also included in this provision. **SE** stated that it was important to clarify what programmes are actually covered by this provision. **SE** asked whether there would be a list of such programmes, and how these programmes are going to work in practice.

(r) 'authorisation' means a residence permit[100] ➲ […] ➲ or ➲ , if provided for in national law, ➲ a long-stay visa ➲ issued for the purposes of this Directive ➲ ;[101]

➲ (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; ➲[102]

(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 ➲ .[103]

(t) ➲ "family members"[104] means third country nationals as defined in Article 4(1) of Directive 2003/86/EC[105] ➲

➲ (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; ➲[106]

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100 **CY** suggested to insert the word "*entry*" in the definition, as to read "*entry/residence permit*". The reason of this insertion in various places of the text is because **CY** issues such entry permits to authorise the entry of third-country nationals for long stays either for work or studies. **CY** does not issue short-term or national long-term visas. Furthermore, the residence permit is issued only when the third-country national is already in **CY**.

101 **FR, ES**: scrutiny reservation.

102 **FR, ES**: scrutiny reservation.

103 **FR, ES**: scrutiny reservation.

104 **FR**: scrutiny reservation.

105 OJ L 251, 3.10.2003, p. 12.

106 **ES**: scrutiny reservation.

➲ (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; ➲[107]

↓ 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.~~

↓ 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.~~

~~*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:~~

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107 **ES, AT**: scrutiny reservation. **SK** proposed to add here the notion of *legislation of the Member State concerned*.

~~(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.~~

↓ 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 ➲ […] ➲ ⇦ .[108]

[108] **HU**: scrutiny reservation. **ES**: reservation. **DE, NL, ES** stated that even though they support the regulation of "researcher" and "student" categories in this proposal, it is very important for them nonetheless that parallel national schemes for these two categories be maintained. **ES** requires an article similar to article 4(2) of the Directive 2009/50/EC of May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment which says: "*This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for persons to whom it applies …*". **DE** stated that currently it applies more favourable admission criteria. **DE** asked **CION** whether there would be possible to continue admitting researchers and students under easier conditions as **DE** does currently. **DE** mentioned that for example, as far as hosting agreements stipulated in Article 9 of the proposal are concerned, a lot of institutes in **DE** are not ready to sign them and **DE** would still like to be able to admit researchers without having to sign hosting agreements. **RO, DE** stated that this proposal should bring a minimum level of harmonisation and let Member States to decide themselves the more favourable provisions to be applied. **NL** also insisted in having the possibility of applying more favourable admission criteria in order to better attract researchers and students. **NL** suggested 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~~.*"
NL pointed out that the provision about more favourable provisions in Directives 2004/114 and 2005/71 is not limited to certain articles. According to **NL** 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. **IT** stressed that it was very important to try to align this proposal with national practices, and in particular in the field of volunteering.
CION answered that it does not like the possibility for Member States to apply parallel schemes. **CION** is of the opinion that admission conditions should be harmonised in the EU, but does not oppose that Member States be able to apply more favourable rights. **CION** also stated that it is open to accept more flexibility concerning admission conditions, but once agreed on a certain level for admission conditions, **CION** does not want fragmentation and is in favour of a single scheme.

CHAPTER II

~~CONDITIONS OF~~ ADMISSION

↓ 2004/114/EC
➲ Council

Article 5

Principle ➲ s ➲ [109]

1. The admission of a third-country national under ➲ the ➲ **[…]** ➲ **provisions** ➲ 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.[110]

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109 **AT, PL**: scrutiny reservation on the whole article.

110 **HU** requested clarification as to whether the requirement of "documentary evidence" would preclude Member States from requiring other types of controls such as tests, interviews, control of the knowledge of the language of the host country, etc. **HU** would like **CION** to clarify how "documentary evidence" should be interpreted in this article. **CION** answered that Article 10 of this proposal complements this article since it stipulates the types of evidence that have to be provided. **CION** went on stating that there is no purpose to limit the interpretation to just documents and that language tests and interviews could also fall within the wording "documentary evidence".

⇩ new

➲ Council

2. Once all the general and specific conditions for admission are fulfilled, applicants shall be entitled to a ➲ n authorisation[111] ⊂ ➲ […] ⊂ . If a Member State issues residence permits only on its territory ➲ […] ⊂ and all the admission conditions[112] laid down in this Directive are fulfilled, the Member State concerned shall ➲ grant ⊂ ➲ […] ⊂ the third country national ➲ every facility to obtain[113] ⊂ the requisite visa ➲ or an equivalent permit for entry to[114] ⊂ ➲ the territory of the Member State concerned ⊂ .[115]

111 **DE** agreed with the inclusion of the word "authorisation", but would like that this would not be applicable to trainees and au-pairs. **PL** said that the inclusion of the term "authorisation" multiplies the number of terms used and therefore it makes the text more complicated.

112 **CZ** asked **CION** for clarification since it is not clear whether the “admission conditions” wording refers to the granting of a permit.

113 **DE** did not agree with the use of the wording concerning "facilitation". **PL** stated that it is unclear how the wording on "facilitation" relate to the Schengen Visa Code. This facilitation could only relate with long-stay visas and not short-term visas.

114 **DE** requested to make clear that this insertion is for non-Schengen Member States.

115 **CZ, EE, IT, FR:** scrutiny reservation. **CZ** pointed out that the provisions of this proposal aim to harmonise practice, or rather to set uniform policies and procedures in the designated area. This means that 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** does not see that this paragraph gives any added value and is cumbersome. **EE** is not against the insertion of "authorisation" but it would prefer the deletion of this paragraph 2. **CION** did not consider this necessary, since 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 would 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] ➲[116]

[116] **NL** agreed with the insertion of this paragraph. It also proposed to add at the end of this paragraph additional wording: "*or do not meet the criteria set out in this Directive*". **NL** said that it would like that national schemes could also be applied. **HU** questioned how the mention to "who fall outside the scope of this Directive" should be interpreted. **PRES** clarified that this means that, in cases where third-country nationals do not fall within the scope of this Directive, Member States could apply their national schemes. **AT** agreed with paragraphs 2 and 3 and supported the proposal from **NL**. **ES** presented a reservation on this paragraph. **DE** stated that this paragraph, as it is currently worded, is not very helpful since, according to **DE**, it is self-evident that Member States will apply their rules if a person does not fall within the scope of this Directive. **DE** would like that more favourable national rules could also be applicable. **CION** agreed with other delegations that the wording of this paragraph is not clear.

↓ 2004/114/EC

➲ Council

➲ *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[117] ➲ **,** ➲ when they are ➲ **[…]** ➲ in an employment relationship[118] with an employer established in the Member State concerned. On this basis and for the purposes of this Directive, an application for authorisation may be either considered inadmissible or be refused. ➲[119]

[117] **ES** suggested to exclude from the volumes of admission also the "*volunteers*" category.

[118] **FR** suggested to put in a recital a reminder that students can work only on an ancillary basis.

[119] **AT, DE**: scrutiny reservation. **FR, DE** stated that the wording is too general and it needs clarification. It has to be specified to what groups the volumes of admission applies. **ES**: reservation. According to **ES**, this article should not be applicable to volunteers and students.

Article 6[120]

General conditions[121]

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

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120 **CZ** proposed, inspired by Article 7 of Directive 2003/86/EC, to add a new article to the text, for example after Article 6 on general conditions, in which Member States may require third-country nationals to comply with integration measures, in accordance with national law. **CZ** explained that it has established preparatory one-day, free of charge, courses for adaptation and integration of newly arrived third-country nationals, who should be passed during the first 6 months (or at the latest during the first year) of stay. **CZ** believes these courses are an important tool of integration/adaptation for third-country nationals.

121 **NL** suggested to include in this Article 6 the notion of "*conditionality*". **NL** pointed out that in the JHA Council Conclusions of June 2011 on the EU strategy on Readmission the concept of "conditionality" was already adopted as an instrument to press third countries to fulfil their international-juridical obligations regarding the re-admission of their nationals. Consequently, **NL** further suggested the inclusion of a new paragraph in this article 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.*"
NL stated that this suggested new paragraph is a concrete implementation of this 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 that third-country national will stay illegally after his legal stay in a Member State. **NL** also pointed out that this is a "may" clause so Member States are not obliged to apply it.
SK supported **NL** on this position.
DE suggested to 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."

(a) present a valid travel document as determined by national legislation ➲ and, if required, an application for a visa[122] ➲ ; 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 ⌦ or equivalent ⌫ for the planned stay;

(c) have sickness insurance ~~in respect of~~ ⌦ for ⌫ all risks normally covered for ~~its own~~ nationals ~~in~~ ⌦ of ⌫ the Member State concerned;[123]

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122 AT: scrutiny reservation.

123 **CZ**, supported by **CY**, advocated for inserting "*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 do not fall under the "risks normally covered for nationals of the Member State concerned", **CZ** considered that it is crucial that this point (c) covers these services as well. **CZ** also suggested to 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. **PL** requested that a mention to "travel health insurance" is introduced as well.

↓ 2004/114/EC

➲ Council

(d) not be regarded as a threat to public policy, public security or public health;[124]

(e) provide proof, if the Member State so requests, that he/she has paid the fee for ➲ […] ➲ handling ➲ the application on the basis of Article ~~20~~31.[125]

⇩ 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 ➲ […] ➲ . ➲[126]

[124] **FR** suggested the inclusion of the following wording at the end of this point: "*and threat to the national scientific, technical and logistic potential*". **NL** presented a scrutiny reservation on **FR**'s suggestion. It asked **FR** to explain further and give an example of what that wording means. **FR** answered that it wants to protect scientific knowledge in research laboratories. The goal is to fight against industrial espionage. **HU** then questioned whether the threat of industrial espionage was not included already in the notion of "threat to public policy". **HU** also questioned whether it was not more appropriate to make a reference to this in a recital. **CION** supported **HU** comments.

[125] **NL** proposed that long-stay visas should also fall within the scope of this article.

[126] **SI**: reservation since it has doubts that the provision be necessary at all. **HU, PT**: scrutiny reservation. **PL** was of the opinion that this point does not serve legal certainty since Member States have a big leeway according to its wording. **AT** welcomed the reintroduction of point (f). **SE** asked what was the meaning of "during his/her stay". **SE, PT** stated that this provision entails requirements that are hard to be met, specially in cases of long stays like for example stays of 4 years. The third-country national can provide evidence that has sufficient resources at the beginning of the period of stay, but if the period is long it is thus more difficult, and in addition if a renewal of the authorisation is needed, then new evidence has to be provided again. **CION** did not agree with the deletion at the end of this point.

➲ 2. Member States may require the applicant to provide, at the latest at the time of the issuance of the authorisation[127], the address of the third-country national concerned in the territory of the Member State. [128] ➲

➲ 3. Where a certain category of third-country nationals covered by this Directive are or intend to be 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. ➲[129]

➲ 4. Member States may lay down a reference amount which they regard as constituting "sufficient resources" as referred to under paragraph (1)(f), which 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. ➲ ➲ **If the third country national concerned can prove that he/she is in receipt of sufficient resources throughout the period of his/her stay in the respective Member State that derive from a grant or scholarship, a sponsorship from a host family, a firm offer of work or a financial undertaking by a pupil exchanges scheme organization or a voluntary service scheme organization, Member States shall take them into account for the fulfilment of the conditions of the paragraph 1 (f).** ➲

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127 **CY** suggested to replace "issuance of the authorisation" by "*issuance of residence permit*".

128 **ES, SI**: scrutiny reservation. **PL, EE, FR, CZ, SK, AT** supported the inclusion of this new paragraph.

129 **AT, FR**: scrutiny reservation. **ES** presented a reservation since it does not want the employment element included. **DE** was very critical with the use in this paragraph of the words "take into account". **CZ** supported the wording of this paragraph. **HU** requested that it should be clarified whether this would cover all categories or only certain categories 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** did not have objections in general concerning this paragraph, but presented a reservation for the time being, since it would like to ascertain for sure that this paragraph does not apply to students.

➲ 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. ➲

➲ 7. Member States shall determine whether applications for authorisations are to be made by the third-country national and/or by the host entity or the host family concerned. ➲

➲ 8. ➲ […] ➲ ➲

↓ 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.~~

↓ 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.~~

⇩ new

➲ Council

➲ *Article 6a*[130]

Approval of the host entity for pupil exchange, remunerated or unremunerated training ➲ or ⇦ voluntary services ➲ […] ⇦

1. Member States may provide that pupils, remunerated and unremunerated trainees ➲ **or** ⇦ volunteers ➲ **[…]** ⇦ have the possibility to be hosted by approved host entities ➲ **[** ⇦ or third party[131], where applicable, ➲ **]** ⇦ for the purposes of admission according to this Directive.[132]

2. The approval of the host entity shall be in accordance with procedures set out in the national law or administrative practice of the Member States.⇦

130 **SI, FI, AT, BE, PL, RO, DE, HU, IT, EE, ES, CZ, PT, SE, SK**: scrutiny reservation. **CION** pointed out that this article should not be the only route for acceptance of third-country nationals.

131 **PL, FR, PT, AT, ES**: scrutiny reservation. They requested clarification of the new term "third party" and eventually a definition.

132 **AT**: scrutiny reservation, but it has to remain a "may" clause. It will not support a "shall" clause.

