



Council of the
European Union

Brussels, 29 September 2014
(OR. en)

13600/14

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

LIMITE

**MIGR 126
RECH 380
EDUC 292
CODEC 1880
SOC 649**

NOTE

From:	Presidency
To:	Working Party on Integration, Migration and Expulsion
No. prev. doc.:	13153/14 MIGR 119 RECH 365 EDUC 282 CODEC 1804 SOC 619
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]

At its meeting held on 22 September 2014, the Working Party on Integration, Migration and Expulsion had an exchange of views on the Presidency compromise suggestions included in document 13153/14. The outcome of this exchange of views is reflected in the text in Annex.

In light of the outcome of the Working Party meeting on 22 September and in view of the meeting of the Working Party on 3 October, the Presidency submits new compromise suggestions. In the text that appears in Annex, the suggestions are indicated with ➤**addition in bold**◄ and deleted text with ➤[...]**◄**.

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

- Recitals 4, 9, 9a, 9bbis, 10, 17, 18, 19, 19a, 21, 28a, 29, 33, 34, 35, 36, 36a, 41, 42
- Article 2(1), (1)(b), (1)(ba), (2)(a), (2)(g)
- Article 3(b), (i), (j), (k), (lc), (o), (u)
- Article 5a
- Article 5(1), (2), (3)
- Article 6(2), (3), (5), (6)
- Article 6a(1)
- Article 7(1)(b), (2new)
- Article 8(1), (2a), (3), (4)
- Article 9(1), (2)(a), (4), (5), (6a)
- Article 10(1)(d), (3)(a)
- Article 11(1bis), (2), (2bis)
- Article 12(1)(a), (2), (2bis)
- Article 13(1)(a), (1)(b), (1)(d)
- Article 14
- Article 15(1), (2)
- Article 16(2), (3), (4), (5), (6), (7)
- Article 18(2)(cbis), (2)(cccbis), (4)
- Article 19(1)(a), (1aa)(bb), (1aa)(fbis)
- Article 21
- Article 24(1), (2), (3), (3a), (5), (7)
- Article 25(1), (1a), (1b), (1c), (4)
- Article 26(1)
- Article 26 A(4)(a)
- Article 26G(4)(b)

ANNEX

↓ 2004/114/EC, 2005/71/EC (adapted)

⇒ new

2013/0081 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL¹

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 ⇐²

¹ All delegations have a general scrutiny reservation on the text, and in particular on the most recent compromise proposals.

AT, CZ, HU, PL have a Parliamentary scrutiny reservation on the text.

FI parliament has expressed doubts about the need for this directive.

Some delegations also have a linguistic reservations on several parts of the text.

² Delegations' position concerning the groups included in this proposal:

- **School pupils:**

* Reservation against becoming mandatory: **AT, BE, CY, DE, EL, ES, FI, LT, NL, PL, SK.**

- **Unremunerated trainees:**

* Reservation against becoming mandatory: **AT, BE, CY, DE, EL, ES, FI, LV, LT, NL, PL, SK.**

- **Remunerated trainees:**

* Reservation against inclusion: **AT, CY, CZ, DE, EL, ES, FI, HU, PL, RO, SI.**

Reservation against becoming mandatory **ES, LV, LT, SK.**

- **Volunteers:**

* Reservation against becoming mandatory: **AT, BE, CY, DE, ES, FI, NL, LV, LT, PL, SK.**

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

[RECAST]³

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty ~~(EEC)~~ on the Functioning of the European Union ~~establishing the European Community~~, and in particular points ~~(3)~~ (a) ~~(4)~~ 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:⁴

³ **AT, CZ** prefer two separate directives instead of a single one. **CZ**: this proposal should deal only with stays on the basis of residence permits and not on the basis of long-stay visas, which remain a national competence. **AT**: doubts whether Article 79 of the TFEU is a sufficient legal base or whether Article 153 should not be a better legal base.

⁴ **ES** suggested the inclusion of the following new recital: "*This Directive should not affect the bilateral or multilateral agreements concluded between one or more Member States and one or more third countries even if these agreements comprise mobility measures for third-country nationals.*"

↓ new

➡ Council

- (1) A number of amendments are to be made to Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service⁵ and Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research⁶. 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 Directives⁷ 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.

⁵ OJ L 375, 23.12.2004, p. 12.

⁶ OJ L 289, 3.11.2005, p. 15.

⁷ COM(2011) 587 final and COM(2011) 901 final

(4) The [...] implementation reports of the two Directives [...] pointed out certain insufficiencies of the two instruments in relation mainly with the admission conditions, rights, procedural safeguards, students' access to the labour market during studies, intra-Union mobility provisions [...]. Also specific improvements were considered necessary regarding the optional categories of third-country nationals. Subsequent wider consultations have also pointed out the need for better job-seeking possibilities for researchers and students and better protection of [...] remunerated trainees⁸ [...] by extending the scope of [...] the current instruments for [...] this category.⁹

↓ 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.~~

⁸ ES: reservation on "better protection of remunerated trainees".

⁹ AT: the recital should be deleted.

↓ 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.~~¹⁰ ⇒ should promote the generation and acquisition of knowledge and skills¹¹. ⇐ ⊗ It ⊗ constitutes a form of mutual enrichment for the migrants concerned, their country of origin and the host Member State and helps to promote better familiarity among cultures.
-

↓ new

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

¹⁰ **CY:** cannot support the deletion of "is by definition temporary".

¹¹ **BG:** insert "... knowledge, skills *and competences*" in order to cover the full range of learning outcomes as defined in the European Qualifications Framework for lifelong learning.

↓ 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 ⇐
↻ [...] ⇐ ↻ a fast track ⇐ admission procedure which does not depend on their legal
relationship with the host research organisation and by no longer requiring a work permit in
addition to ↻ [...] ⇐ ⇒ ↻ [...] ⇐ ↻ an authorisation ⇐ ⇐ . ~~Member States could apply
similar rules for third-country nationals requesting admission for the purposes of teaching in
a higher education establishment in accordance with national legislation or administrative
practice, in the context of a research project. The~~ ⊗ This ⊗ ~~specific admission~~
~~for researchers~~ should be based on collaboration between ~~the~~ research organisations and the
immigration authorities in the Member States. It should give the former a key role in the
admission procedure with a view to facilitating and speeding up the entry and residence of
third-country researchers in the ~~Community~~ ⊗ Union ⊗ while preserving Member States'
prerogatives with respect to immigration ~~policy~~ ⊗ policy ⊗. Research organisations ↻,
which may be ⇐ approved in advance by the Member States, should be able to sign
↻ either ⇐ a hosting agreement ↻ or a contract ⇐ with a third-country national for the
purposes of carrying out a research ↻ [...] ⇐ ↻ activity¹² ⇐ . Member States should issue a
~~residence permit~~ ⇒ an authorisation ⇐ on the basis of the hosting agreement ↻ or the
contract ⇐ if the conditions for entry and residence are met.¹³

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

¹³ ES: in favour of a fast-track procedure only for researchers and students.

☞ (☞ [...] ☞ ☞ 9a ☞) _____ Member States should have the possibility to apply, in addition to the general procedures of admission of ☞ [...] ☞ 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 ☞ [...] ☞ for the purposes of entry to the first Member State or, in the case of unremunerated and remunerated trainees, when they are recruited by an approved host entity or fall within an approved training programme. ☞¹⁴

☞ (9b) Member States should have the possibility to provide for an approval procedure for higher education institutions wishing to host a third-country national student. Applications to approved higher education institutions should be facilitated and speed up the entry and residence of third-country national students in the Union. Member States making use of the approval procedure should ensure that higher education institutions have access to clear and transparent information on the conditions and criteria for approval as well as on the consequences of non-compliance. As the approval system is aimed at facilitating procedures, in order not to put at a disadvantage students who have applied to a higher education institution whose approval has been withdrawn pending a decision on their application, such students should be able to introduce a new application. ☞

☞ (☞ [...] ☞ ☞ 9bbis ☞) _____ Member States should have the right to ☞ [...] ☞ ☞ provide for ☞ an approval procedure for respective entities to host pupils, remunerated and unremunerated trainees ☞ [...] ☞ or volunteers ☞ [...] ☞ . This approval should be in accordance with the procedures set out in the national law or administrative practice of the Member State concerned, while Member State would have the possibility to apply this procedure to some or all of the categories of the host entities. ☞

¹⁴ **PL:** the wording gives an impression that there are 2 parallel schemes, one for the admission by approved host entities and a general admission scheme. **ES:** fast-track procedure should apply for researchers and students only suggesting to delete this recital.

↓ 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 ☒ ⇒ be encouraged ☒ therefore ⇒ , where appropriate, to ☒ recruit more researchers in the years to come, the research organisations ~~potentially eligible~~ ☒ that ⇒ [...] ☒ ⇒ may ☒ be approved ☒ under this Directive ☒ ⇒ [...] ☒ ⇒ could ☒ ☒ belong to either the public or private sectors.

↓ 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 reunification¹⁵, ⇐ ~~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 ⇒ [...] ☒ ⇒ allowed to accompany ☒ them, ⇒ [...] ☒ benefit from intra-Union mobility provisions and ⇒ [...] ☒ have access to the labour market¹⁶ ⇐.

¹⁵ OJ L 251, 3.10.2003, p. 12.

¹⁶ **CY**: deletion of "should"; the provisions of national law regarding family reunification should apply. **FI**: compatibility with the text in the Single Permit Directive. **BG**: add: "...have access to the labour market *with respect to the provisions of the Directive 2011/98/EU*".

↓ new

↻ Council

(12) ↻ [...] ↻¹⁷

↓ 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 systems¹⁸, 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.

¹⁷ ES: scrutiny reservation on deletion.

¹⁸ COM(2011) 567 final

↓ new

→ Council

- (15) The extension and deepening of the Bologna process launched through the Bologna Joint Declaration of the European Ministers of Education of 19 June 1999 has led to more comparable, compatible and coherent systems of higher education in participating countries but also beyond them. This is because national authorities have supported the mobility of students and researchers¹⁹, and higher education institutions have integrated it in their curricula. This needs to be reflected through improved intra-Union mobility provisions for students. Making European higher education attractive and competitive is one of the objectives of the Bologna declaration. The Bologna process led to the establishment of the European Higher Education Area. Its three-cycle structure with easily readable programmes and degrees as well as the introduction of qualifications frameworks have made it more attractive for students who are third-country nationals to study in Europe.

↓ 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.

¹⁹ EE prefers the original term "*academic staff*" over "researchers".

↓ 2004/114/EC recital 12

↻ Council

- (17) Evidence of acceptance of a student by a ↻ [...] ↻ higher education ↻ institution ↻ ↻, **including business schools**, ↻ could include, among other possibilities, a letter or certificate confirming his/her enrolment.²⁰

↓ 2004/114/EC recital 13

⇒ new

↻ Council

- (18) ↻ [...] ↻ ↻ If the third-country national concerned can prove that he/she is in receipt of ↻ [...] ↻ resources throughout the period of his/her stay in the respective Member State that derive from a grant, a fellowship or a scholarship, ↻ [...] ↻ ↻ [...] ↻, a firm offer of work or a financial undertaking by a pupil exchange scheme organisation or a voluntary service scheme organisation, Member States ↻ ~~may~~ ⇒ should ⇐ ↻ [...] ↻ ↻ take them ↻ into account in assessing the availability of sufficient resources. ↻ Member States could lay down a reference amount which they regard as constituting “sufficient resources” that might vary for each one of the respective categories of third-country nationals, while ↻, where applicable, ↻ taking into account the level of minimum national wages, and ↻ [...] ↻ the number of family members. ↻²¹

²⁰ ES proposed to add at the following in order to cover business schools in this Directive: *"Besides, due to the need of improving the competitiveness of the EU, higher education institution also refers to business schools which are considered in the global context as centres of excellence, highlighting the importance of the discipline of management for future development of Europe".*

²¹ CION prefers the EP amendment for the corresponding provision.

↓ new

→ Council

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

→ **(19a) As far as volunteers are concerned, Member States are strongly encouraged to apply the Directive, in particular to cover volunteers coming to the European Union in the framework of a European Voluntary Education scheme.** [←]

(20) → [...]]²²

(21) → [...]]

(22) Once all the general and specific conditions for admission are fulfilled, Member States should issue an authorisation, → [...]] within specified time limits. If a Member State issues a residence permit on its territory only and all the conditions of this Directive relating to admission are fulfilled, the Member State should grant the third-country national concerned → every facility to obtain [← the requisite visa → or equivalent permit → [...]] allowing entry [←]²³

²² **HU:** insert a new recital clarifying who should be considered a worker.

²³ **DE, PL** wish to make clear in this recital that the "equivalent permit for entry" applies only to Member States that are not part of Schengen. **AT** requests this recital to be put in line with Article 5(2). **EE:** reservation connected to Article 5(2); this recital and Article 5(2) clearly limit the right of Member States to consider who is allowed to enter into their territory. In addition, it creates for the third-country national an automatic right to enter the Member State. **EE** also points out that even if Article 18(1)(d) allows to refuse the application, if it is evident that the third-country national intends to reside or carry out an activity for purposes other than those for which he/she applies to be admitted, in practice it is very difficult to prove the intention and therefore it is very difficult to apply this ground for refusal.

- (23) Authorisations should mention the status of the third-country national concerned [...] Member States may indicate additional information including [...] relevant information on EU [...] or multilateral programmes that comprise mobility measures in paper format or electronically, provided this does not amount to additional conditions.²⁴
- (24) The different periods of duration regarding authorisations under this Directive should reflect the specific nature of the stay of each group.
- ⤵ (24a) Member States should have the right to determine that the total duration of residence of students does not exceed the maximum duration of studies, as defined in national law. In this respect, the maximum duration of studies [...] could also include, if so provided by the national law of the Member State concerned, the possible extension of studies for the purpose of repeating one or more years of studies.
- ⤵ (24bis) When deciding the period of validity of the authorisation issued to researchers and students, Member States should take into account the planned mobility into other Member States, in accordance with Articles 26A, 26B and 26C.
- (25) Member States may charge applicants for [...] handling²⁵ applications for authorisations and notifications. The [...] level of the fees [...] should not be disproportionate or excessive.
- (26) The rights granted to third-country nationals [...] falling under the scope of this Directive should not depend on [...] the form of the authorisation each Member State grants [...].²⁶

²⁴ AT proposes the following wording: "Member States may indicate additional information including respective information on EU or multilateral programmes[...]".

²⁵ AT: reservation on the inclusion of the new wording "handling".

²⁶ CY: reservation as the meaning is unclear. AT: against including third-country nationals staying on the basis of a visa.

↓ 2004/114/EC recital 8

↻ Council

(27) ↻ [...] ↻

↓ 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 ⇐ . ↻ Before
taking a decision to reject an application or withdraw or non-renew an authorisation, the
Member States concerned should take account of the specific circumstances of the case and
respect the principle of proportionality. ↻ ~~The notion of public policy may cover a~~
~~conviction for committing a serious crime. In this context it has to be noted that the notions~~
~~of public policy and public security also cover cases in which a third-country national~~
~~belongs or has belonged to an association which supports terrorism, supports or has~~
~~supported such an association, or has or has had extremist aspirations.~~

↻ (28a) **In case a third-country national applies to be admitted to fill a specific vacancy**
in a Member State, that Member State should have the possibility to apply a test
demonstrating that the post cannot be filled from within the domestic labour
market. ↻

↓ 2004/114/EC recital 15 (adapted)

→ Council

- (29) In case of doubts concerning the grounds of the application ~~of~~ for admission, Member States should be able to → [...] → carry out appropriate checks or require evidence → in order to assess → [...] the applicant's intended → research, studies → , remunerated or → unremunerated training , → volunteer activity → [...] or pupil exchange → [...] → and → 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 as soon as possible and, at the latest within → [...] → the period specified in this Directive .