Article 7

Specific conditions for researchers[133]

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 ➲ […] ➲ research ➲ activity[134] ➲ shall:

   (a) present a hosting agreement[135] 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).[136]

2. Member States may ➲ […] ➲ require ➲ the terms upon which the hosting agreement[137] has been based and concluded ➲ to meet requirements established in national law ➲ .[138]

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133 **DE** found the conditions imposed on researchers overly restrictive. **IT** also pointed out that the provisions in this article seem too restrictive for the category of researchers. According to **IT**, from such provision would remain excluded- or not sufficiently clear- the cases of entry of researchers for scientific collaborations in cases where the financial resources to support the research depend either on the organization of the home country of the researcher, or directly on the researcher itself; and in general all those cases where the financial support of the researcher does not depend on the host organization of the researcher.

134 **AT**: reservation on the use of "research activity", instead of the original "research project".

135 **ES** presented a reservation since it considered that this provision needs also to include "*contracts*" as well as hosting agreements.

136 **FR** considered that this Article 7(1)(b) overlaps with Article 6(f) on sufficient resources and therefore it is redundant. **CION** considered it 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.

137 **ES** suggested to include the possibility for researchers to use also an employment contract.

138 **HU**: scrutiny reservation.

3. ➲ […] ➲[139]

4. ➲ […] ➲

5. ➲ […] ➲

6. ➲ […] ➲

↓ 2005/71/EC (adapted)

~~CHAPTER II~~

~~RESEARCH ORGANISATIONS~~

Article ~~5~~8

Approval ⌦ of research organisations ⌫

↓ 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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139 **DE** asked why this paragraph was deleted to which **PRES** answered that the reason was that such paragraph was misleading.

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. By way of derogation, Member States may decide to exempt public research organisation or other respective research body of the public sector[140], from the approval procedure of 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[141] 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.

➲ In case the ➲ **right of residence of the** ➲ researcher ➲ **[…]** ➲ ➲ **is extended in accordance with** ➲ the provisions of article 24, the responsibility of the research organization shall be limited to the ➲ **[…]** ➲ ➲ **starting date of the residence permit for the purposes of job searching or entrepreneurship** ➲ . ➲

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140 **ES** would also like to include here the "*private sector*".

141 **CZ** suggested 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. […]"*
CZ pointed out that 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.

4. Member States may provide that, within two months of the date of expiry of the hosting agreement concerned, the approved organisation 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 ➲ in respect of which a hosting agreement has been signed pursuant to Article ~~6~~9.

↓ 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 ➲ […] ➲ a research organisation is enlisted or removed from the list ➲ ⌫ .

↓ 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 with a third-country national fraudulently or negligently. Where ➲ […] ➲ 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 ➲ […] ➲ non-renewal ➲ or withdrawal ➲ .

7. 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, concluded in accordance with Article ~~6~~9, as well as the consequences for the residence permits of the researchers concerned.

↓ 2005/71/EC (adapted)
➲ Council

Article ~~6~~9

Hosting agreement[142]

[142] **DE**, **NL, EL, ES, AT, BE:** scrutiny reservation. **ES, DE** wanted as much flexibility for Member States as possible, since even minimum mandatory requirements could harm the recruitment of researchers. **DE** stated that research organisations in its territory do not use hosting agreements and this article could bring some problems for them. **NL** argued, in the same line than **DE**, that the complex admission procedure would have negative effects for the admission of researchers. **AT** preferred to go back to the old version as proposed by **CION**. **BE** was of the opinion that these provisions are a little too flexible. **BE** was concerned about the mobility implications. **PL** stated that the content should be mandatory in the agreement and that the simplifications have gone too far. **IT** was of the opinion that the procedures for the entry of researchers taking part to European research programs- or in cases of resources based on EU funds- are not clear. In those cases **IT** questions the scope and the utility of the hosting agreement, given that the research program/project is covered by EU funds. In case it is agreed that an hosting agreement is always required (also in cases where financial resources are covered by EU funds), **IT** is of the opinion that it could be useful to include additional items in the hosting agreement to cover the cases mentioned above (where the research organization declares in the hosting agreement that either the financial resources are supported by the research organization of the researcher or is covered by EU fund defined with the acronym…. or covered by the researcher itself). **EL** was of the opinion that the hosting agreement should be left, if possible, free of any elements that require a contractual relationship, in the framework of a specific research project, between the researcher and the host organisation. According to **EL** various cases have been reported that third-country researchers (e.g. Brazilians) are funded by national sources to complete part of their research activities (usually in the framework of doctoral studies) in a foreign country. Consequently, the research organisation has not other legal obligation (remuneration, social security, pension coverage, etc.) than to incorporate the researcher to its research activity. Thus, in this cases, the hosting agreement might be transformed into a commitment of the host organisation that will integrate, for a certain period of time, the researcher to its research initiatives. The researcher should have in his/her possession an official document by his/her funding source declaring, officially, that they will cover all of his/her stay for research purposes abroad. If hosting agreements were to be necessarily linked to research projects, then a specific provision should be foreseen for third-country researchers that are accepted on European research organisations on the basis that researchers will cover all their costs during their stay in the EU for research purposes. **CION** said that it prefers the text as it was originally proposed by them. As other delegations mentioned, there should be some elements in the hosting agreements that should be mandatory. According to **CION**, there are already some elements which are obligatory in the current Directive on researchers, so it would not agree to lessen the minimum binding provisions.

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 ⌦ ➲ […] ➲ ⌫.[143]

⇩ new
➲ Council

➲ 1a. ➲ […] ➲ Member States shall require the hosting agreement[144] to contain ➲[145] :

(a) the title ➲ […] ➲ or ➲ purpose[146] 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; ➲[147]

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143 **NL** stated that it would like the reference to Articles 6 and 7 in this paragraph to be deleted since it seems to impose on the research organisation an obligation to monitor whether the conditions laid down in those articles are respected. **NL** was of the opinion that this is not something for the research organisations to do. **ES** considered that the notions of "financial means" and "health insurance" should also be included in the points of this first paragraph.

144 **ES** requested to include the possibility of also using a "*contract*" besides the hosting agreement.

145 **DE, FI** stated that a mere agreement should suffice, not thinking that any requests of titles and further information improves anything. Therefore they would prefer to delete the whole paragraph 1a, or at least to make it a "may" provision.

146 **FR** was on the opinion that the purpose is more important than the title, so the title could be deleted and only mention the purpose.

147 **SE** preferred the text that was originally proposed by the **CION**.

(d) the start and end date ➲ or the estimated duration ⊂ of the research ➲ […] ⊂ ➲ activity ⊂ ;

➲ Member States may also require the hosting agreement to contain: ⊂

➲ […] ⊂➲ (a) ⊂ information on the legal relationship between the research organisation and the researcher;[148]

➲ […] ⊂➲ (b) ⊂ information on the working conditions of the researcher ➲ in accordance with the national law ➲ **or applicable collective agreements** ⊂ or practice[149] of the Member States concerned ⊂ .[150]

➲ **(c) information of the source of the financial means for the completion of the research.** ⊂

🡻 2005/71/EC
➲ Council

2. Research organisations may sign hosting agreements 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;

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148 **NL** was of the opinion that this description is vague in the NL version of the text.

149 **ES**: scrutiny reservation. **CION** expressed a reservation on the inclusion of "or practice".

150 **NL** also thought that this description is vague in the NL version of the text. Therefore, **NL** requested further clarification. **FR** stated that the wording « information on the working conditions of the researcher » lacks of precision. Furthermore, information on the working conditions is available in the working contract or the trainee agreement. **FR** proposes to delete point f) or to 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*".

(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);

↓ 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.~~

↓ 2005/71/EC
➲ Council

3. ➲ […] ➲

4. 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.

5. 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.[151]

↓ 2004/114/EC (adapted)
➲ Council

Article ~~7~~ 10

Specific conditions for students[152]

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 ⌫ ~~have~~ been accepted by a ➲ […] ➲ ➲ higher education institution ➲ to follow a course of study;[153]

(b) ~~(d)~~ provide evidence, if the Member State so requires, that he/she has paid the fees charged by the ➲ […] ➲ ➲ higher education institution ➲ ; ;

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151 **DE, ES** had doubts about the information requirement stipulated in this paragraph. They considered it to impose an extra administrative burden on Member States.

152 **FI**, **AT**: scrutiny reservation. **ES** would like to include a specific reference to "*means of subsistence*" in this article. **PRES** invited **ES** to clarify this in writing. **IT** suggested to add to this article the following paragraph: "*The present article applies also to the students that are conducting a placement activity in connection with the course of study they are enrolled in, as it is considered to be part of the learning activities foreseen by the curriculum.*" **IT** explained that its legislation stipulates that those who attend learning activities provided for by the curriculum (that is to say an experience in the work world foreseen in the study plan and aimed at acquiring the expertise provided for by the course of study) are regarded as students (and not as workers, trainees or other). The present practice in **IT** is to issue them a permit for study.

153 **FR** requested the inclusion of a "*formation continue*" system as the one currently applied in its territory. **FI** was of the opinion that this point should also include courses other than those pertaining to higher education.

~~(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;~~[154]

(c) provide evidence, if the Member State so requires, of sufficient knowledge of the language of the course to be followed by him/her~~.~~. ➲ In case the student cannot prove that he/she possesses this requirement and when Member States foresee it according to its national legislation, the student ➲ **[…]** ➲ ➲ **shall** ➲ benefit from basic language training in the respective Member State". ➲ **The Member States shall require from the student a written undertaking that he/she will follow the basic language training.** ➲ ➲

[154] **CION** clarified that this point was deleted because its content has been introduced in other provisions (Articles 6 and 30) of this proposal. **AT** acknowledged that this content is now in Article 6(1)(f) but criticised that this provision in Article 6(1)(f) is not consistent with other migration instruments, like the Seasonal Workers Directive proposal in which, for instance, the concept of "*not having recourse to social assistance*" is included, while in Article 6(1)(f) is lacking.

➲ (d) if the Member State so requires, provide evidence ➲ **[…]** ➲ that he/she will have sufficient resources to cover his/her study costs. ➲[155]

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).

➲ *Article 10a*

Approval of higher education institutions[156]

1. ➲ **[…]** ➲ ➲ **The Member States may first approve any higher education institution wanting to host a student under the admission procedure laid down in this Directive.** ➲ [157]

2. The approval of the higher education institution 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 higher education institutions shall be made in accordance with those procedures and be based on their statutory tasks.

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155 **AT**: scrutiny reservation. **SE** asked clarification on what "study costs" means and why it is requested for evidence to be provided and welcomed that this provision had become voluntary. **CION** wondered whether this point (d) is not already covered by Article 6. **HU** disagreed and pointed 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. **HU** therefore believed that these should stay in the specific conditions. **NL** stated that the fees in Article 6 are fees paid for application process while here the fees are paid to the education establishment, so **NL** was of the opinion that they are two different categories of fees.

156 **DE, ES, AT, FR, BE**: scrutiny reservation.

157 **CION** stated that this scheme should not be the only way in for students.

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:~~

~~(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

1. ~~Subject to Article 3,~~ ~~a~~ A third-country national who applies to be admitted in a pupil exchange scheme ➲ or educational project[158] ⊂ shall, in addition to the general conditions ~~stipulated~~ ⌦ laid down ⌫ in Article 6:[159]

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158 **AT** said that a definition is needed.

159 **FR** suggested the following changes: "*A third-country national who applies to be admitted in a pupil exchange scheme or a pedagogical project which requires mobility shall […]*"

↓ 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 this paragraph reference may be made by the Member States to the education levels of International Standard Classification of Education (ISCED)** ⊂ ;[160]

(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 a** ⊂ ➲ **[…]** ⊂ exchange scheme ➲ or educational project ⊂ ➲ […] ⊂ ➲ ➲ **[…]** ⊂ ⊂ operated by a ➲ […] ⊂ ➲ host entity ⊂ ➲ […] ⊂ in accordance with ➲ **[…]** ⊂ ➲ **Member State's** ⊂ national legislation or administrative practice;[161]

(d) provide evidence that the ➲ […] ⊂ ➲ host entity ➲ **[** ⊂ , or – as far as provided for by national law - a third party[162] ➲ **]** ⊂ ⊂ 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 ⊂;[163]

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160 **FR** proposed that the age should be expressly stated since this is important for insurance coverage.

161 **ES**: scrutiny reservation. **DE** would also like to introduce the notion of "*reciprocity*". **CION** pointed out on "reciprocity" that in the Member States where this optional provision has been transposed no relevant issues have arisen.

162 **ES**: scrutiny reservation on the reference to "third party".

163 **FR** suggested the following changes: "*provide evidence that the pupil exchange organisation and/or the pedagogical project accepts responsibility for him/her throughout his/her period of presence in the territory of the Member State concerned, in particular as regards subsistence, study, healthcare and return travel costs;*".

(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[164] ➲ 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. ➲ ➲ **In case the pupil cannot prove that he/she possesses this requirement and when Member States foresees it according to its national legislation, the pupil may benefit from basic language training in the respective Member State.** ➲

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.

[164] **FR**: scrutiny reservation.

↓ 2004/114/EC (adapted)
⇨ new
➲ Council

Article ~~10~~12

Specific conditions for ~~unremunerated~~ ➲ unremunerated and remunerated ➲ trainees[165]

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:

[165] **LV** could support the admission of trainees only under licensed education programmes and providing they are students or pupils. **RO** objected 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. **PL, IT, LT** and **PT** also pointed out that it is very difficult to differentiate remunerated trainees from employees. **PL** stated that it does not agree with remunerated trainees not being subject to the labour market test. **PT** pointed out that in its national legislation there is a difference between "traineeship" which is paid and "vocational training" which is not paid. **BE** proposed that accommodation and assumption of responsibility by the organisation should be also 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 ➲ .[166] ➲ The agreement shall describe the training programme, ➲ **[…]** ➲ 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. ➲[167]

166 **AT**: scrutiny reservation.
DE:
- requested clarification on the meaning of the wording: "[…] in accordance with its national legislation or administrative practice […]".
- wanted to know whether a labour market test could be done under this wording.
- also asked to know what it is meant by "relevant authority".
- wanted clarification on whether vocational training would be included as a form of traineeship, in which case, **DE** would object.