↓ 2004/114/EC recital 16

↻ Council

- (31) ↻ [...] ↻ This Directive aims to facilitate intra-EU mobility of researchers ↻ [...] ↻ and students ↻ [...] ↻ inter alia by reducing the administrative burden ↻ [...] ↻ related to their activities as well as the administrative procedures for their movement in several Member States. For this purpose, this Directive sets up a specific intra-EU mobility scheme whereby ↻ [...] ↻ a third-country national who holds an authorisation for the purpose of research or studies issued by the first Member State ²⁷ might enter, stay and carry out part of his/her research or studies in one or several second Member States ↻ [...] ↻ in accordance with the provisions governing mobility under this Directive. ↻ [...] ↻ ↻ [...] ↻ ↻ [...] ↻ ↻ In order to enable researchers to move easily from one research organisation to another for purposes linked to their research activities²⁸, their short-term mobility ↻ [...] ↻ ↻ [...] ↻ should cover stays in ↻ [...] ↻ second Member States for a period of up to ↻ [...] ↻ ↻ [...] ↻ 90 days in ↻ [...] ↻ ↻ any ↻ [...] ↻ 180-day ↻ period per Member State. ↻ Long-term mobility for researchers should cover stays in ↻ [...] ↻ one or several second Member States for a period of more than ↻ [...] ↻ 90 days per Member State. ↻ ↻ ²⁹

²⁷ **FR:** "...issued by the first Member State, which should remain responsible for the third-country national in case of extension of the right of residence as stated in Article 24, might enter...".

²⁸ **AT** requested to specify the term "research activities" and include the relevant explanation in this recital as follows: "(...) In order to enable researchers to move easily from one research organisation to another for the purpose of research activities their short-term mobility should cover stays in second Member States for a period of up to 90 days in any 180-day period per Member State. Long-term mobility for researchers should cover stays in one or several second Member States for a period of more than 90 days per Member State. Research activities may also include, for example, attending and holding seminars and lectures as well as presenting and publishing research findings, and the like. (...)

²⁹ **FR:** it should be stated in the recitals that the mobility scheme is based on specific needs of particular groups.

☞ [...] ☹ As regards students, in order to ensure continuity of studies during a whole semester, this Directive should ☞ [...] ☹ provide for mobility in one or several second Member States for a period of up to 180 days in any 360-day period per Member State.³⁰ This period should be up to 360 days per Member State in cases where the mobility takes place in the framework of EU or multilateral programmes or an agreement ☞ between two or more recognised higher education institutions ☹ ☞ [...] ☹ with a possibility of an extension for another ☞ [...] ☹ ☞ [...] ☹ 180 days. ☞ [...] ☞ [...] ☹ ☞ [...] ☹☞ ☞ [...] ☞ [...] ☹ ☞ [...] ☹

☞ [...] ☹

☞ [...] ☹

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

³⁰ **FR:** opposed to mobility of students outside programmes or agreements.

³¹ **HU:** the recital is in contradiction with Article 26A.

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

↓ new

➔ Council

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

³² AT, DE, ES, PL: in relation to Article 16(4), Member States should be competent to decide the maximum period of stay for students and researchers.

↓ 2004/114/EC recital 18 (adapted)

⇒ new

⇒ Council

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

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

~~⇒~~ ~~⇒ [...]~~ ~~⊗~~

³³ **AT:** scrutiny reservation. **PL**, supported by **DE**, proposed the following wording stating that the recital is too detailed and overly complex: "*Economic activities of students and researchers should be taken up only in one Member State at a time. Moreover, they must be performed in accordance with the national laws, collective agreements and/or practices of that Member State.*"

↓ new

→ Council

(34) As part of the drive to ensure a well-qualified workforce for the future, Member States should³⁴ allow students who graduate in the Union → to be issued an authorisation → 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 → for admission → . They should³⁵ also allow researchers to do so upon completion of their research → [...] → activity → as defined in the hosting agreement. → In order to be issued the requested authorisation, → they may be → [...] → asked → to provide evidence in accordance with → [...] → the requirements of this Directive. → This → authorisation → should not → [...] → grant any → automatic right of access to the labour market or to set up a business → . **Member States should retain their full right to take into consideration the situation of their labour market when the third-country national, who was issued an authorisation to remain on the territory, applies for a work permit to fill a specific vacancy.** → .³⁶

→ (34a) This Directive does not aim to harmonise national laws or practices of Member States → [...] → with respect to worker's status. → [...] → .³⁷

³⁴ **CY:** replace "should" with "*could*".

³⁵ **CY:** replace "should" with "*could*".

³⁶ **ES:** insert the following: "... They should also allow researchers to do so upon completion of their research activity as defined in the hosting agreement *or in the employment contract...*". **BG:** insert the following: "... the requirements of this Directive *and Directive 2011/98/EU*".

³⁷ **AT:** concerns about the inclusion of temporary agencies.

(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. ➔ **With regard to volunteers, unremunerated and remunerated trainees, volumes of admission should only apply if the Member State concerned considers these categories to be in an employment relationship as defined in this Directive. Volumes of admission should not apply to students as they are admitted to the territory of the Member States to pursue as their main activity a full-time course of study.** Ⓒ

(36) To make the Union more attractive for third-country national researchers, students, pupils, remunerated or unremunerated trainees and volunteers [...], it is important to ensure their fair treatment in accordance with Article 79 of the Treaty. [...] Students, trainees and volunteers 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 State³⁸, when they fall under the definition of a "third-country worker" as established by Directive 2011/98/EU. The possible exceptions that apply under that Directive should also continue to apply. In addition, independently on whether students, trainees and volunteers fall under the definition of a "third-country worker" as established by Directive 2011/98/EU, they, as well as school pupils, 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 as well as, where applicable, in relation to recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures and insofar as it is necessary to pursue the objectives set forth in this Directive. [...] Researchers should enjoy equal treatment with nationals of the host Member State as regards all the elements of Article 12(1) of Directive 2011/98/EU. [...] The restrictions provided for in Article 12(2) [...] of Directive 2011/98/EU should not apply to researchers. [...] ³⁹ [...] ⁴⁰.

³⁸ OJ L 343, 23.12.2011, p. 1.

³⁹ DE wanted to exclude researchers that are less than 6 months in a Member State's territory from family benefits. NL did not see any reason to treat researchers different from the other categories of legal migrants covered by the Directive.

⁴⁰ ES: not in favour of equal treatment as regards social rights of third-country nationals. EE: this recital does not contribute to making the EU more attractive to the groups involved. CION: reservation on the recital. BG suggests the following wording: "To make the Union more attractive for third-country national researchers, students, pupils, remunerated or unremunerated trainees, volunteers and au pairs, it is important to ensure their fair treatment in accordance with Article 79 of the Treaty. Students should continue to be covered by Directive 2011/98/EU of the European Parliament and of the Council, with the possible exceptions that apply under that Directive. *The right to equal treatment* with nationals of the host Member State as regards branches of social security as defined in Regulation No 883/2004 on the coordination of social security schemes and Regulation No. 1231/2010 should be applicable for researchers and other categories of third-country nationals falling

under the scope of this Directive, when they are authorised to work under Union or national law. For these categories Member States should be allowed to limit equal treatment with regard to branches of social security, including family benefits in accordance to the practice, established by Directives 2011/98 and 2009/50. In addition, independently on whether Union or national law of the host Member State gives researchers, students, school pupils, volunteers, unremunerated and remunerated trainees and au-pairs access to the labour market, they should enjoy equal treatment with nationals of the host Member State as regards access to goods and services and the supply of goods and services made available to the public. “

➔ (36a) Equal treatment should be granted under national law in respect of those branches of social security listed in Article 3 of Regulation (EC) No 883/2004 of the European Parliament and of the Council.⁴¹ This Directive does not harmonise the social security legislation of Member States. It is limited to applying the principle of equal treatment in the field of social security to the persons falling within its scope⁴². The right to equal treatment in the field of social security applies to third-country nationals who fulfil the objective and non-discriminatory conditions laid down by the law of the Member State where the work is carried out with regard to affiliation and entitlement to social security benefits; **consequently third-country nationals are entitled to the same treatment as the own nationals of the Member State concerned in the same or in a comparable situation.** This Directive, furthermore, should not grant rights in relation to situations which lie outside the scope of Union law, such as in relation to family members residing in a third country. That should not affect, however, the right of survivors who derive rights from third country nationals falling under the scope of this Directive, where applicable, to receive survivors' pensions when residing in a third country.

(36b)⁴³ In many Member States, the right to tax financed benefits⁴⁴ like e.g. family benefits is conditional upon a certain connection with that Member State since the benefits are designed to support e.g. a positive demographic development in order to secure the future work force in that Member State. Therefore, with the exclusion of researchers, this Directive should not affect the right of a Member State to restrict equal treatment in respect of these benefits if this connection is not yet established.

⁴¹ **LT:** this first sentence should be deleted as it contradicts Recital 36 which states that certain restrictions are possible.

⁴² **PL** expressed doubts about the reference to "*its scope*".

⁴³ **DE:** scrutiny reservation regarding the phrase: "with the exclusion of researchers".

⁴⁴ **Cion** could not support the term "*right to tax financed benefits*" considering it too broad.

(36c) In the event of mobility between Member States, Regulation (EU) No 1231/2010 of the European Parliament and of the Council applies. This Directive should not confer more rights than those already provided for in existing Union law in the field of social security for third-country nationals who have cross-border interests between Member States.

(36d) ⁴⁵This Directive should be applied without prejudice to more favourable provisions contained in Union law and applicable international instruments. ☹

↓ 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 ☞ [...] ☹⁴⁶.

↓ 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 nationals⁴⁷.~~

⁴⁵ **AT** wanted to be able to conclude bilateral agreements after the entry into force of the directive. Furthermore, **DE** suggested to delete "*more favourable*" and entered a scrutiny reservation on the term "*applicable international instruments*". In response, **Pres** indicated that the recital corresponded to recital 28 of the Single Permit Directive. **Cion** indicated that the EMN study did not find relevant bilateral agreements.

⁴⁶ OJ L 157, 15.6.2002, p. 1.

⁴⁷ ~~OJ L 157, 15.6.2002, p. 1.~~

↓ 2004/114/EC recital 4 (adapted)

↻ Council

(38) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union= ↻ [...] ↻ .


↓ 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.

➡ (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. ⁴⁸

↓ 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.⁴⁹

⁴⁸ **EE**: the decision of one Member State may affect another Member State and consequently it should be an obligation to inform the other Member States. **CION** (supported by **AT**): reservation on the inclusion of this recital even if there is a similar one in the Seasonal Workers Directive. **CION**: this recital opens the possibility of adding conditions in an arbitrary fashion.

⁴⁹ **LV** : it is premature to consider "the transmission of such documents to be justified" 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 or voluntary service ↻ [...] ↻ ↻ [...] ↻ ↻, 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.⁵⁰

↓ 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.~~

⁵⁰ CY: against the insertion of references to mandatory and optional provisions.

↓ 2004/114/EC recital 22 (adapted)

↻ Council

- (42) Each Member State should ensure that ↻ [...] ↻ [...] ↻ adequate, ↻ regularly updated ↻, ↻ information is made available to the general public, notably on the Internet, ☒ ↻ [...] ↻ ☒ ↻ [...] ↻ concerning ↻ ☒ information about ☒ the establishments ↻, ↻ research organisations and institutions ↻ defined in this Directive, ↻ [...] ↻ ↻ [...] ↻

↓ 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. ↻ ↻ [...] ↻⁵¹

⁵¹ Please note that the amendment of this recital is linked with Article 36.

↓ 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.

↓ 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 Community⁵², 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.~~

⁵² ~~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 service⁵³.~~

↓ 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.~~

⁵³ 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 Community⁵⁴.~~

↓ 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.~~

⁵⁴ 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

→ Council

(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 → 2004/117/EC and 2005/71/EC ← .

(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 → [...] ← → 2004/114/EC and 2005/71/EC ← ,

↓ 2004/114/EC (adapted)

⇒ new

→ Council

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter⁵⁵

This Directive determines:

- (a) the conditions for admission of entry to and residence as well as the rights⁵⁶ of third-country nationals and, where applicable, of their family members in the territory of the Member States for a period exceeding three months 90 days for the purposes of research, studies, pupil exchange scheme or educational project, remunerated and unremunerated training or voluntary service [...];

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

⁵⁵ **EL:** this proposal is not in full compliance with the subsidiarity principle since the regulation of remunerated trainees and au-pairs at EU level does not seem to have a significant added value. The existing national provisions for remunerated trainees, on the one hand, and the absence of national provisions for au-pairs, on the other hand, lead to the conclusion that there is no actual need for the adoption of common EU rules. This proposal does not comply sufficiently with the proportionality principle. In particular, the modification of the current optional categories into binding categories reduces the degree of flexibility that is necessary for the Member States which should be left to decide whether to implement the EU legislation for the categories provided as optional by the current Directives.

⁵⁶ **ES:** reservation. **CY** (supported by **ES**) suggested to insert the following "...as well as the rights and obligations of third-country nationals..".

↓ 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 **for admission** on the basis of this Directive. ↻;⁵⁷

↻ (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 **for admission** on the basis of this Directive. ↻

(c) ↻ [...] ↻

↓ 2005/71/EC (adapted)

~~CHAPTER I~~

~~GENERAL PROVISIONS~~

~~Article 1~~

~~Purpose~~

⁵⁷ **CI**ON: against the deletion of the category of remunerated trainees.

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

↓ 2004/114/EC (adapted)

↻ Council

Article 2

Scope

1. This Directive ↻ shall ↻ apply to third-country nationals who apply to be admitted to the territory of a Member State for the purpose of ☒ research ☒ ↻ and ↻ studies ↻ [...] ↻ .⁵⁸

↻ Member States may also decide to apply this Directive to third-country nationals who apply to be admitted for the purposes of ↻ [...] ↻ ↻ a ↻ pupil exchange ↻ scheme or educational project ↻ , remunerated or unremunerated training or voluntary service ↻ [...] ↻

⁵⁹ ↻

⁵⁸ **EE** would like to add "higher institutions lecturers" to be considered as researchers.

⁵⁹ **DE** (supported by **AT, LT, SE, SK**): reservation on the inclusion of accompanying teachers. **SE**: Member States who wish to cover accompanying staff could do so through provisions in their national law. **ES**: reservation on the inclusion of remunerated trainees even as an optional category. **Cion**: reservation on these categories being optional.

➔ 1bis. _____ ➔ [...] ☹ ☹

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

- (a) ~~third-country nationals~~ ➔ [...] ☹ ➔ **who seek international protection, who are beneficiaries of international protection in accordance with the Directive 2011/95/EU of the European Parliament and of the Council, or beneficiaries of temporary protection in accordance with the Council Directive 2001/55/EC in a Member State.** ☹ ;
- (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/EC⁶⁰ ➔ [...] ☹ ;
- (e) ➔ [...] ☹

⁶⁰ OJ L 16, 23.1.2004, p. 44

↓ 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) trainee ↻ **employees** ↻ who come to the Union in the context of an intra-corporate transfer under ↻ [...] ↻ Directive 2014/66/EU ↻ [...] ↻;⁶¹

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

↓ 2004/114/EC (adapted)

↻ Council

Article 3

Definitions

For the purposes of this Directive:

(a) 'third-country national' means ~~any~~ ↻ a ↻ person who is not a citizen of the Union within the meaning of Article ~~1720~~(1) of the Treaty ↻ on the Functioning of the European Union ↻;

⁶¹ **DE:** the boundaries between trainees in this proposal and "graduate trainees" in the ICT Directive proposal are not clear. **CION:** the scheme set up in the ICT Directive is a separate scheme which contains objective criteria for the determination of who is to be considered as "graduate trainee" under that Directive. **PL:** no overlap between this proposal and the ICT Directive proposing to delete this point.

↓ 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 **↻ a PhD or ↻** 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;⁶²

⁶² **HU** suggests the following wording: “(b) ‘researcher’ means a third-country national holding an appropriate higher education qualification, which gives access to doctoral programmes, who is selected by a research organisation for carrying out, *based on a hosting agreement*, a research activity for which the above qualification is normally required;”

↓ 2004/114/EC

→ Council

(c) ~~(b)~~ 'student' means a third-country national accepted by a → [...] ← higher education → institution recognised or considered as such according to national legislation ← and admitted to the territory of a Member State to pursue as his/her main activity a full-time course⁶³ 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;⁶⁴

⁶³ **EE:** concerns about the reference to "full-time course". This may indicate that students shall study during the whole day which would be in contradiction with the provision in Article 23(3) of this proposal stipulating a minimum of hours per week that students are entitled to work.