167 **AT**: scrutiny reservation. **ES** presented a reservation since it does not think this last part should be included.

⇩ 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** .[168]

➲ (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[169]; ➲

[168] **ES**: scrutiny reservation. **DE** was critical of this provision, specially given the uncertainty as to the possibility of performing a labour market test. **DE** explained that it does not currently admit trainees with low-level qualifications. **LT** supported **DE**'s comments about the possibility of this article being interpreted in a way that unskilled workers will have access to the labour market. **AT** stated that 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" according to this proposal. **AT** thinks this is particularly true in cases where the underlying agreement is not an education agreement, but merely a training programme which may include any practical activity.

[169] **AT, DE, BE, PT, ES, SE, IT, FR**: scrutiny reservation. **SE** asked more information about what "training costs" entails. **PRES** answered that the wording "training costs" was in he original **CION** proposal in Article 6, and it just has been moved to Article 12. **AT** requested clarification about whether "training costs" have to be considered in addition to adequate means, to which **PRES** answered that "training costs" are to be understood as in addition to adequate means. **CION** explained that "training costs" could encompass costs of materials like for example the books.

↓ 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;~~

↓ 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 ➲ .[170]

[170] **AT** stated that it is not clear who decides if the condition has been fulfilled. **PRES** answered that it is the Member State that decides. **AT** also pointed out that DE version should use a different term when referring to trainees to avoid further confusion. **DE** criticised this point since it is not clear whether the third-country national is required to have some knowledge already of the language.

➲ (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. ➲[171]

⇩ new
➲ Council

➲ […] ➲

2. ➲ […] ➲ ➲ Member States may require the training programmes referred to in paragraph 1 to be ➲ **[…]** ➲ ➲ **certified** ➲ in accordance with national law. ➲ [172]

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171 **AT**: scrutiny reservation.

172 **DE, FI, SI, AT, PT, NL** found that this provision is insufficient to prevent abuses. All of them were also of the opinion that a labour market test should be possible under this provision. **CION** stated that this paragraph opens too widely the possibility for Member States to have parallel schemes, so **CION** did not agree with this. **SE, DE** preferred the earlier version of this paragraph.

↓ 2004/114/EC (adapted)
➲ Council

Article ~~11~~13

Specific conditions for volunteers[173]

~~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:[174]

~~(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 nor above the maximum age[175] set by the Member State concerned ➲ **if required by national law** ➲ ; ➲

[173] **AT, CY** specified that if the mandatory extension to cover volunteers is provided for, the Member States must be given at least the opportunity to set a quota. **NL** stated that there is a big risk of abuse, since volunteers could be used to fill employees' jobs. **DE** already has national legislation dealing in detail with this category and it does not see the need to make this category mandatory at EU level.

[174] **IT** suggested alternative wordings for points (b) and (c). The rationale for this is to be found in the Italian law on voluntary work no. 266 of 1991(art. 2 volunteers' activity). For the purpose of this law, volunteers' activity is to be intended as the one performed by the individual, spontaneously and free of charge, through the organization he/she belongs to, on a non-profit basis, including indirect profits, exclusively for solidarity reasons. The volunteers' activity cannot be paid, not even by the beneficiary. Only the expenses incurred by the volunteer for performing his/her activity can be reimbursed by the organization, within the limits established by the organizations themselves in advance. The capacity as volunteer is not compatible with any other kind of subordinate or self-employment activity and with any other business relationship with the organization he/she belongs to. The above-mentioned Law on voluntary work n. 266 of 1991 also deals with the obligation for volunteer's organisations to insure their own members and the application of simplified insurance mechanisms.

[175] **ES** expressed its reservation against the reference "the maximum age".

🡻 2004/114/EC ➲ Council

➲ […] ⊂ ~~(b)~~ ➲ (b) ⊂ ➲ **[…]** ⊂ ➲ **provide** ⊂ an agreement with the ➲ […] ⊂ ➲ host entity ⊂ ➲ ➲ **[** ⊂ or other institution[176] ➲ **]** ⊂ ⊂ 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 other institution ➲ **]** ⊂ to cover his/her ⊂ accommodation ➲ […] ⊂ ➲ costs ⊂ and ➲ a ➲ **[…]** ⊂ ➲ **minimum** ⊂ sum of money[177] 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;[178]

176 **NL, ES, AT**: scrutiny reservation. It is a broad and vague concept.

177 **FR, AT**: scrutiny reservation. Broad and vague concept. AT suggested to maybe clarify in a recital.

178 **DE**: scrutiny reservation. **ES** stated a reservation since it does not think this should be mandatory. **IT** proposed an alternative wording for this point: *"show a contract signed with the social utility and non-profit organisation which promotes the chosen voluntary action and/or active citizenship scheme in the concerned Member State, that specifies the tasks and actions to be performed by the volunteer, the placement conditions for carrying out such tasks and actions, his/her schedule, the financial resources allotted for the reimbursement of expenses -effectively incurred- for the trip, meals and accommodation during the whole stay as well as, if provided for in the volunteer's scheme, the training he/she will receive as a support for performing his/her tasks".* **SE** was of the opinion that this paragraph should have the same wording than in Article 12(1)(e).

🡻 2004/114/EC ➲ Council

➲ […] ⊂ ~~(e)~~ ➲ (c) ⊂ provide evidence that the ➲ […] ⊂ ➲ host entity ➲ **[** ⊂ or other institution ➲ **]** ⊂ ⊂ responsible for the voluntary service scheme in which he/she is participating has subscribed to a third-party insurance policy ➲ accepting full 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;~~[179]

[179] **ES**: scrutiny reservation. **PL, RO, IT, AT, CY** did not agree with the last part of this point being deleted and wanted it to be reinserted. The risks of civil liability are low, and therefore it is reasonable that the insurance covers more (subsistence, healthcare and return travel costs). **AT** added that the organisation of the volunteer programme does not only have liability, but it also has to meet other responsibilities regarding compliance with the national legislation of the Member States, in particular regarding the subsistence, healthcare and return travel costs of the third-country national. **IT** proposed an alternative wording for this point: *"prove that the organisation promoting the volunteers' scheme has taken out a public liability insurance with regard to the individuals entering as volunteers"*.

↓ 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 ➲ **[…]** ⊂ ➲ **knowledge** ⊂ to the language, history ➲ **[…]** ⊂ ➲ **,** ⊂ political and social structures of that Member State.[180]

⇩ (new) ➲ Council

Article 14

Specific conditions for au-pairs[181]

➲ 1. ⊂ A third-country national who applies to be admitted for the purpose of working as an au-pair shall, in addition to the general conditions laid down in Article 6:

180 **FR** sought more information from **CION** on whether the basic introduction to the language, history and political and social structures of the Member State would take place prior to or during the volunteering period. **FR** also inquired on who would bear the costs of such introduction. **CION** answered that this is up to Member States to regulate.

181 **PL**: linguist reservation concerning the term "au-pairs". **AT** expressed a 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** also pointed out that Member States need to have the opportunity to refuse to grant residence where any suggestion exists that the purpose of stay actually pursues a different aim than the one foreseen in this proposal. **FI** stated that it considers au-pairs as employees and therefore this should be better reflected in this article.

➲ […] ⊂ ➲ (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[182] 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) ⊂ ➲ **[…]** ⊂ ➲ **fullfil at least** ⊂ ➲ ➲ **[…]** ⊂ the age[183] ➲ **[…]** ⊂ ➲ **of majority set by the law of the Member State conerned** ⊂ ; ⊂[184]

➲ […] ⊂➲ (c) ⊂ provide evidence that the host family ➲ […] ⊂ ➲ ➲ **[** ⊂ or – as far as provided for by national law - a third party[185] ➲ **]** ⊂ ⊂ 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;[186]

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182 **SE** did not agree with the use of the term "pocket money" and requested it to be replaced for another concept, for example "*allowance*" or "*remuneration*".

183 **FR, HU, BE** wanted to introduce an age range. Member States then can decide but at least there would be some idea of the range in which Member States are working.

184 **FI** pointed out that it has not a requirement about age in its legislation. **SE** requested to delete the reference to "national law" in this point. **CION** stated that it is in favour of a minimum harmonisation of age in the form of a "bracket of ages" while, for the sake of flexibility, still allowing for exceptions.

185 **PL** showed doubts about what the wording "a third party" encompasses.

186 **CZ** stated that the costs of health care should be borne by the au-pair and that this should be explicitly stipulated in the text.

➲ 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[187], 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.[188]

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 [189] hours per week. The third-country national shall have at least one day per week free of au-pair duties.

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187 **IT** found this mention to "regulated profession" problematic, since regulated professions correspond to specific arrangements. **PRES** explained that in at least one Member State, au-pairs are considered as a regulated profession and this is the reason for this inclusion.

188 **ES**: scrutiny reservation. **SE, FI, PT, BE** stated that the issues of nationality should be deleted since it could give rise to some legal questions. **DE** stated that even if it could understand the concerns expressed by other delegation, it is in favour of keeping this provision. **HU** was against the concepts of "nationality" and "family link". It asked more information about what "family link" means exactly. **CION** agreed with **HU** on the issue of "nationality" and "family link".

189 **DE, LU** preferred *30* hours per week. **IT** preferred to leave to Member States to define the number of hours, and alternatively **IT** would support *30* hours per week. **FR, ES** also suggested to leave it to the national law. **BE**, on the other hand, stated that it does not support 30 hours per week as suggested by the other delegations.

5. Member States ➲ […] ➲ shall [190] ➲ set a minimum ➲ […] ➲ sum of money as ➲ pocket money to be paid to the third-country national according to the paragraph 1 (a). ➲

➲ 6. Member States may determine a maximum age limit for the admission of third country nationals, as au pair, in accordance with the provisions of this Directive. ➲

🡻 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.~~

~~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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[190] **DE**: reservation on the change from "may" to "shall".

⇩ new

➲ Council

CHAPTER III

AUTHORISATIONS AND DURATION OF RESIDENCE[191]

Article 15

Authorisations[192]

➲ 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"[193], "remunerated trainee", "unremunerated trainee" or "au pair". ➲

191 **ES**: scrutiny reservation on the whole chapter.

192 Concerning the inclusion of codes (numerical, acronyms):
- In favour: **CZ, PT**
- Against: **SE, DE, NL, AT, IT, CION**
- Scrutiny reservation: **PL**

NL, AT, DE: scrutiny reservation on the whole article.
DE, supported by **AT**, did not agree with the new wording in this provision and preferred the original wording. **PL, LV** agreed with and supported these changes. According to **PL**, previous wording seemed to introduce a new residence permit when it is not the case. **CION** answered that its proposal does not refer to a new type of permit and that in its opinion the original proposed text was already clear that the permit was not a new one. **FR** advocated for the extension of the target audiences of this proposal, in order to regularize the situation of young people working in the context or a « *youth exchange programs for non-academic accomplishments*» and of « *youth workers for training visits and networking* ».

193 **HU** did not agree with the mention of "school pupils" since it would like to extend the scope to other types of pupils. **PRES** asked **HU** to produce its request in writing.

➲ 2. When the authorisation is in form of a long-stay visa[194], 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. ➲

➲ […] ➲

🡻 2005/71/EC (adapted)
⇨ new
➲ Council

Article ~~8~~ 16

Duration of ➲ […] ➲ ➲ authorisation ➲ ~~permit~~ [195]

➲ 1. Member States shall issue 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. ➲

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194 **HU** wanted to make sure that this is not about the entrance visa but a long-term visa. **HU** also stated that it would be useful to have a reference in this article to Article 24(3) of this proposal.

195 **IT, AT**: scrutiny reservation on the whole article. **BE** stated that the definition of and references to authorisation need to be improved.

➲ […] ⊂➲ 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, and ➲ **the authorisation** ⊂ shall be renewed, ⊂ ➲ […] ⊂ if the conditions laid down in Articles 6, ~~and~~ 7 ⌦ and 9 ⌫ are still met. ➲ […] ⊂[196]

⇩ new
➲ Council

➲ […] ⊂➲ 3. The period of validity of ⊂ ➲ […] ⊂ an authorisation for students ➲ […] ⊂ ➲ shall be ⊂ of at least one year[197] ➲ 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 and 10 [198] are still met ➲ **and the grounds of Article 19 do not apply** ⊂ .[199]

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196 **AT, ES**: scrutiny reservation. **RO** put this paragraph in relation with Article 4(2) of this proposal and wondered whether the new wording would respect the national rules of Member States that stipulate the Member State can give an authorisation for the duration of the research activity. **PRES** clarified to the questions from some delegations that the changes in paragraphs 2 and 3 are structural and not intended to change the substance and that as long as the conditions are met, the authorisation can be renewed. **IT** wanted this paragraph to 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.

197 **CZ** suggested to make reference to "*academic year*" or "*semester*" instead of "one year".

198 **AT** stated that Article 19 should also be included.

199 **FR** suggested that if the propositions presented under articles 3 and 11 are to be taken into account, this article would also have to be coherent with the addition of two new target audiences :
"*Member States shall issue an authorisation for the duration of the exchange program for third country national involved in a non-academic project operated by a youth structure recognised for that purpose by the Member State, and for « youth workers for training visits and networking »*".