⁶⁴ **FR** suggested the following rephrasing : "“student” means a third-country national *enrolled* by a higher education institution and admitted to the territory of a Member State to pursue as his/her main activity a full-time *higher education, including all types of courses of study or sets of courses, training or training for research, which may cover a preparatory course prior to such education according to its national legislation, and* leading to a higher education qualification recognised by the Member State, including degrees, diplomas, or certificates awarded by a higher education institution".

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

(d) ~~(e)~~ 'school pupil' means a third-country national admitted to the territory of a Member State to follow a [...] recognised and/or State or Regional programme of [...] secondary education in the context of an exchange scheme or educational project operated by [...] an education establishment in accordance with its national legislation or administrative practice;⁶⁵

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

↓ 2004/114/EC (adapted)
⊖ Council

(e) ~~(d)~~ 'unremunerated trainee' means a third-country national [...] admitted to the territory of a Member State for the purpose to gain knowledge, practice and [...] experience in professional environment in accordance with the national legislation of the Member State concerned⁶⁶, which is related to his/her educational training or profession⁶⁷, for a training period without [...] remuneration [...];⁶⁸

⁶⁵ **EE:** reservation. **HU:** the definition is not completely clear.

⁶⁶ **CION:** the reference to national legislation should be deleted so that it is clear that it does not apply to "admission" as this will be subject to common EU rules.

⁶⁷ **LV, SE:** deletion of the words "or profession"; a trainee is someone in transition from education to the labour market and not someone who already has a profession.

⁶⁸ **LV:** trainees (remunerated and unremunerated) should be admitted only under licenced educational programmes and provided they are students or pupils. This constitutes a safeguard against abuse so that they would not be used as "cheap labour". **ES:** the notion of "reimbursement of expenses" as provided for in point (h) should also apply to trainees. **DE:** it is not clear whether vocational training is included in the category of trainees. **CION:** training can cover vocational training. **CION:** reservation on this group becoming optional and subject to national law. This would result in a very low level of harmonisation.

↓ new

→ Council

- (f) 'remunerated trainee' means a third-country national admitted to the territory of a Member State for the purpose to gain knowledge, practice and experience in professional environment in accordance with the national legislation of the Member State concerned⁶⁹, which is related to his/her educational training or profession⁷⁰ for a training period in return for which he/she receives remuneration⁷¹;
- (g) 'volunteer' means a third-country national admitted to the territory of a Member State to participate in a voluntary service scheme;

⁶⁹ **CION:** the reference to national legislation should be deleted so that it is clear that it does not apply to "admission" as this is subject to common EU rules.

⁷⁰ **SE:** deletion of the words "or profession"; a trainee is someone in transition from education to the labour market and not someone who already has a profession.

⁷¹ **RO:** against the inclusion of this category; remunerated trainees are considered as workers in RO. **LV:** trainees (remunerated and unremunerated) should be admitted only under licenced educational programmes and provided they are students or pupils. This constitutes a safeguard against abuse so that they would not be used as "cheap labour". **AT, DE:** vocational training should not be included in the scope; it should be clearly differentiated from traineeship in the text. **DE** would like to be able to conduct a check as to who has the priority to be included in such scheme. **AT** proposed the following: ".. and experience in a professional environment *other than vocational training, unskilled or semi-skilled labour* in accordance with the national legislation of the Member State concerned, which is related to his/her educational training or profession for a training period *that may be required to be prescribed within a tertiary educational programme* and in return for which he/she received remuneration." **CION:** reservation against this group becoming optional and subject to national law. This will result in a very low level of harmonisation.

↓ 2004/114/EC (adapted)

→ Council

(h)(~~g~~) 'voluntary service scheme' means a programme of → practical ← → solidarity ← activities⁷²
→ [...] ← , 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 ← ;⁷³

↓ new

→ Council

(i) → [...] ← ;

⁷² **RO**: reservation on "practical solidarity activities".

⁷³ **BE** suggested to use the wording of Directive 2004/114: "*Voluntary service scheme means a programme of activities of practical solidarity*". **CION**: against the inclusion of "practical"; no added value.

↓ 2005/71/EC

→ Council

(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 → or to transfer it to society ↻ ;

(k) ~~(e)~~ 'research organisation' means any public or private organisation which conducts research and which → [...] ↻ → may have ↻ been approved for the purposes of this Directive by a Member State in accordance with the latter's legislation or administrative practice;⁷⁴

↓ 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 ↻ → and which participates in an exchange scheme or educational project ↻ for the purposes set out in this Directive;

→ (l^{bis}) "educational project" means a set of educative actions developed by a Member State's education establishment in cooperation with similar establishments in a third country, with the purpose of sharing cultures and knowledge without → necessarily ↻⁷⁵ requiring a mutual exchange of pupils; ↻

⁷⁴ ES suggests the following wording: "'research organisation' means any public or private organisation which conducts research and *recruits researchers*."

⁷⁵ AT: why has "necessarily" been inserted?

↓ new

→ Council

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

→ (lb) → [...] ◯ ◯

→ (lc) 'host entity' means → [...] ◯ a research organisation, a higher education institution, an education establishment, an organisation responsible for a voluntary service scheme, an enterprise or a vocational training establishment → [...] ◯ → → [...] ◯ → [...] ◯ located 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 ; ◯⁷⁶

(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;

⁷⁶ **ES, PL:** a very broad notion mixing together different notions. **CY, FR** reservation: "regardless of its legal form" is unclear. **SE:** against including a list in the definition that would exclude other possibilities.

- (o) 'first Member State' means the Member State which first grants a third-country national an authorisation **➔** for admission **Ⓞ** on the basis of this Directive;
- (p) 'second Member State' means any Member State other than the first Member State;
- (q) '**➔** [...] **Ⓞ** **➔** EU **➔** [...] **Ⓞ** or multilateral⁷⁷ programmes that comprise **Ⓞ** mobility measures' mean **➔** [...] **Ⓞ** programmes **➔** funded by the Union **➔** [...] **Ⓞ** or by **➔** [...] **Ⓞ** Member States **Ⓞ** promoting **➔** [...] **Ⓞ** mobility of third-country nationals **➔** [...] **Ⓞ** **➔** in **Ⓞ** the Union **➔** or in the Member States participating in the respective programmes **Ⓞ** ;⁷⁸
- (r) 'authorisation' means a residence permit **➔** [...] **Ⓞ** or **➔** , if provided for in national law, **Ⓞ** a long-stay visa **➔** issued for the purposes of this Directive **Ⓞ**;
- ➔** (ra) 'residence permit' means an authorisation issued using the format laid down in Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals entitling its holder to stay legally on the territory of a Member State; **Ⓞ**

⁷⁷ **DE, PL** reservation: this proposal should not regulate the mobility programmes of multilateral nature. **DE, EE**: do "multilateral programmes" include programmes with the participation of a third country? **CY** opposes the inclusion of multilateral programmes when these involve agreements between private higher institutions.

⁷⁸ **EE, FR** wondered whether national programmes of Member States are also covered by this provision.

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

(t) "family members" means third country nationals as defined in Article 4(1) of Directive 2003/86/EC⁷⁹ .

~~(u)~~ ~~...~~ .

~~(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; .

↓ 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.

⁷⁹ OJ L 251, 3.10.2003, p. 12.

~~Article 3~~

Scope

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

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

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

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

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

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

↓ 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 \boxtimes concluded \boxtimes 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 \Rightarrow with respect to Articles \Rightarrow 16, \bullet 21, 22, 23, 24, 25 ⁸⁰ and 29 \Rightarrow [...] \bullet \Leftarrow . ⁸¹

⁸⁰ **NL** proposed to insert ", 26 till 26C".

⁸¹ **DE, ES, FI, NL** reservation, it is important to keep parallel national schemes for researchers and students. **ES** requires an Article similar to Article 4(2) of the Blue Card Directive: "*This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for persons to whom it applies ...*". **DE** would like to be able to continue applying more favourable admission criteria. **DE, RO**: this proposal should bring a minimum level of harmonisation and let Member States decide the more favourable provisions to be applied. **NL**: the possibility of applying more favourable admission criteria to better attract researchers and students and suggests the following deletion in paragraph 2: "*This Directive shall be without prejudice to the right of Member States to adopt or maintain provisions that are more favourable to the persons to whom it applies with respect to Articles 21, 22, 23, 24, 25 and 29, especially in the context of Mobility Partnerships.*" Furthermore, it should be possible to apply more favourable provisions to the Articles related to intra-EU mobility (26 to 26F) to enable Member States to apply more flexible provisions. **NL**: the provision about more favourable provisions in Directives 2004/114 and 2005/71 is not limited to certain Articles. It is contrary to the aim of this proposal (stimulating the admission of researchers and students and the other categories) to restrict that possibility of more favourable treatment. **FI**: delete "with respect to Articles 16, 21, 22, 23, 24, 25 and 29". **CI**: against parallel schemes. Admission conditions should be harmonised in the EU, but Member States can apply more favourable rights.

CHAPTER II

~~CONDITIONS OF ADMISSION~~

↓ 2004/114/EC

↻ Council

Article 5

Principle ↻ s ↻

1. The admission of a third-country national under the ↻ [...] ↻ ↻ terms ↻ of this Directive shall be subject to the verification of documentary evidence ↻ [...] ↻ ↻ attesting ↻ that he/she meets the general conditions laid down in Article 6 and the specific conditions in whichever of Articles 7 to ~~11~~ ↻ [...] ↻ ↻ 13 ↻ applies to the relevant category.

↓ new

→ Council

2. Once all the general and specific conditions for admission are fulfilled, applicants⁸² shall be entitled to → an authorisation ← → [...] ← . If a Member State → only ← issues residence permits → [...] ← on its territory → [...] ← and all the admission conditions laid down in this Directive are fulfilled, the Member State concerned shall → grant ← → [...] ← the third-country national → every facility to obtain⁸³ ← the requisite visa → or an equivalent permit → [...] ← allowing entry to⁸⁴ the territory of the Member State concerned ← .⁸⁵

→ 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 → [...] ← ←⁸⁶

⁸² **PL:** replace by "*third-country nationals*".

⁸³ **DE:** against "facilitation". **PL:** unclear how "facilitation" relates to the Schengen Visa Code. This "facilitation" should relate to long-stay visas not to short-term visas.

⁸⁴ **DE:** request for a clear reference to non-Schengen Member States.

⁸⁵ **CZ:** third-country nationals should primarily apply for a residence permit, if the legislation of the Member State allows it, and maintain the national responsibility on the issuance of long-term visas. **EE:** against restricting the right of Member States to consider whether access of a third-country national to the EU should be granted and suggested "*may be issued*" instead of "shall be entitled" or to delete the first sentence of the paragraph. **CY:** reservation; a reference to the volumes of admission is necessary, since third-country nationals are given the possibility to work in the territory of the Member States.

⁸⁶ **HU:** clarify further "who fall outside the scope of this Directive". **DE:** no added value since Member States will apply their rules if a person does not fall within the scope of this Directive. More favourable national rules could also be applicable.

↓ 2004/114/EC

↻ Council

↻ Article 5a

Volumes of admission

This Directive shall not affect the right of a Member State to determine ↻ in accordance with Article 79(5) of the Treaty on the Functioning of the European Union⁸⁷, ↻ the volumes of admission of third-country nationals referred to in Article 2(1), with the exception of students, ↻ [...] ↻ if ↻ the Member State concerned considers that they are or will be ↻ [...] ↻ in an employment relationship ↻ [...] ↻ [...] ↻ . On this basis and for the purposes of this Directive, an application for authorisation may either be considered inadmissible or be ↻ [...] ↻ rejected ↻ . ↻

⁸⁷ AT, DE prefer a general reference to the Treaty instead of a specific article.

Article 6⁸⁸

General conditions⁸⁹

1. **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 legislation **and, if required, an application for a visa**; 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)

→ Council

- (b) if he/she is a minor under the national legislation of the [...] Member State **concerned**, present a parental authorisation or equivalent for the planned stay;

⁸⁸ CZ proposed, inspired by Article 7 of Directive 2003/86/EC, to add a new article, for example after Article 6 on general conditions, allowing Member States to require third-country nationals to comply with integration measures, in accordance with national law.

⁸⁹ NL: include the notion of "conditionality". The JHA Council Conclusions of June 2011 on the EU strategy on Readmission use the concept of "conditionality" as an instrument to press third countries to fulfil their international legal obligations regarding the re-admission of their nationals. NL suggests the inclusion of a new paragraph as follow:

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

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

"When examining an application Member States shall verify whether the third country national does not present a risk of illegal immigration." LV: include under Article 6 a requirement for a work contract as one of the admission conditions in cases where, according to the national legislation, a third-country national is in employment relationships. The existence of a work contract would provide for better legal protection of the worker and would reduce the risk of undeclared work.

- (c) ~~to~~ [...] ~~the~~ ~~to~~ present evidence of having or, if provided for in national law, having applied for ~~the~~ sickness insurance ~~in respect of~~ ~~it~~ for ~~the~~ all risks normally covered for ~~its own~~ nationals ~~in~~ ~~the~~ of ~~the~~ the Member State concerned ~~to~~. The insurance shall be valid for the whole period of his/her stay in that Member State ~~the~~;⁹⁰

↓ 2004/114/EC

→ Council

- (d) not be regarded as a threat to public policy, public security or public health;
- (e) provide proof, if the Member State so requests, that he/she has paid the fee for ~~the~~ [...] ~~the~~ handling ~~the~~ the application⁹¹ on the basis of Article 2031.

↓ new

→ Council

- ~~to~~ [...] ~~the~~ ~~to~~ (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 system⁹²

~~to~~ [...] ~~the~~ ~~to~~

⁹⁰ **CZ:** insert “*cost of repatriation for medical reasons and repatriation of remains*” as a criterion for admission. Since these costs are not covered by public health insurance, because they do not fall under the “risks normally covered for nationals of the Member State concerned”. **PL:** include a reference to “travel health insurance”. **EL:** reference to national legislation should be made; EL requires insurance for 1 year.

⁹¹ **SE** (supported by **LT**): “for handling the *notification or application*..”.

⁹² **SE** suggested to add the following: “... to the Member State's social assistance system *or to benefits which in accordance with Regulation (EC) No. 883/2004 are intended to guarantee the person concerned a minimum subsistence income.*”

2. Member States may require the applicant⁹³ to provide, at the latest at the time of the issuance of an [...] authorisation provided for in Article 15, the address of the third-country national concerned in the territory of the Member State.

3. [...]

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 where applicable: the level of minimum national wages, and [...] the number of family members. The assessment of the sufficient resources shall be based on an individual examination of the case. [...] ⁹⁴.

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.

[...] [...], 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.

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

8. [...]

⁹³ PL: it should be clarified who the applicant is.

⁹⁴ PL: there is a contradiction between the first and the last sentence of the paragraph.

↓ 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 6a⁹⁵

Approval of the host entity → [...] ←

1. Member States may → decide to ← provide → for an approval procedure for any host entity⁹⁶
→ [...] ← → to which third-country nationals are assigned as ← → [...] ← pupils,
remunerated and unremunerated trainees → [...] ← or → [...] ← volunteers → [...] ←
→ [...] ← → [...] ← for the purposes of admission according to this Directive.
2. The approval of the host entity shall be in accordance with → the ← procedures set out in the
national law or administrative practice of the Member State → [...] ← concerned.⁹⁷

⁹⁵ **CION**: reservation; this Article should not mean that the approved host entity is the only route for acceptance of third-country nationals under this Directive.

⁹⁶ **NL**: add "...or be involved in the exchange of..".

⁹⁷ **AT** does not support a *shall*-clause. **BE**: the text should reflect clearly the fact that the approval procedure is optional for Member States. **BE** also asked whether the approval procedure would have to be applied to other categories as well if it is applied to one or is it optional regarding every category.

Article 7

Specific conditions for researchers⁹⁸

1. In addition to the general conditions laid down in Article 6, a third-country national who applies to be admitted for the purpose of [...] carrying out a research activity⁹⁹ shall [...] present [...] a hosting agreement and/ or a contract, as provided for by national law,¹⁰⁰ signed with a research organisation in accordance with Article 9(1) [...].

[...]

[...]