➲ 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 ➲[200]

➲ 4. By way of derogation from paragraphs (2) and (3), researchers and students who are covered by EU, bilateral or multilateral programmes that comprise mobility measures, shall be issued an authorisation[201] covering the whole duration of their stay[202] in the Member State participating in the programme. ➲

200 **ES, DE, BE**: scrutiny reservation.

201 **PL** requested clarification about whether this paragraph indicates that the authorisation is going to be issued by the first Member State or by the Member State in which the third-country national is going to stay most of the time. **PRES** answered that if necessary, this paragraph could be revised in the sense that it is stipulated that the first Member State issues the authorisation.

202 **AT, SE, ES, FI**: scrutiny reservation. **DE, AT, SE, ES, FI** were of the opinion that the length of the stay should be more flexible. 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** advocated for the introduction of a time limit in this paragraph. According to them there should be a maximum time duration placed in this paragraph. **IT**, on the other hand, informed that it recently adopted a piece of legislation by which the duration of the authorisation is tied to the duration of the stay. **IT** agrees therefore to extend this at the Union level. **NL** also welcomed this paragraph.

➲ 5. The period of validity of an authorisation for school pupils 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.** ⊂➲ **[…]** ⊂ ➲ **This** ⊂ authorisation may be renewed, in special circumstances, if the conditions laid down in Articles 6 and 11 are still met ➲ **and the grounds of Article 19 do not apply** ⊂ . ⊂[203]

➲ […] ⊂ ➲ 6.⊂ ➲ […] ⊂ ➲ The period of validity of an authorisation for ⊂ au pairs ➲ […] ⊂ ➲ shall be of ⊂ a maximum period of one year[204] ➲ **[…]** ⊂ ⊂ ➲ **and may be renewed if the conditions laid down in Articles 6 and 14 are still met.** ⊂

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203 **NL** stated that one year is more than adequate, did not agree with the possibility of renewal. **FR** wanted the length of the residence permit to match the period of study. **SE, BE, DE, SI** preferred the text in the existing Directive and the originally proposed **CION** text ("*Member States shall issue an authorisation for a maximum period of one year*"). According to **SE**, there is no need to grant longer permits than one year, given that it concerns exchanges of studies. In addition, Member States are according to Article 4 allowed to adopt or maintain more favourable provisions. In the alternative, **SE** could consider stating that a permit shall be granted for a maximum of one year while allowing extensions in special circumstances. **AT** wanted to point out the link of this paragraph with Article 19 of this proposal.

204 **ES** expressed its reservation on the duration of residence for au-pairs since it does not agree with the inclusion of this category in the proposal. **FR** wanted the length of the residence permit to match the period of study. **DE** thought that one year is too much since au-pairs are allowed to stay significantly less in **DE**. **AT** supported **DE**. **LU** liked the wording suggested by **PRES** since it is that way already in their legislation.

🡻 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 ⊂ maximum of one year. In exceptional cases, it may be renewed, once ➲ **[…]** ⊂ ⇨ ➲ […] ⊂ ⇦ and exclusively for ➲ **[…]** ⊂ ➲ **the time period** ⊂ ➲ **[…]** ⊂ needed to ➲ […] ⊂ ➲ complete the traineeship, insofar as this is provided for in national law ⊂ ➲ […] ⊂ .[205]

➲ […] ⊂ ➲ 8. ⊂ ➲ The period of validity of ⊂ an ⇨ authorisation ⇦ ~~residence permit~~ ➲ […] ⊂ ➲ for ⊂ volunteers shall be ➲ […] ⊂ ➲ of ⊂ ➲ **a maximum period of** ⊂ one year ➲ ➲ **[…]** ⊂ ⊂ . ➲ […] ⊂ ➲ ➲ **[…]** ⊂ ⊂ 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 legislation** ⊂ .[206]

➲ 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. ⊂[207]

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205 **DE, AT, ES**: scrutiny reservation. **PL, FR** wanted the authorisation to cover the whole duration of the traineeship. **AT** wanted to point out the link of this paragraph with Article 19 of this proposal.

206 **DE, AT, ES**: scrutiny reservation. **SK** preferred "*shall*" instead of "may". **AT** wanted to point out the link of this paragraph with Article 19 of this proposal.

207 **ES, PL, HU**: scrutiny reservation. **AT** welcomed the insertion of this paragraph.

➲ […] ➲ 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 ➲ 7, 9, 10, ➲ 11, ➲ 12, 13 ➲ or 14 ➲ are still met ➲ . ➲ […] ➲[208]

[208] **CZ**: scrutiny reservation, the long-stay visa should remain a matter for the Member States to regulate. **HU** pointed out that this paragraph refers to long-stay visas and not to entry visas, which are linked to residence permits, and therefore asked whether this apply to non-Schengen countries that have competence for visas. **BE** would like to obtain some clarifications from **PRES** concerning this paragraph: is it still possible to deliver a long-stay visa for a period inferior to a year (for example 4 months) and following this period deliver a residence permit? According to **BE**, the expression "during the first year" could imply that only long-stay visas of one year could be delivered. **CION** would like to keep the text as proposed or at least would like to have a text in which people do not need to submit again an application. **CION** would like to distinguish between an application to enter the territory and an application to renew the authorisation. **CION** made a reservation about the deletion of the last part of the paragraph.

Article 17

Additional information[209]

➲ 1. ⊂ Member States may ➲ **[…]** ⊂ ➲ **determine that** ⊂ additional information related to the ➲ **[…]** ⊂ ➲ **residence** ⊂ ➲ and, in cases covered by Article 23, the economic activities ⊂ of the third-country national, such as the full list of Member States that the researcher or student intends to go to ➲ or a specific EU, bilateral or multilateral programme that comprises mobility measures ⊂ , ➲ **shall be indicated either** ⊂ in paper format, ➲ […] ⊂ or stored ➲ **[…]** ⊂ in electronic format ➲ **[…]** ⊂ ➲ **, in accordance with** ⊂ Article 4 of Regulation (EC) No 1030/2002 and ➲ **[…]** ⊂ point (a) 16 of the Annex thereto.[210]

➲ 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. ⊂

209 **AT, DE, HU, ES**: scrutiny reservation. AT stated that it would like a reference to recital 23 in this article.

210 **FR** was of the opinion that additional information should be included in the visa or permit and that this should be explicitly stated in this article. Concerning the list of Member States mentioned in this article, **FR** also pointed out that for stays below 3 months such a list is not necessary.

↓ 2004/114/EC (adapted)

CHAPTER IV[211]

~~RESIDENCE PERMITS~~ ⌦ GROUNDS 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.~~

211 **ES**: scrutiny reservation on the whole chapter.

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.

⇩ new

➲ Council

Article 18

Grounds for ➲ refusal ⊂ ➲ […] ⊂ [212]

1. Member States shall ➲ refuse ⊂ ➲ […] ⊂ an application in the following cases[213]:

(a) where the general conditions laid down in Article 6 ➲ , 6a or ⊂ ➲ […] ⊂ the relevant specific conditions laid down in Articles 7, ➲ […] ⊂ 10 to ➲ 14 or ⊂ 16 are not met;[214]

➲ (aa) Where ➲ **, if applicable,** ⊂ the volumes of admission as defined in article 5a are not met; ⊂[215]

212 **IT, ES**: scrutiny reservation. **SE**: linguistic reservation. Several delegations requested the addition of new grounds in this article:
- **DE, NL, AT** requested that "*willingness of the applicant to return*" be included as new grounds. **CION** did not support the inclusion of this new ground for refusal.
- **DE** suggested a new optional ground for refusal similar to the one in Article 19(1a)(d) of this proposal, in case that there are reasonable doubts from the beginning that the applicant would be able to complete his or her studies.
- **IT** also proposed the inclusion of a new ground for refusal: *" if elements appear that are deemed to be justified and well-grounded, and also if clear evidence of incoherence and circumvention of specific immigration rules also emerges"*. The aim is to fight against forms of deception and circumvention of specific migratory regulations (i.e. employment and reunification) and to repress potential illegal and/or organized migratory phenomena.

213 **EE** stated that Member States should have more flexibility and should not be obliged to issue a permit, even when all the conditions are met.

214 **AT** said that Article 9 should be included due to the need for a hosting agreement.

215 **DE, ES**: scrutiny reservation. **HU** pointed out that Article 5a uses a "may" clause while here it is located in a "shall" clause, so **HU** suggested to move this to paragraph 2 of this article which is also a "may" clause. **CION** agreed with **HU**.

(b) where the documents presented have been fraudulently acquired, falsified or tampered with;

(c) where the host entity ➲ […] ⊂ was established ➲ or ➲ **[…]** ⊂ ➲ **operates** ⊂ for the main ⊂ ➲ […] ⊂ purpose of facilitating entry;[216]

(d) ➲ where ➲ **[…]** ⊂ ➲ **there is a reasonable cause** ⊂ 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; ⊂ ➲ […] ⊂

➲ (e) where, if appropriate[217], the host entity or the institution has been sanctioned in conformity with national law for undeclared work and/or illegal employment ➲ **. The Member States shall determine the specific circumstances under which this provision will be aqpplied** ⊂ ; ⊂[218]

➲ (f) where, if appropriate, a member of the host family ➲ **[** ⊂ or third party ➲ **]** ⊂ , has been sanctioned in conformity with national law for breach of the conditions and/or objectives of au-pair placements ➲ **. The Member States shall determine the specific circumstances under which this provision will be aqpplied** ⊂ . ⊂

➲ […] ⊂

2. Member States may ➲ refuse ⊂ ➲ […] ⊂ an application ➲ in the following cases: ⊂ [219]

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216 **DE**: scrutiny reservation on this point. **RO** suggested to merge points (b) and (c).

217 **NL, SE, BE** pointed out that this is a "shall" provision, but the use of "if appropriate" somehow undermine the value of the mandatory provision. **CION** supported the inclusion of "if appropriate" since it reflects the discussions carried out in the ICTs proposal.

218 **AT** suggested to include also the possibility when the family members had been sanctioned.

219 **ES, AT**: scrutiny reservation on the whole paragraph 2.

➲ (a) where the host entity ➲ […] ➲ appears to have deliberately eliminated the positions ➲ **[…]** ➲ ➲ **in order to** ➲ fill ➲ **[…]** ➲ ➲ **them by submitting a** ➲ new application ➲ **under the provisions of the present Directive** ➲ within the 12 months immediately preceding the date of the application;[220]

(b) ➲ […] ➲ ➲ where the host entity ➲ **[** ➲ or institution, ➲ **]** ➲ has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions or if the terms and conditions of employment according to applicable laws, collective agreements or practices in the Member State where the host entity ➲ **[** ➲ or the institution ➲ **]** ➲ is established are not met; ➲[221]

(c) where the business of the host entity ➲ **[…]** ➲ is being or has been wound up under national insolvency laws or, where relevant, if no economic activity is taking place or the host entity does not have adequate financial resources to grant satisfying conditions of stay or residence to the third-country national;

(d) ➲ **[…]** ➲

(e) ➲ **[…]** ➲

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220 **ES** expressed a reservation on this point. **ES** is concerned about the relation between specific groups of this proposal and the notion of "worker". **ES** is of the opinion that this proposal should not determine the conditions of entry and residence of workers.

221 **DE** suggested to include also the case where there is "*infringement against labour rights*".

↓ 2004/114/EC (adapted)
⇨ new
➲ Council

Article ~~16~~ 19

⇨ Grounds for ⇦ ~~W~~withdrawal ~~or non-renewal~~ ➲ or non-renewal ➲ ~~of residence permits~~ ⇨ of an authorisation ⇦ [222]

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 in the following cases : ⇦ [223]

[222] **PL, FR, IT, SE, DE**: scrutiny reservation. **AT** stated that a reference to volumes of admission is lacking in this article.

[223] **NL, HU, AT** were against taking out the deleted part in this paragraph, and therefore they would like to have it back.

⇩ 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, 10 to 14 or 16 were not met or are no longer met; ➲[224]

➲ (b) ➲ where authorisations ➲ […] ➲ ➲ or ➲ documents presented have been fraudulently acquired, falsified or tampered with;

➲ […] ➲➲ (c) ➲ where the third-country national ➲ **[…]** ➲ ➲ **resides** ➲ ➲ or ➲ **[…]** ➲ ➲ **carries** ➲ out an activity[225] ➲ for purposes other than those for which he/she was authorised to reside;

➲ […] ➲➲ (d) ➲ where the host entity ➲ ➲ **[…]** ➲ ➲ was established ➲ or ➲ **[…]** ➲ ➲ **operates** ➲ ➲ for the ➲ main ➲ ➲ […] ➲ purpose of facilitating entry;

(d) ➲ […] ➲

(e) ➲ […] ➲

(f) ➲ […] ➲

[224] **AT** said that Article 9 should be included due to the need for a hosting agreement. AT also requested to include the "threat to public security".

[225] **CION** questioned what the added-value of the addition of this wording is.

➲ 1a. Member States may withdraw or refuse to renew an authorisation in the following cases:[226]

(a) if the host entity ➲ **or a member of the host family** ➲ **[** or institution, ➲ **]** ➲ **[…]** has been sanctioned in conformity with national law for undeclared work and/or illegal employment or ➲ **[…]** ➲ **has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions or if the terms and conditions of employment according to applicable laws, collective agreements or practices in the Member State where the host entity or the institution is established are not met** ;

(b) where the business of the host entity is being or has been wound up under national insolvency laws or, where relevant, if no economic activity is taking place or the host entity does not have adequate financial resources to grant satisfying conditions of stay or residence to the third-country national ;

(c) where a member of the host family ➲ **[** or third party ➲ **]** ➲ **[…]** has been sanctioned in conformity with national law for breach of the conditions and/or objectives of au-pair placements;[227]

(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 legislation or administrative practice;[228]

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226 **PL** suggested to add a new ground, where *the third-country national does not provide proof that is looking for a job or have a good chance to find one*.