2new. [...] 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 stay¹⁰¹ 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.¹⁰²

⁹⁸ **DE:** the conditions imposed on researchers are overly restrictive.

⁹⁹ **AT, RO:** reservation on the use of "research activity" instead of the original "research project". Similar issue in Articles 22 and 26 and in recital (31).

¹⁰⁰ **AT:** the difference between a hosting agreement and a contract is not clear; would cross-border contracts be covered by the term "contract"? **PL:** scrutiny reservation on this distinction. **FR:** the definitions of both terms should be included in the text.

¹⁰¹ **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. [...]". 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.

¹⁰² **PL:** why is there no reference to a contract here?

☞ In case the right of residence of the researcher is extended in accordance with the provisions of Article 24, the responsibility of the research organisation shall be limited
☞ [...] ☞ until the ☞ starting date¹⁰³ of the ☞ [...] ☞ ☞ authorisation ☞ for the purposes of
job searching or entrepreneurship ☞ ☞ [...] ☞ . ☞¹⁰⁴¹⁰⁵ ☞ ☞.

3. ☞ [...] ☞

4. ☞ [...] ☞

5. ☞ [...] ☞

6. ☞ [...] ☞

↓ 2005/71/EC (adapted)

~~CHAPTER II~~

~~RESEARCH ORGANISATIONS~~

¹⁰³ **ES:** ".. until the *application* for the authorisation.."

¹⁰⁴ **DE:** it is not clear whether the two sub-paragraphs are linked or not.

¹⁰⁵ *Moved from Article 8(3).*

Approval ~~of~~ of research organisations ~~of~~

↓ 2005/71/EC

→ Council

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

3. ~~shall~~¹⁰⁶

~~shall~~

4. ~~shall~~¹⁰⁷

¹⁰⁶ *Moved to Article 7(2).*

¹⁰⁷ *Moved to Article 9(6bis).*

↓ 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 ↻ ☒ .¹⁰⁸

↓ 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 agreement¹⁰⁹ 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 ↻ .

↻ [...] ↻¹¹⁰

¹⁰⁸ **ES:** this should be a *may*-clause.

¹⁰⁹ **PL:** why is there no reference to a contract here?

¹¹⁰ *Moved to Article 9.*

↓ 2005/71/EC (adapted)

↻ Council

Article 69

Hosting agreement ↻ [...] ↻¹¹¹

1. A research organisation wishing to host a researcher shall sign ↻ [...] ↻ a hosting agreement ↻ [...] ↻ with the latter ↻ [...] ↻ ↻ [...] ↻ ☒ ↻ **Contracts containing the elements referred to in paragraph 2 and, where applicable, paragraph 3, shall be considered equivalent to hosting agreements in the application of this Directive** ↻ .

↓ new

↻ Council

↻ [...] ↻

↻ 2. ↻ ↻ [...] ↻ ↻ ↻ [...] ↻ The hosting agreement ↻ [...] ↻ shall ↻ [...] ↻ contain ↻ :

(a) the title ↻ [...] ↻ ↻ or ↻ purpose of the research ↻ [...] ↻ ↻ activity ↻ ↻ **or the research area** ↻ ;

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

¹¹¹ **ES, DE:** as much flexibility for Member States as possible, since even minimum mandatory requirements could harm the recruitment of researchers. **DE:** research organisations in its territory do not use hosting agreements pointing out that the complex admission procedure could have negative effects for the admission of researchers. **BE:** these provisions are too flexible expressing concerns about implications on mobility. **CION:** there are already some elements which are obligatory in the current Directive on researchers, so it does not agree to reduce the minimum binding provisions.

(c) an undertaking by the organisation to host the researcher for the purpose of completing the research activity;

(d) the start and end date or the estimated duration of the research activity;

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

3. Member States may also require the hosting agreement to contain:

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

(b) information on the working conditions of the researcher which shall be in accordance with the national law or applicable collective agreements or practice of the Member States concerned.¹¹²

(c) information on the source of the financial means that will be used for the research.¹¹³

↓ 2005/71/EC

↓ Council

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

¹¹² **BG:** delete this point or add the following: "information on the working conditions of the researcher that are specified in the hosting agreement or a specific agreement between the host entity and the researcher".

¹¹³ **LT:** the provision is superfluous. **CION:** reservation on this requirement as it constitutes a burden and it runs against the principle of attractiveness of the scheme for researchers.

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

↻ [...] **↻**

- 5. The hosting agreement **↻** with the researcher concerned **↻** **↻** [...] **↻** shall automatically lapse when the researcher is not admitted or when the legal relationship between the researcher and the research organisation is terminated.
- 6. Research organisations shall promptly inform the **↻** competent **↻** authority **↻** [...] **↻** of any occurrence likely to prevent implementation of the hosting agreement **↻** [...] **↻** .

➔ **6a.** Member States may provide that, within two months of the date of expiry of the hosting agreement concerned, the ➔ [...] ☹ host entity shall provide the competent authorities designated for that 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 **this** Article. ☹ ➔ [...] ☹ ☹¹¹⁴

➔ **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 this Article, as well as the consequences for the residence permits of the researchers concerned. ☹

↓ 2004/114/EC (adapted) ➔ Council

Article ~~7~~10

Specific conditions for students

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 ➔ provide evidence ☹:
 - (a) ☒ ➔ [...] ☹ that he/she has ☒ ~~have~~ been accepted by a ➔ [...] ☹ ➔ higher education institution ☹ to follow a course of study;
 - (b) ~~(d)~~ ➔ [...] ☹ if the Member State so requires, that he/she has paid the fees charged by the ➔ [...] ☹ ➔ higher education institution ☹ ;

¹¹⁴ *Moved from Article 8(4).*

~~(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;~~

(c) ~~☞ [...] ☹ if the Member State so requires, of sufficient knowledge of the language of the course to be followed by him/her;~~ ☞_☞ [...] ☹ ☞ [...] ☹ ☹

☞ (d) ☞ [...] ☹ ☞ [...] ☹ if the Member State so requires, ☞ [...] ☹ that he/she will have sufficient resources to cover his/her study costs. ☹

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).

☞ 3. A Member State having established an approval procedure for higher education institutions in accordance with Article 10a shall provide for a facilitated application procedure for students hosted by a higher education institution approved by that Member State. This shall at least include:

a) exempting the applicant from presenting some of the documents or evidence referred to in Article 6 and/or in this Article;¹¹⁵

b) a fast-track admission procedure, in accordance with paragraph 1a of Article 29¹¹⁶. ☹

¹¹⁵ EL, FR, PL wanted to specify what documents could be exempted. Cion considered that the facilitation should be done both through exemption of some documents and through a fast track procedure. Cion rejected the reference to Article 29 considering the 60 days procedure referred to in that article too long.

¹¹⁶ Cion: opposed to the reference to Article 29 considering the 60 days procedure referred to in that Article too long.

➤ *Article 10a*

Approval of higher education institutions¹¹⁷

1. ➤ [...] ☹ Member States may ➤ [...] ☹ decide to ➤ [...] ☹ ➤ provide for ☹ an approval procedure for ➤ public and/or private ☹ ➤ [...] ☹ higher education institutions wanting to host a student ➤ [...] ☹ .
2. The approval of ➤ [...] ☹ public ➤ and/ ☹ or private higher education institutions shall be in accordance with procedures set out in the national law or administrative practice of the Member State ➤ [...] ☹ concerned ➤ [...] ☹ .
3. ➤ [...] ☹ ➤ Where a Member State decides to establish an approval procedure in accordance with paragraphs 1 and 2, it shall provide clear and transparent information to higher education institutions about, *inter alia*, the conditions and criteria for approval, its period of validity, the consequences of non-compliance, including possible withdrawal and non-renewal, as well as on any sanction applicable. ☹¹¹⁸
- 4. In cases where a Member State decides to withdraw the approval of a higher education institution, the student having submitted the application through that higher education institution shall have the right to introduce a new application. ☹¹¹⁹

¹¹⁷ **FI:** this Article should be removed as the Directive is not a tool for setting up national approval procedures. **FR:** scrutiny reservation on the word "approval" preferring a more general term which would correspond to its practice of using different kinds of "approval".

¹¹⁸ **AT** considered that the references to the procedure in recital (9b) suffice and need not be included in paragraph 3 as well.