227 **DE**: scrutiny reservation.

228 **DE, BG**: scrutiny reservation.

(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 fullfil the condition set out by the written undertaking in accordance with Article 10.1(c). ⊂

🡻 2004/114/EC
⇨ new
➲ Council

➲ 2. In case of withdrawal, when assessing the progress[229] in the relevant studies, as referred to in paragraph 1a(d), a Member State ➲ […] ⊂ ➲ may consult with[230] ⊂ 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.[231]

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229 According to **CION** the wording "assessing the progress" is too vague. **PL** requested that the "*lack of progress*" be also considered as a ground for non-renewal.

230 **CION** preferred the previous wording "*shall consult with*".

231 **CZ** stated that it would like to make a modification to this paragraph as follows: "[…] *possible threat to public policy, public security or public health*".

↓ 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 that that for which he was authorised to reside.~~

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

⇩ new

➲ Council

Article 20

Grounds for non-renewal of an authorisation

➲ […] ➲

↓ 2005/71/EC (adapted)

CHAPTER V

~~RESEARCHERS'~~ RIGHTS

Article ~~12~~ 21

Equal treatment[232]

232 **DE, AT, BG, FR, CZ, BE, HU, IT, FI, SI, PT, MT, EL, SK, PL, SE**: scrutiny reservation. **ES**: reservation. **CZ** argued against the inclusion in this proposal 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** stated that full equal treatment seems to be exaggerated in view of the temporary nature of the activities. **CION** answered that the rights stemming from this article are relatively limited and therefore they would not affect significantly the social security systems of the Member States. **BG** stated that even if it has a positive stance towards this proposal as a whole, it does not agree in particular with this provision on equal treatment. **PL** stated that this paragraph should be drafted more clearly. **HU** requested PRES to produce a table that will illustrate the benefits given by the application of equal treatment.

⇩ 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 by virtue of the national law of the Member State concerned, and students shall[233] enjoy equal treatment as provided for by Directive 2011/98/EU. ➲[234]

233 **AT** preferred a "may" here.

234 **DE, FI, AT, FR, SI, SK, PL, IT**: scrutiny reservation. **ES** presented a reservation on the drafting of this paragraph since it considers that it deals with employment relationships. **DE, FI, AT, ES, IT** requested this paragraph to be brought in line with the Single Permit Directive. **SK** pointed out that this article refers to "equal treatment" while recital 36 refers to "fair treatment". **CION** stated that this proposal is different from the proposals on seasonal workers and intra-corporate transferees and that therefore it cannot simply be copied here from the Single Permit Directive as has been done with the other two proposals. **CION** deemed that this proposal is more complex due to the different categories included and that therefore here it is needed a different wording than the one in the Single Permit Directive. **CZ** stated that it does not agree with the extensive approach to equal treatment on social security. This equal treatment should only be for researchers.

➲ […] ⊂➲ 2. ⊂ By way of derogation from Article 12(2)(b) of Directive 2011/98/EU, ➲ […] ⊂ researchers shall[235] 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 ➲ […] ⊂ ➲ and without prejudice of ➲ **[…]** ⊂ bilateral agreements. Member states may decide to exclude researches[236] residing in a Member State for a period less than six months from the right to family benefits. In the event of mobility between Member States Council Regulation (EU) No 1231/2010 shall apply accordingly. ⊂ [237]

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235 **AT** preferred a "may" here.

236 **CION** did not agree with this exclusion concerning researchers since it would mean a step backwards for this proposal.

237 **AT, DE, IT, FI, ES**: scrutiny reservation. **DE, AT, HU, FI, PL** found the relationship of this paragraph with the Single Permit Directive unclear. **BG** stated that the procedure applicable to researchers should be similar to that provided for in the Blue Card Directive. **IT, MT, LV, AT, DE, LT** were against the inclusion of family benefits in this provision on equal treatment. **DE** pointed out that equal treatment, including family benefits, applies to researchers residing in the territory over 6 months, according to the Single Permit Directive, but not for residence under 6 months. **IT** also mentioned the problem of the social security payments for researcher's family. **CION** wanted to precise that it created in its proposal an exception from the Single Permit Directive, but only to the extent to keep the same level of rights for researchers as it is currently stipulated in the Researchers Directive in force.

➲ […] ➲➲ 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. [238]

➲ 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. ➲[239]

238 **DE, AT, CZ**: scrutiny reservation. **ES**: reservation since the wording of the paragraph is confusing. **CION** also had a reservation on the additions that have been made to the exceptions at the end of the paragraph. **NL, AT** proposed the deletion of this paragraph since it is going too far. **SI** introduced scrutiny reservation on "access to goods and services and the supply of goods and services made available to the public" and asked for clarification of the term "available to the public". **SI** also entered a linguistic reservation to this whole paragraph. **DE** suggested the exclusion of study and vocational training grants from the scope of this paragraph. **LV** also proposed the exclusion of employment services. Furthermore, **BE** proposed the exclusion of disability benefits. **FR** requested clarification on the distinction between housing and student accommodation, since **FR** is of the opinion that accommodation should be permitted for students.

239 **CION**: reservation.

↓ 2005/71/EC (adapted)

Article ~~11~~ 22

Teaching ⌦ by researchers ⌫

~~1.~~ Researchers admitted under this Directive may teach in accordance with national legislation.~~2.~~ Member States may set a maximum number of hours or of days for the activity of teaching.

↓ 2004/114/EC (adapted)
⇨ new
➲ Council

~~**CHAPTER IV**~~

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

Article ~~17~~ 23

Economic activities by students[240]

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[241]. The situation of the labour market in the host Member State may be taken into account.[242]

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

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240 **AT, FR, CZ**: scrutiny reservation. **DE, SE, LU, FI**: support this provision. **PL** criticised that in this article is still not clear whether the right to access to employment is available to researchers and students that are using the right to mobility, and the same applies to their families.

241 **CY** requested clarification concerning the wording "students […] may be entitled to exercise self-employed economic activity". **CY** asked whether this means that students will be able to work, additionally to the 15 hours weekly, in any self-employment activity without the prior permit of the migration authorities?

242 **EL** considered that the Member States should check the situation of the national labour market, as a mandatory clause, having the right no to, as an optional derogation.

~~2~~3. 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~~ ⇨ ➲ […] ➲ ➲ [15] ➲ ⇦[243] hours per week, or the equivalent in days or months per year.

~~3. Access to economic activities for the first year of residence may be restricted by the host Member State.~~[244]

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 ➲ […] ➲ .

➲ 5. In case of mobility, the provisions of this article shall apply accordingly. ➲[245]

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243 **ES**: reservation. **DE** supported **PRES** change to 15 hours. **NL, RO, CZ, SK, AT, EL, MT, BG, ES** preferred 10 hours. This is a minimum so Member States still enjoy a degree of flexibility. **MT** could also agree with 15 hours. **EL, CZ, SK** could agree, as an alternative to a minimum figure, on a general provision dealing with the right of the Member States to decide the exact figure. **IT** prefers a maximum limit rather than a minimum limit, but could also agree with 15 hours. **FR** finds it more relevant to reason in terms of a working hours ceiling per year, instead of referring to a minimum threshold. In **FR**, a student is not allowed to work more than the equivalent of 60% of a full-time job, that is to say 964 hours per year. **FR** thinks that this system gives more flexibility. **SE** agreed with **FR** that flexibility is needed. In **SE**, students can work without any limitation, therefore **SE** would prefer not to put any limit at all in the text and let Member States to decide themselves. **CION** insisted in maintaining the minimum of 20 hours per week, and stressed the fact that it can also be calculated in days and months per year.

244 **AT** is against the deletion of this paragraph. **LU**: scrutiny reservation.

245 **AT**: scrutiny reservation.

⇩ new

➲ Council

Article 24

➲ Extension of the right of residence for the purposes of ⊂ job-searching ➲ […] ⊂ ➲ or ⊂ entrepreneurship for researchers and students[246]

[246] **BE, FR, IT, SI, DE, LU, ES, EL, CZ**: scrutiny reservation. **ES**: linguistic reservation on the concept of launching a business. **HU** asked how it is going to work in practice the fact of checking out whether somebody is doing the necessary to set up a business. **EL** Parliament's views are against this provision being mandatory. **EL** expressed strong concerns regarding the right of third-country nationals to have an automatic right to seek job or set up a business. **EL** was of the opinion that 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** opposed to the proposed distinction between "job seeking" and "access to the labour market". **FR** would like this article to be applicable also to other categories, not just students and researchers. It would present something along these lines in writing. **FI, PL, EE, PT, SE, NL**: support.
Some delegations put forward their wishes to insert additional conditions:
- **SK**: for the setting up of a business, students/researchers should apply before their studies/research are finished in order to avoid to be a burden for the social security of the Member State.
- **PL, SI**: there should be a express reference to "*sufficient means of subsistence*".

➲ 1. ⊂ After ➲ […] ⊂ ➲ the completion ⊂ of research or studies[247] in the Member State, ➲ […] ⊂ third-country nationals shall[248] ➲ […] ⊂ ➲ have the right to apply[249] ⊂ to stay on the territory of the Member State for a period of ➲ at least [6] [250]⊂ ➲ […] ⊂ 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[251], followed by a positive evaluation of the host entity in case of researchers or by evidence of having obtained a higher education qualification in case of students. ⊂

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 change of being engaged ⊂ or are in the process of setting up a business.

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247 **FR** preferred to make reference to "*holder of a qualification*" or "*holder of a diploma*".

248 **SI, IT, AT** preferred a "*may*" provision. **CION** preferred the originally proposed "*shall be entitled to stay*". This should be the case where the conditions are fulfilled. According to **CION**, having only the "right to apply" is not meaningful. This wording does not achieve the goals sought in the **CION**'s proposal.

249 **DE** wanted to have the possibility of not accepting the application if the quotas had been completed. **PRES** clarified that this paragraph deals with the right to seek work, and if the third-country national finds work, then the quotas can be applied. **CION** stated that the wording "have the right to apply" is too weak. So reservation on this wording. **CION** preferred the wording "have the right to stay".

250 **AT, HU, FR, LV, BE, SI**: supported the reduction to 6 months. **DE, CZ**: scrutiny reservation. **DE** stated that it could support a period of 18 months since this is the case already in its legislation. **CZ** did not agree with 6 months, it preferred 3 months and that this provision should be optional and not mandatory. **CY** could accept 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. **CION** continued to support its original proposal of 12 months.

251 **CION** was of the opinion that this is not the moment (job-seeking activity) to take into account the labour market situation.

After a period of 6 months[252] ➲ and in case of Member States have granted a period of more than six months, Member States may require[253] ➲ third-country nationals ➲ […] ➲ ➲ to prove that they have a genuine chance of being engaged ➲ or of launching a business.[254]

➲ 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** ➲ of research or ➲ **the** ➲ field of studies ➲ **[…]** ➲ ➲ **completed** ➲ or ➲ **the** ➲ skills gained by the third-country national. ➲[255]

252 **DE** did not agree with having to wait 6 months. There should not be time limitations and Member States should be able to ascertain this when they wish.

253 **ES**: scrutiny reservation. **AT** asked if the application for the addition of 6 months has to be launched before the end of the first period of 6 months. If this is the case, there is no indication of this in the wording, so **AT** suggested to indicate this explicitly as well as to provide for an application also for family members, before the authorisation expires.

254 Several delegations requested clarification:
- on whether the right to apply for stay granted in this paragraph can also be enjoyed by students finishing their studies in a second Member State (**CY**).
- on the concept of setting up a business (**FI, IT**).
- on access to benefits (**FI**). **MT** stated that such access should be excluded. **CION** stated that the need for "sufficient resources" under Article 6 of this proposal *de facto* excludes any access to social assistance.
- on what "genuine chance of being engaged" means (**IT**). **CION** explained that the student/researcher would have to provide evidence such as a job offer.
- on whether this article would be applicable in cases where Member States apply a zero quota (**DE**). **CION** answered that a communication from the Member State that the quota is zero should be enough.

255 **IT** suggested to delete this provision since it would hold back and restrict the chance of finding a job as well as it would confer excessive discretional 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[256] to the third-country national and, where relevant, to his family members according to their national law. ➲[257]

➲ 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, has to be launched before the expiry of the residence permit. ➲

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256 **PL** was of the opinion that the wording "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 documents other than visa and residence permit. **PL** also pointed out that the provisions concerning granting the authorisations to the family members should be included in Art. 25 of the proposal. Placing these provisions in art. 24 suggests that the directive not only grants the right to stay to the family members of researchers but also to the family members of students. **AT** agreed with **PL**.

257 **AT** agreed with the inclusion of this paragraph but thinks that it should be optional whether the Member State grants a residence permit or a visa in such cases. **AT** further stated that 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. **FR** pointed out the issue that once a student or researcher obtains a job, they change their legal status to employee. **BE** was of the opinion that this paragraph clarified the question of change of status and pointed out that the residence permit should not be renewed. **LV, DE, SI, SE** supported this new paragraph.

➲ 3. If the conditions provided for in paragraph 1 are no longer fulfilled, Member States shall withdraw the authorisation of the third country national and his/her family members according to their national law. Member States may[258] 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[259] of research or ➲ **the** ➲ field of studies finalised or ➲ **the** ➲ skills gained[260] by the third-country national. ➲[261]

Article 25

Researchers' family members[262]

1. By way of derogation from Article 3(1) and Article 8 of Directive 2003/86/EC, ➲ […] ➲ ➲ 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.[263]➲ .

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258 **PL** stated that 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. **PL** also pointed out that such requirement is not provided in the 1st paragraph of this article, which determines the prerequisites to grant the third-country nationals the authorisation for the purposes of job-searching or setting up the business. **ES** stated a reservation on the use of "may". **SE** preferred this to remain an optional provision.

259 **DE, EE** suggested the following: "*level or area of research*".

260 **BG** requested clarification on the meaning of this last part.

261 **ES**: scrutiny reservation. **IT** pointed out that the wording of this provision creates excessive limits for the completion of studies in a Member State and then for the seeking of employment afterwards. According to **IT**, it is difficult for the authority to check these requirements. It is administratively onerous and can give rise to arbitrary decisions. **FR** requested to pay attention to the degree of detail that it is put in this paragraph, since 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.

262 **DE, CZ, FR**: scrutiny reservation. **NL, SE**: support.

263 **CION**: reservation.

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. ➲ Without prejudice to Article 24(2) and ➲ 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 ➲ […] ➲ .[264]

4. By way of derogation from Article 13(2) ➲ […] ➲ of Directive 2003/86/EC, the duration of validity of the authorisation of family members shall ➲ […] ➲ ➲ , as a general rule, end on the date of expiry[265] of the ➲ authorisation ➲ […] ➲ ➲ issued ➲ to the researcher ➲ […] ➲.

5. By way of derogation from the second sentence of Article 14(2) of Directive 2003/86/EC, Member States ➲ […] ➲ ➲ may[266] ➲ not apply any time limit in respect of access to the labour market.[267]

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264 **AT, LU, BE**: scrutiny reservation. **IT, AT, LU, SE** were of the opinion that the set of time-limits 90/60 days were too short. In particular, **IT** suggested a time-limit set of 180/90 days and **SE** said that it would be preferable not to have time-limits in the proposal since it gives Member States less flexibility. **HU** preferred to keep the reference to the 60-day time limit applicable in the case of Union programmes including mobility measures which has been deleted in the current version of the text.

265 **AT** criticised the fact of stating the necessary period here. **DE** stated that it agrees with **PRES** suggestion, but it also considered **AT**'s comments a valid point.

266 **NL** did not agree with this becoming a "may" provision since the effects are watered down. **CION**: reservation.

267 **EL, LU**: scrutiny reservation. **AT:** reservation. The acceptance of family members from day one is a problem for **AT**. **SK** preferred that the access to the labour market of family members should be dealt with by Member States at national level. **DE** asked whether a labour market test, which is allowed under the Family Reunification Directive, would be prohibited here. **CION** answered that there should be no labour market test since the lack of it is what increases attractiveness of the proposal.

CHAPTER VI

MOBILITY BETWEEN MEMBER STATES[268]

➔ 2005/71/EC
➲ Council

➲ *Article 26*

Intra-EU mobility[269]

1. Researchers, students [and remunerated trainees] who hold a valid authorisation issued by the first Member State may, on the basis of that authorisation and a valid travel document and under the conditions laid down in Articles 26A, 26B, 26D or 26E and subject to Article 26F, enter, stay and carry out[270] research activities, studies [or traineeship] in one or several second Member States, provided that they are not on the national list of alerts of the Member States concerned.[271]

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268 **LV, AT, ES, PT, SK, DE, NL, RO, SI, PT, SE, BE, HU, CZ, PL, EE, IT, FR, PL, CY**: scrutiny reservation on the whole Chapter VI.

269 **IT** pointed out that this provision provides for the opportunity of a special channel in case a student moves from one Member State to another during his/her studies, but only if such period goes up to six months. According to **IT**, it is desirable that the maximum length of time – if it must be established – should amount to at least 12 months (an academic year) rather than 6 in order to safeguard the mobility within the courses of study leading to the issuance of double/joint qualifications.

270 **SE** suggested to insert here "*for the purposes of carrying out*".

271 **PL** stated that it would like the wording of this paragraph as close as possible to the wording in Article 21 of the Schengen Convention.

2. Where the third-country national intends to use the possibility of exercising intra-EU mobility, the first application for authorisation shall be submitted to the authorities of the Member State where the longest overall stay is planned during the study or research activities [or traineeship].[272]

3. During the mobility referred to in paragraph 1, researchers may teach and students may, in addition to their studies, carry out economic activities in the second Member States in accordance with the conditions laid down in Articles 22 and 23.

4. The second Member State may provide for the possibility of the researchers and students to extend their right of residence for the purposes of job-searching and entrepreneurship according to the conditions laid down in Article 24. [273]

272 **ES**: scrutiny reservation. According to **AT**, since this is a reason for refusal, the wording of this paragraph should be tougher.

273 **ES**: scrutiny reservation. **DE** wondered how this paragraph is going to work in practice. **DE** suggested to clarify the wording in order to make clear how far the entitlement for job seeking goes. **FR** presented a reservation on this paragraph since according to **FR** it is not logic to allow researchers and students to set up a business in the framework of mobility.

Article ~~13~~ 26 ➲A ➲

➲ […] ➲ ➲ Short-term mobility of researchers ➲[274]

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 allowed to carry out part of his/her research ➲ activity ➲ in ➲ the host entity established in ➲ another Member State ➲ […] ➲ ➲ for a period of up to 90 days in 180-day period subject to ➲ the conditions as set out in this Article.

~~2.~~ ➲ 2. ➲ ➲ […] ➲

[274] **IT, AT**: scrutiny reservation on the whole article. **AT** pointed out that the proposed notification procedure takes place only between the 1st and 2nd Member State. Not even the researcher can be sure whether he/she meets the conditions for the exercise of mobility. **AT** suggested, for the sake of legal certainty, that the researcher should receive a document form the 2nd Member State which would provide some kind of "assurance" that he/she is entitled to stay and which would allow him/her to provide evidence of legal residence in the 2nd Member State. **AT** also suggested to insert in this article specific procedural requirements to deal with cases where the residence title issued by the 1st Member State expires while the researcher is staying in the 2nd Member State.

➲ 3. The second Member State may require the host entity in the ➲ […] ➲ second ➲ Member State ➲ or the researcher ➲ to notify the first Member State and the second Member State of the intention of the researcher to carry out the research activity in the ➲ […] ➲ host entity ➲ established in the second Member State ➲ . In such cases, it shall allow the notification to take place ➲ :[275]

(a) either at the time of the application in the first Member State, where the mobility to the second Member State is already foreseen at that stage;

(b) or after the researcher has started research activity in the first Member State, as soon as the intended mobility to the second Member State is known.[276]

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275 **AT**: scrutiny reservation. **AT** pointed out that in case of refusal of mobility by the second Member State, it is obliged to inform the competent authorities of the 1st Member State, the researcher and the host entity without delay, even though the authorities of the 2nd Member State were never in contact with the researcher in the previous procedure. According to **AT** this, in practice, would be very difficult for the competent authorities of the 2nd Member State to determine the address of the researcher within a short time. Such a procedure would take a long time. This applies equally to the relevant provisions of Article 26D. **CY** requested clarification on the practical implementation of the notification process of each of the two alternatives (points (a) and (b)).

276 **EL** suggested to introduce an *ex-ante* check, to establish a time-limit to receive the information *before* the entry of the researcher into the territory of the 2nd Member State.

4. ➲ The second Member State may[277] require ⇐ the notification ➲ […] ⇐ ➲ to ⇐ include the ➲ […] ⇐ ➲ presentation ⇐ to the second Member State of the documents ➲ […] ⇐ ➲ presented ⇐ to the first Member State in the context of Article 6 (1) (a), (c) and (f) ➲ , Article 7 (1) (a) ⇐ and the planned duration and dates of the mobility.[278]

5. Where the notification has taken place in accordance with paragraph 3 (a), and where the second Member State has not raised any objection with the first Member State in accordance with paragraph 7, the mobility of the researcher to the second Member State may take place at any moment within the validity of the authorisation.[279]

6. Where the notification has taken place in accordance with paragraph 3 (b), the mobility may be initiated after the notification to the second Member State immediately or at any moment thereafter within the validity of the authorisation.[280]

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277 **AT** wanted this to be a "*shall*" provision.

278 **NL** was of the opinion that the hosting agreement signed by the university in the 1st Member State should also be added to the list of documents to be transmitted to the 2nd Member State. **DE** requested to also include in this paragraph documents that the 2nd Member State can check that the third-country national does not represent a threat of public security and public order. **SE** asked about how the system of document transmission would work. **PRES** answered that the documents should be submitted by the applicant or the host entity. These would be the same documents that had been submitted to the 1st Member State. **HU, BE** pointed out that if this paragraph does not ask to present the hosting agreement, how can the relevant authorities verify that the researcher indeed intends to carry out a research activity in the second Member State? **CION** answered to this that in the current Directive it is possible for researchers to carry out the research activity in the second Member State without the hosting agreement, so **CION** failed to see the need to include this in the text of this proposal. **ES** stated that the mobility system should not be more difficult and complex than the one currently existing in the researchers Directive.

279 **ES**: scrutiny reservation. **PL** pointed out that paragraphs 5 and 6 refer to the notification procedure and wondered what happens when the Member State decides not to apply such notification procedure.

280 **ES**: scrutiny reservation.

7. Following the notification referred to in paragraph 3, the second Member State may object to the mobility of the researcher to its territory within ➲ […] ⇐ ➲ 30[281] ⇐ [282] days from having received the notification, where:[283]

(a) the criteria set out in Article 6(1), points (a), (c) ➲ , (d) ⇐ and (f), ➲ or Article 7 (1) (a) ⇐ are not met;

(b) ➲ […] ⇐

(c) the documents presented have been fraudulently acquired, falsified or tampered with;

(d) the maximum duration of stay as defined in paragraph 2[284] has been reached;

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281 **ES** did not agree with the increase from 20 to 30 days. **AT** preferred a longer period than 30 days.

282 **EE, CZ, AT, FI, IT, SK** were of the opinion that 20 days is too short. They proposed to use a 30-days period instead. **EE** also wondered whether a procedure allowing the 2nd Member State to revoke the authorisation given by the 1st Member State should not be included in this proposal. **PRES** answered that the 2nd Member State cannot do anything about the authorisation given by the 1st Member State, but the 2nd Member State can object to the entry of the researcher in its territory. **SE** asked how this would work if the 2nd Member State objects. **PRES** answered that this procedural issues is left to the discretion of the Member States.

283 **NL** proposed the introduction of a new point (e): "*if labour conditions are not in line with the requirements of the national labour law.*"

284 **RO** pointed out that paragraph 2 has been deleted but it is still mentioned here. **PRES** acknowledged that indeed paragraphs 1 and 2 were merged.

➲ (e) if applicable, labour conditions are not in line with national labour[285] law[286]. ➲

The competent authorities of the second Member State shall inform[287] without delay the competent authorities of the first Member State ➲ and ➲ the researcher ➲ […] ➲ ➲ or ➲ the host entity ➲ in the Second Member State ➲ about their objection to the mobility.

8. Where the second Member State objects to the mobility in accordance with paragraph 7 and the mobility has not yet taken place, the researcher shall not be allowed to carry out research activity in the second Member State on the basis of the hosting agreement.

9. In case the authorisation is renewed by the first Member State, the renewed authorisation continues to authorise its holder to carry out the research activity in the second Member State notified, subject to the maximum duration stated in paragraph 2[288]. ➲

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285 **SE, DE** preferred, like it is the case in other migration directives, not to make reference to "national labour law", but jus to "*national law*", and also wished to add the mention to "*labour collective agreements*".

286 **SE** suggested to add "*and practice*" at the end of this point. **ES** did not agree with the inclusion here of notions pertaining to employment law since this proposal does not cover employment relationships in its scope.

287 **PL** pointed out that it might be difficult to put in practice this obligation since the authorities of the 2nd Member State might not know the address of the researcher. According to **PL**, an option could be that the host entity in the 2nd Member State informs the researcher that the mobility has been denied. **PT** supported **PL** on its doubts. **PT** suggested the following addition: *"[…] the researcher and / or the host entity […]"*.

288 **RO** pointed out that paragraph 2 has been deleted but it is still mentioned here. **PRES** acknowledged that indeed paragraphs 1 and 2 were merged.

➲ *Article 26B* ➲

➲ Long-term mobility of researchers ➲[289]

~~3.~~ ➲ 1. ➲ If the researcher ➲ who has a valid authorisation issued by the first Member State ➲ ➲ […] ➲ ➲ intends to stay ➲ in ➲ […] ➲ ➲ the second ➲ Member State for more than ➲ […] ➲ ➲ 90 days ➲ […] ➲ , the second Member State ➲ may ➲ decide to: ➲ ➲ […] ➲[290]

➲ (a) apply the provisions referred to in Article 26A and allow the researcher to carry out the research activity on its territory based on ➲ the hosting agreement[291] in the first Member State and on ➲ ➲ […] ➲ the authorisation issued by the first Member State ➲ as long as it is valid ➲ ;

or

(b) apply the procedure provided for in this Article. ➲

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289 **CION** stated, since this system does not create a specific authorisation for long-term stays, that paragraphs 3 and 4 might not be needed at all. **CION** also suggested that Member States should be encouraged to have an accelerated procedure and pointed out that article 13(4) of the current Researchers Directive gives an example of such accelerated procedure.

290 **AT**: scrutiny reservation. **AT** wondered whether this paragraph should not include a maximum time limit otherwise it might seem that the researcher enjoys of an unlimited period. **AT** also expressed doubts about this paragraph not being clear enough about the documents that should be issued to the researcher in case of long-term mobility by the 2nd Member State. **FR** stated that the fact of having two procedures can create confusion and it would prefer this to be simplified. **LV** expressed its positive opinion about the **PRES** suggestion. **SE** expressed concerns about whether this system deviates from the Schengen *acquis*.

291 **ES** wanted also to include the possibility for the researcher of carrying out the research activity based on a "*labour contract*", and not just on a hosting agreement.

⇩ new

➲ Council

➲ […] ➲

➲ 2. Where ➲ […] ➲ ➲ an application ➲ for long-term mobility ➲ is made ➲ :

(a) The second Member State may require the host entity ➲ in the second Member State ➲ or the researcher to transmit some or all of the ➲ following ➲ documents ➲ […] ➲ , where these documents are required by the second Member State for an initial application:[292]

➲ i) the documents referred to in Article 6 (1) (a), (c)[293] or (f);

ii) the address of the researcher in the second Member State;

iii) a hosting agreement[294] signed with the host entity established in the second Member State in accordance with Article 9 (1)[295] and (2); ➲

292 **AT** stated that there should also be a reference to Article 6(1)(d) (threat to public order and safety) and Article 6(1)(e) (proof of payment of fees). This also applies to Article 26E(2)(a).

293 **AT** wanted to include also points (d) and (e) of Article 6(1). **CION** answered that the content of Article 6(1)(d) is already covered by paragraph 3.

294 **ES** wanted also to include here the possibility of transmitting a "*labour contract*", and not just a hosting agreement.

295 **SE** asked whether the reference here should not be Article 9(1)(a).

(b) The researcher shall not be required to leave the territory of the Member States in order to submit the application and shall not be subject to a visa requirement;[296]

(c) The researcher shall be allowed to carry out the research activity in the second Member State until a decision on the application for long-term mobility has been taken by the competent authorities, provided that the time period referred to in Article 26A (2) and the period of validity of the authorisation issued by the first Member State have not expired.[297]

3. Based on the documentation provided for in paragraph 2, Member States may ➲ […] ➲ refuse ➲ an application for long-term mobility where:

(a) one of the grounds covered by Article 18 applies;

(b) the authorisation of the first Member State expired.

4. Where a Member State takes a decision on an application for long-term mobility ➲ and issues an authorisation ➲ , the provisions of Articles ➲ 15, 16, 17, ➲ 29 ➲ , 30 ➲ and 31 shall apply ➲ accordingly[298] ➲ . ➲

➲ *Article 26C* ➲

➲ […] ➲

[296] **DE** wondered about this point since it stipulates an obligation but in not very concrete terms. **AT** pointed out that this only applies as long as the permit of the 1st Member State is valid and this should be explicitly stated.

[297] **AT** pointed out that there might be a need to add in this point the possibility of imposing penalties.

[298] **DE, AT** had doubts about whether the reference to some articles referred to in this paragraph is correct, in particular Articles 16 and 29. **PRES** said that the addition of the term "accordingly" should be enough to make such reference accurate.

➲ *Article 26D* ➲

➲ Short-term mobility for students [and remunerated trainees[299]] ➲[300]

➲ 1. A third-country national who has been admitted as a student [or remunerated trainee] under this Directive ➲ and who holds a valid authorisation issued by the first Member State ➲ shall be allowed to carry out part of his/her studies [or traineeship] in the host entity established in another Member State for a period of up to ➲ […] ➲ ➲ 180 days in 360-day period in case of studies [and 90 days in 180-day period in case of traineeship] ➲ subject to the conditions set out in this Article.[301]

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299 **RO, AT, DE, FR** expressed a reservation against including remunerated trainees.

300 **HU, ES**: scrutiny reservation. **AT** was of the opinion, on the question on short-term mobility of students for the purposes of this proposal, that such mobility to a 2nd Member State should only be regulated in this proposal for periods between 3 and 6 months. According to **AT**, stays of up to 3 months are already regulated by the Schengen *acquis* and the provisions provided for short stays of students in the current draft seem to be much more difficult and complicated than the relevant provisions in the Schengen *acquis*. Therefore, the student would be treated less favourably according to the current draft and this cannot be the intention. Mobility for more than 6 months has to be rejected as well. In view of the overall permitted stay of students for a duration of one year, students who intend to stay for more than 6 months in a 2nd Member State would stay for more than the half of the whole duration of their stay in the 2nd Member State. According to **AT**, such a provision would be susceptible to abuse and circumvention. **AT** explained that the student may apply for a residence permit in a Member State, where the admission seems to be very easy, and afterwards makes use of his mobility to stay nearly the whole duration of his overall permitted stay in the 2nd Member State. In order to avoid such cases of circumvention, it has to be ensured that the student must apply for a residence permit in the 2nd Member State, where he intends to spend most of his time. Thus, it would not be necessary to provide for mobility provisions for more than 6 months. **SK, PL, CZ, CY** supported a duration of 3 months for students rather than 6 months. **HR** pointed out its flexible position as far as the debate on the duration is concerned.

301 **DE**: scrutiny reservation. **PL** suggested the following redrafting of this paragraph in order to ensure coherence with Article 21 of the Convention implementing the Schengen Agreement:
"*A third-country national who has been admitted as a student under this Directive shall be allowed to carry out part of his/her studies in other Member States for period of 90 days in any 180-day period, provided that he/she has valid authorisation issued by the first Member State, valid travel document, sufficient resources in the other Member State and is not considered as a threat to public policy, public security or public health in the second Member State*."

2. The second Member State may[302] require the host entity in the ➲ […] ➲ second ➲ Member State ➲ or the student or [remunerated trainee] ➲ to notify the first Member State and the second Member State of the intention of the student [or remunerated trainee] to carry out studies [or traineeship] in the host entity established in the second Member State ➲. In such cases, it shall allow the notification to take place ➲ :

(a) either at the time of the application in the first Member State, where the mobility to the second Member State is already foreseen at that stage;

(b) or after the student [or remunerated trainee] has started studies [or traineeship] in the first Member State, as soon as the intended mobility to the second Member State is known.

3. ➲ The second Member State may[303] require ➲ the notification ➲ […] ➲ ➲ to ➲ include the ➲ […] ➲ ➲ presentation ➲ to the second Member State of the documents ➲ […] ➲ ➲ presented ➲ to the first Member State in the context of Article 6 (1) (a), (c), (f) and Article 10 (1) (a) [or Article 12 (1) (a)] and, where not specified in any of the preceding documents, the planned duration and dates of the mobility. ➲ The second Member State may require the documents referred to in Article 10 (1) (a) [or Article 12 (1) (a)] to be concluded[304] with the host entity in the second Member State. ➲

302 **AT** wanted this to be a "*shall*" provision.
303 **AT** wanted "*shall*" provisions in this paragraph.
304 **IT** requested clarification on the meaning of this.

4. Where the notification has taken place in accordance with paragraph 2 (a), and where the second Member State has not raised any objection with the first Member State in accordance with paragraph 6, the mobility of the student [or remunerated trainee] to the second Member State may take place at any moment within the validity of the authorisation.

5. Where the notification has taken place in accordance with paragraph 2 (b), the mobility may be initiated after the notification to the second Member State immediately or at any moment thereafter within the validity of the authorisation.

6. Following the notification referred to in paragraph 2, the second Member State may object to the mobility of the student [or remunerated trainee] to its territory within ➲ […] ➲ 30[305] ➲ days from having received the notification, where:[306]

(a) the criteria set out in Article 6 (1) (a), (c), ➲ (d), ➲ (f) and Article 10 (1) (a) [or Article 12 (1) (a)], are not met;

(b) ➲ […] ➲

(c) the documents presented have been fraudulently acquired, falsified or tampered with;

(d) the maximum duration of stay as defined in paragraph 1 has been reached;

➲ (e) if applicable, labour conditions are not in line with national labour law[307]. ➲

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305 **AT** wanted to have a longer time period.

306 **NL** proposed the introduction of a new point (e): "*if labour conditions are not in line with the requirements of the national labour law*." **DE** supported the request from **NL** and also suggested to make reference to *collective agreements* in the line as it was discussed for ICT proposal.

307 **SE** suggested to add "*and practice*" at the end of this point. **CION** presented a reservation to this point since it thinks this is not needed for students.

The competent authorities of the second Member State shall inform without delay the competent authorities of the first Member State ➲ and ➲ the student [or remunerated trainee] ➲ […] ➲ ➲ or ➲ the host entity ➲ in the second Member State ➲ about their objection to the mobility.

7. Where the second Member State objects to the mobility in accordance with paragraph 6 and the mobility has not yet taken place, the student [or remunerated trainee] shall not be allowed to carry out studies [or traineeship] in the second Member State.

8. In case the authorisation is renewed by the first Member State, the renewed authorisation continues to authorise its holder to carry out studies [or traineeship] in the second Member State notified, subject to the maximum duration stated in paragraph 1.

9. ➲ […] ➲ ➲

➲ Article 26E ➲

➲ Long-term mobility of students [and remunerated trainees] ➲ [308]

➲ 1. If the student [or remunerated trainee] who has a valid authorisation issued by the first Member State ➲ […] ➲ ➲ intends to stay ➲ in another Member State for more than ➲ […] ➲ ➲ 180 days, in case of studies, [or 90 days, in case of traineeship] ➲ , the second Member State may decide to:

[308] **AT**: scrutiny reservation. **AT** was of the opinion that long-term mobility of students for more than 6 months could lead to abuses since the student concerned could be in the second Member State longer than in the first Member State.

(a) apply the provisions referred to in Article 26D and allow the student [or remunerated trainee] to stay and carry out studies [or traineeship] 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 this Article.

2. Where an application for long-term mobility is made:[309]

(a) The second Member State may require the host entity ➲ in the second Member State ➲ or the student [or remunerated trainee] to transmit some or all of the ➲ following ➲ documents ➲ […] ➲ where these documents are required by the second Member State for an initial application:

➲ i) documents referred to in Article 6 (1) (a), (c), (f);

ii) the address of the student [or remunerated trainee] in the second Member State;

iii) evidence that the student has been accepted by the host entity in the second Member State to follow a course of study [or a trainee agreement signed with the host entity in the second Member State in accordance with Article 12 (1) (a)]. ➲

[309] **SE** pointed out some possible errors in the reference to articles in this paragraph.

(b) The student [or remunerated trainee] shall not be required to leave the territory of the Member States in order to submit the application and shall not be subject to a visa requirement;[310]

(c) The student [or remunerated trainee] shall be allowed to carry out studies [or traineeship] in the second Member State until a decision on the application for long-term mobility has been taken by the competent authorities, provided that the time period referred to in Article 26D (1) and the period of validity of the authorisation issued by the first Member State has not expired.[311]

3. Based on the documentation provided for in paragraph 2, Member States may ➲ […] ➲ refuse ➲ an application for long-term mobility where:

(a) one of the grounds covered by Article 18 applies;

(b) the authorisation of the first Member State expired.

4. Where a Member State takes a decision on an application for long-term mobility ➲ and issues an authorisation ➲ , the provisions of Articles ➲ 15, 17, ➲ 29 ➲ , 30 ➲ and 31 shall apply ➲ accordingly ➲ .

5. ➲ […] ➲ ➲

[310] **AT** pointed out that this only applies as long as the permit of the 1st Member State is valid and this should be explicitly stated.

[311] **AT** expressed its concerns about this provision being susceptible to abuse and circumvention. According to **AT**, this provision would mean that students may exercise their right of mobility without ever meeting the conditions for mobility. Pending the decision of the competent authorities after all legal options available have been exhausted, the student may have completed the semester without ever having met the necessary requirements.

➲ Article 26F ➲

➲ Safeguards in case of ➲ researchers, ➲ students [and remunerated trainees] mobility ➲[312]

➲ 1. The host entity ➲ in the second Member State or the researcher, student [or remunerated trainee] ➲ 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.

2. Where the second Member State:[313]

(a) has not been notified in accordance with Article ➲ 26A(3) and (4) or ➲ 26D (2) and (3) ➲ […] ➲ ➲ when ➲ such notification ➲ is required by that Member State ➲; ➲ or ➲

(b) has objected to the mobility in accordance with Article ➲ 26A (7) or ➲ 26D (6); ➲ or ➲

(c) has found that the ➲ researcher, ➲ student [or remunerated trainee] continues ➲ research activity, ➲ studies [or traineeship] in the second Member State although the conditions laid down in Article ➲ 26B (2) (c) or ➲ 26E (2) (c) are no longer complied with; ➲ or ➲

(d) has ➲ […] ➲ ➲ refused ➲ an application for mobility in accordance with Article ➲ 26B (3) or ➲ 26E (3); ➲ or ➲

(e) has found that the authorisation is used for purposes other than those for which it was issued; ➲ or ➲

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312 **AT**: scrutiny reservation.

313 **DE** was of the opinion that there should be inserted in this paragraph an obligation for the student or researcher to return to the first Member State, since the second Member State cannot do anything if the student or researcher does not go back voluntary.

(f) has found that the conditions on which the mobility was allowed to take place are no longer fulfilled,

it may ➲ withdraw the authorisation, if it was issued in that second Member State, and ➲ request that:

i) the ➲ researcher, ➲ student [or remunerated trainee] shall cease all activity on its territory[314]; ➲ and/or ➲

ii) the first Member State shall immediately allow re-entry of the ➲ researcher and, where applicable, his or her family members[315], the ➲ student [or the remunerated trainee] without formalities. 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.

➲ 3. Articles 26A, 26B (1) (a), 26D and 26E(1)(a) shall be without prejudice to the right of the second Member State to consult the Schengen information system if that system could not be consulted at the time of issuance of the permit. Where the researcher, the student [or the remunerated trainee] is a person for whom an alert has been issued in the Schengen information system, the second Member State shall refuse his or her entry or object to his or her mobility. ➲

➲ […] ➲➲ 4. ➲ In case the first Member State withdraws the authorisation it shall inform the authorities of the second Member State immediately. ➲

314 **PL, AT** suggested the following addition: "*[…] shall cease all activity and leave its territory*".

315 **SK** pointed out that the researcher is normally with the family in the 2nd Member State and that leaving requires organisation and does not happen overnight, therefore **SK** suggested to introduce a time-limit for leaving.

➲ *Article 26G*

Sanctions

Member States may hold the host entity responsible and provide for sanctions for failure to comply with the conditions of mobility laid down in this Directive. Those sanctions shall be effective, proportionate and dissuasive. ➲[316]

Article 27

➲ […] ➲[317]

Article 28

Residence in the second Member State for ➲ researchers' ➲ family members[318]

316 **NL** was in favour of having the same sanction provisions than in the ICT Directive proposal. **CION** did not agree with the inclusion of sanctions since the goal is to make the EU an attractive place to come and the inclusion of sanctions will not help the attainment of this goal.

317 **ES** asked why Article 27 was deleted to which **PRES** answered that in its proposal the mobility scheme applies to all programmes, not being necessary therefore having specific conditions for Union programmes including mobility measures.

318 **AT, DE**: scrutiny reservation.

1. When a researcher moves to a second Member State in accordance with Articles 26 ➲ A ⇐ and ➲ […] ⇐ ➲ 26B ⇐ , and when the family was already constituted in the first Member State, the members of his family shall be authorised to accompany or join him ➲ , provided that they are not regarded as a threat to public policy or public security[319] of the second Member State concerned ⇐ . [320]

2. No later than one month after entering the territory of the second Member State, the family members concerned or the researcher, in accordance with national law, shall submit an application for a residence permit as a family member to the competent authorities of that Member State. ➲ This requirement is not applied in case where the researcher moves to the second Member State for no longer than the period foreseen in Article 26A (1) and the family members' residence permits issued by the first Member State allow their holders to stay in that second Member State in accordance with the relevant Union *acquis*. ⇐ [321]

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319 **IT** requested clarification on the wording "public policy or public security".

320 **AT** stated that the inclusion of short-term mobility in paragraph 1 appears incomprehensible since short-term mobility is already regulated by the Schengen *acquis*. **AT** requested for paragraphs 1 and 2 an adaptation to the wording of other Directives in the area of migration, for example the Blue Card Directive. In particular, instead of referring to "researcher" it should be referred to "*a holder of an authorisation for researchers based on this Directive*". Moreover, in line with Articles 26 and 27, the mention to "moving" to a second Member State should be changed to "*settling*" in a second Member State. In addition, **AT, SE** requested the modification of this paragraph by including a provision that allows the 2nd Member State to refuse the stay in its territory of family members of researchers if such family members represent a possible threat to public policy, public security or public health. The current wording does not make this possible.

321 **HU** presented a reservation against this paragraph.

➲ 2a. ➲ In cases where the residence permit of the family member issued by the first Member State expires during the procedure or no longer entitles the holder to reside legally on the territory of the second Member State, ➲ the second ➲ Member State shall allow the person to stay in its territory, if necessary by issuing a national temporary residence permit, or an equivalent authorisation, allowing the applicant to continue to stay legally on its territory with the researcher until a decision on the application has been taken by the competent authorities of the second Member State.[322]

3. The second Member State may require the family members concerned to present with their application for a residence permit:[323]

(a) their residence permit in the first Member State and a valid travel document, or their certified copies, as well as a visa, if required;

(b) evidence that they have resided as members of the family of the researcher in the first Member State;

(c) evidence that they have a sickness insurance covering all risks in the second Member State, or that the researcher has such insurance for them.[324]

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322 **SE** requested the inclusion of a reference for the return of family members to the first Member State. **AT** requested that, if this paragraph refers to long-term mobility, this fact should be made clear in the wording of this paragraph.

323 **AT, NL, SE, DE** requested the inclusion of a reference to the possibility to check whether there is a threat to public order and public safety. **AT** also pointed out that this lack of reference to the threat to public order and public safety was criticized in the Blue Card Directive and **CION**, according to **AT**, declared that this missing reference in that directive was a mistake. Therefore, **AT** stated that the possibility of including such a provision in this proposal should not be missed again. **FR, AT, DE** wanted to be able to control access by the family members to the labour market of the second Member State in order to minimise risks of social dumping. **AT** also pointed out that the permit of stay of the family member should correspond with the duration of the residence title of the researcher.

324 **CZ** suggested to include medical repatriation costs.

4. The second Member State may require the researcher to provide evidence that ➲ […] ➲ he or she ➲ :

(a) has an accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in the Member State concerned;[325]

(b) has ➲ […] ➲ sufficient resources to cover subsistence ➲ […] ➲ of his/her family members ➲ without recourse to the social assistance ➲ system ➲ of the Member State concerned.[326]

Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members.[327]

➲ 5. Derogations contained in Article 25 shall continue to apply *mutatis mutandis*.

6. Where the family was not already constituted in the first Member State, Article 25 shall apply. ➲[328]

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325 **IT** was of the opinion that this is a quite technical criterion which is very difficult to apply without incurring in the risk of being arbitrary. **IT** thought that it was better just to delete it.

326 **AT** pointed out that this point needs to be adapted to the Blue Card Directive and that it lacks a reference to Article 25 for cases where the family had not already had existed in the first Member State.

327 **DE** wanted this last sentence of paragraph 4 to be deleted.

328 **AT** was of the opinion that newly added paragraph 5 and 6 are not necessary since the residence in the 2nd Member State is temporary, being the work carried out in the 1st Member State the most important. **SE** wondered whether Article 6 should not also be mentioned in these two paragraphs since it seems that Article 6 applies to all categories of this proposal. **PRES** clarified that Article 25 deals with exceptions of the family reunification directive while Article 6 regulates researchers but not family members.

↓ 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.~~

↓ 2004/114/EC (adapted)

CHAPTER ~~V~~ VII

PROCEDURE AND TRANSPARENCY

Article ~~18~~ 29

Procedural guarantees and transparency[329]

~~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.~~

329 **AT, EE, SI, DE**: scrutiny reservation. **DE** and **SE** pointed out that there was a linguistic problem in their respective versions of the text.

⇩ new

➲ Council

1. The competent authorities of the Member States shall decide on the complete application for an authorisation and shall notify the applicant in writing, in accordance with the notification procedures laid down in the national law of the Member State concerned, as soon as possible and at the latest within ➲ […] ➲ ➲ 90 ➲ days from the date on which the application was lodged ➲ […] ➲.[330]

➲ 1a. By way of derogation from paragraph 1, in case the application is submitted by ➲ **a research organisation,** ➲ an approved host entity ➲ **[…]** ➲ ➲ **or an approved high education institution** ➲ , as referred to in Article ➲ **s** ➲ 6a, ➲ **8 and 10a,** ➲ the time for taking a decision on the complete application shall be at most ➲ […] ➲ ➲ 60 ➲ days[331]. ➲ **[…]** ➲

330 **HU, ES** wanted to shorten this deadline. **HU** has 21 days in its national legislation. **PRES** explained that 90 days is the longest period but Member States can shorten this period if they want to. **ES** asked why do not longer distinguish between time-limits like the original **CION** proposal. In case the distinction between time-limits is maintained, **SI** could agree with a shorter deadline than 30 days in the case of Union programmes including mobility measures, but it would like to include the possibility of extending this deadline if need it, for example, in the event of complex cases. **PRES** explained that previously delegations had expressed concerns about the administrative burden that two types of time-limits may entail and accordingly decided to suggest just one time-limit. **CION** stated that 90 days is too long and that 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. Since the needs are different the different time limits are justified.

331 **CZ**: scrutiny reservation. **HU** considered that this period is too long. **HU** has a 21-day period for researchers, and a 15-day period for students in its legislation. **NL** pointed out that the paragraph should be simplified and better drafted. **CION** further pointed out that since some Member States have shorter deadlines, the figure in this text could even be reduced to 30 days. **DE** preferred not to specify a time limit and leave Member States to decide.

🡻 2004/114/EC (adapted)
⇨ new
➲ Council

2. If the information supplied in support of the application is ➲ […] ➲ incomplete[332] ➲ , ~~processing of the application may be suspended and~~ the competent authorities shall[333] ➲ **[…]** ➲ ➲ **notify** ➲ the applicant of ➲ **[…]** ➲ ➲ **the additional** ➲ information ➲ **[…]** ➲ ➲ **that is required** ➲ ⇨ and ➲ **[…]** ➲ ➲ **set** ➲ a reasonable deadline[334] ➲ **[…]** ➲ ➲ **for providing it** ➲ . The period referred to in paragraph 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 refused ➲ ⇦ .

3. Any decision ➲ […] ➲ ➲ refusing ➲ an application for ~~a residence permit~~ ⌦ an authorisation ⌫ ➲ declaring it inadmissible, as well as any decision withdrawing the authorisation ➲ shall be notified to the third-country national concerned in accordance with the notification procedures provided for under the relevant national legislation. The notification shall specify the ➲ reasons for the decision, the ➲ possible redress procedures available, ⌦ the national court or authority with which the person concerned may lodge an appeal ⌫ and the time limit for taking action.[335]

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332 **AT** did not agree with changes in this paragraph. In particular it preferred to use another term such as "*inappropriate*" instead of "incomplete". **AT** stated that it preferred to get back to the previous wording of paragraph 2.

333 **EE, SI** preferred a "*may*" clause instead of "shall".

334 **LU** asked **CION** what it means by "reasonable deadline". **CION** answered that it introduced this wording since it is the same wording used in other migration instruments.

335 In response to **DE**, **CION** clarified that the procedural safeguards also cover mobility decisions, where a new application is submitted. **AT**: scrutiny reservation on the modifications.

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. ➲

~~*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.~~

⇩ new

➲ Council

Article 30

Transparency and access to information[336]

Member States shall make available information on entry and residence conditions for third-country nationals falling under the scope of this Directive, including ➲ , where appropriate[337], ⊂ the ➲ […] ⊂ ➲ **level of the** ⊂ monthly ➲ sufficient ⊂ resources ➲ **if** ⊂ required, rights, all documentary evidence needed for an application and the applicable fees. ➲ **[…]** ⊂ [338]

336 **PL** was of the opinion that it would be difficult to make available the information requested by this article due to the heterogeneity of the groups targeted by this proposal.

337 **CZ, AT**: scrutiny reservation.

338 **PL** pointed out that while in this article the provisions are mandatory, the related provisions in Article 6 are optional.

↓ 2004/114/EC

⇨ new

➲ Council

Article ~~20~~ 31

Fees

Member States may require applicants to pay fees for the ➲ […] ➲ handling[339] ➲ of applications in accordance with this Directive. ⇨ The ➲ level of such fees shall not be disproportionate or excessive. ➲ […] ➲ ⇦ [340]

↓ 2005/71/EC (adapted)

~~CHAPTER VI~~

~~FINAL PROVISIONS~~

339 **AT**: scrutiny reservation.

340 **FR** asked what the fees cover exactly and **CION** answered that the fees cover any administrative costs related to any part of the processing of the application, including fees charged by universities. **AT** also asked whether this concerns the fees for the application or the fees for the handling of the application. According to **AT**, they are different types of fees. **CION** answered that it needs to check the wording, but it does not think that there is a difference intended in the wording.

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.~~

↓ 2004/114/EC

CHAPTER ~~VI~~ VIII

FINAL PROVISIONS

⇩ new
➲ Council

Article 32

➲ […] ➲ Cooperation on information ➲[341]

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, ➲ **[…]** ➲ **on** ➲ the procedures applied to admission and mobility referred to in Articles 6a, 9, 26A to 26F. ➲

341 **AT**: scrutiny reservation.

Article 33

Statistics[342]

➲ **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 shal 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.** ➲

342 **AT**: scrutiny reservation. **AT** stated that the period for communicating statistics should be in line with Eurostat periods. It also suggested to transmit to **CION** data on authorisations to take up employment.

↓ 2004/114/EC (adapted)
⇨ new
➲ Council

Article ~~21~~ 34

Reporting[343]

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.~~

343 **AT**: scrutiny reservation.

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*.

↓

➲ Council

Article 35

Transposition[344]

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [two years[345] 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.

344 **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". **LV** pointed out that the legislator has not yet made the corresponding assessment, therefore the statement regarding transmission of relevant documents as justified is premature.

345 **SE** and **FI** preferred a deadline for transposition of 3 years.

Article 36

Repeal[346]

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.*

346 Please note that the amendment of Recital 43 is linked with this article.

↓ 2004/114/EC (adapted)

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	*For the Council*
The President	*The President*

ANNEX I

↑

Part A

Repealed Directive with list of its successive amendments

(referred to in Article 37)

Directive 2004/114EC of the European Parliament and of the Council	(OJ L 375, 23.12.2004, p. 12)
Directive 2005/71/EC of the European Parliament and of the Council	(OJ L 289, 03.11.2005, p. 15)

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	-