¹¹⁹ **EL, NL** considered that the new application should be made at another higher education institution than the one for which the approval for a facilitated procedure has been withdrawn. **NL** suggested to add at the end "*with another approved higher education institution*". **PL** suggested to include also a reference to non-renewal of the approved status. **ES** wanted similar flexibility in the case of researchers.

~~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 911

Specific conditions for school pupils → [...] ←

→ 1bis. The provisions of this Article → [...] ← shall concern pupils → [...] ← who apply to be admitted within the framework of a pupil exchange scheme or an educational project. Member States may decide to apply this Article also to teachers exclusively accompanying the pupils.¹²⁰

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

↓ 2004/114/EC

→ Council

(a) not be below the minimum → [...] ← nor above the maximum age → or grade ← set by the Member State concerned → , insofar as this has been established by the Member State . For the purpose of → [...] ← defining the grade, reference may be made by the Member States to the education levels of International Standard Classification of Education (ISCED) ← ;

¹²⁰

AT, BE, DE, SE: no real need for a provision in the directive covering teachers. **BE** asked what such accompanying consists of and whether it is considered paid work. **HR:** what should be the basis in national legislation for granting the teachers an authorisation to stay? **LT:** against the inclusion of teachers in this proposal but in case they are kept it should be specified what documents they should receive, how many teachers per how many pupils there should be etc.

- (b) provide evidence of acceptance by an [...] education establishment;
- (c) provide evidence of participation in a [...] recognised and/or State or Regional programme of education in the context of an [...] exchange scheme or educational project [...] operated by a [...] host entity [...] in accordance with [...] Member State's national legislation or administrative practice;¹²¹
- (d) provide evidence that the [...] host entity [...], or – as far as provided for by national law - a third party¹²² [...] 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;
- (e) be accommodated throughout his/her stay by a family or a special accommodation facility within the education establishment or – as far as provided for by national law - any other facility meeting the conditions set by the Member State concerned and selected in accordance with the rules of the pupil exchange scheme or educational project in which he/she is participating.
- (f) provide evidence, if the Member State so requires, of sufficient knowledge of the language of the course to be followed by him/her. [...] If the pupil [...] [...] cannot prove that he/she fulfils [...] this requirement and [...] when Member States foresee [...] it in their national legislation [...], the pupil [...] may benefit from [...] language training in the [...] Member State concerned.¹²³

¹²¹ **DE** would like to introduce the notion of "reciprocity". **CION** points out that in the Member States where this optional provision has been transposed no relevant issues have arisen.

¹²² **AT, CY, FR, PL, PT** request clarification of the term "third party" and eventually a definition. **PL**: reservation concerning this term since it increases the number of entities involved and goes against the clarity of the text. **FR**: reservation until the term is not defined.

¹²³ **CION**: what is the added-value of this addition since Member States can already offer language courses without it being mentioned in this proposal?

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

☞ (2bis) **Where applicable, a third-country national who applies to be admitted as an**
☞ [...] ☹ ☞ accompanying ☹ teacher in a pupil exchange scheme or educational project
shall in addition to the general conditions laid down in Article 6:

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

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

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

(d) provide evidence, if the Member State so requires, of ☞ [...] ☹ knowledge of the language of the respective course. ☹¹²⁴

¹²⁴ **DE:** cannot see the added value of such a provision.

↓ 2004/114/EC (adapted)

⇒ new

↻ Council

Article ~~10~~12

Specific conditions for ~~unremunerated~~ ↻ unremunerated and remunerated ↻ trainees¹²⁵

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:

¹²⁵ **LV** can support the admission of trainees only under licensed education programmes and providing they are students or pupils. **RO** objects to the merging of unremunerated and remunerated trainees in the same category since the former is a category closer to students and the latter is a category closer to employees, which have access to the labour market. **ES**: reservation on the inclusion of remunerated trainees in the scope of this Directive as this category is closer to employees and their admission and residence should be regulated by general labour migration schemes. ES could, however, support the solution offered by LV.

- (a) have signed a [...] trainee agreement, which provides for a theoretical and practical training, with a host entity. The agreement shall be [...] approved, if [...] required, by the [...] relevant authority [...] of the Member State concerned in accordance with its national legislation or administrative practice. ~~an unremunerated~~ [...] ¹²⁶ [...] The agreement shall describe the training programme, including the educational objective or learning components, its duration, the placement and supervision conditions of the traineeship, the traineeship hours, the legal relationship between the trainee and the host entity. [...] In case of remunerated trainees, the agreement shall include the remuneration granted to him/her and 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. ¹²⁷

↓ 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. ¹²⁸

- (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 ¹²⁹;

¹²⁶ **DE:** clarification of the meaning of: "... in accordance with its national legislation or administrative practice ...". **CY:** what is the meaning of "relevant authority" and is vocational training included as a form of traineeship?

¹²⁷ **ES** reservation, the last part should be deleted.

¹²⁸ **DE,** supported by **CY** and **LT:** trainees with low-level qualifications should not be admitted. **AT:** the mere evidence of relevant education or relevant qualifications or experience may not exclude the use of unskilled workers as "trainees", in particular when the underlying agreement is not an education agreement, but merely a training programme which may include any practical activity.

¹²⁹ **FR:** reservation regarding the requirement of sufficient resources.

↓ 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 ☹ .¹³⁰

↻ (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. ☹

↓ new

↻ Council

↻ [...] ☹

¹³⁰ **DE:** it is not clear whether the third-country national is required to have already some knowledge of the language.

2. ~~...~~ ~~Member States may require the training programmes referred to in paragraph 1 to be ~~...~~ approved in accordance with national law.~~ ¹³¹

~~2bis.~~ Member States may require the host entity to submit a declaration ~~...~~ that the ~~third-country national does not fill a vacant ~~...~~ job.~~

↓ 2004/114/EC (adapted)

↻ Council

Article ~~113~~

Specific conditions for volunteers

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

~~(a) not be below the minimum age nor above the maximum age set by the Member State concerned;~~ ~~(a)~~ ~~...~~ ~~...~~ not be below the minimum age of 18 years¹³².
Member States may determine a maximum age limit for third-country nationals who apply to be admitted to a voluntary service scheme.

↻ The minimum age shall be set at 17 years for volunteers participating in a European Voluntary Service scheme.

¹³¹ **AT, DE, SI:** this provision is insufficient to prevent abuses; a labour market test should be possible under this provision. **CI**ON against this paragraph, which opens too widely the possibility for Member States to have parallel schemes.

¹³² **DE, LU:** against the minimum age of 18 years, it should be left for Member States to define.

↓ 2004/114/EC

↻ Council

↻ [...] ↻ ~~(b)~~ ↻ (b) ↻ [...] ↻ provide ↻ an agreement with the ↻ [...] ↻ host entity ↻ ↻ [...] ↻ or, as far as provided for by national law, other institution¹³³ ↻ [...] ↻ responsible in the Member State concerned for the voluntary service scheme in which he/she is participating ↻ [...] ↻ . The agreement shall¹³⁴ describe the voluntary service scheme, its duration, the placement and supervision conditions, of the voluntary service scheme, the volunteering ↻ hours, ↻ [...] ↻ the obligation of the host entity ↻ [...] ↻ or, as far as provided for by national law, other institution ↻ [...] ↻ to cover his/her ↻ accommodation ↻ [...] ↻ costs ↻ and ↻ a minimum sum of money¹³⁵ 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;

↻ Volunteers participating in a European Voluntary Service scheme shall only provide a volunteer agreement signed with the sending organisation and the host entity. ↻

¹³³ **AT:** this is quite a broad and vague concept. **DE**, supported by **FR**, considers that the host entity and the entity with which the volunteer has an agreement are not always the same, so this needs to be reflected in the text.

¹³⁴ **ES:** reservation, it should not be mandatory.

¹³⁵ **AT:** a broad and vague concept to be clarified in a recital.

↓ 2004/114/EC

↻ Council

↻ [...] ~~(e)~~ ↻ (c) ↻ provide evidence that the ↻ [...] ↻ host entity ↻ [...] ↻ or, as far as provided for by national law, other institution ↻ [...] ↻ responsible for the voluntary service scheme in which he/she is participating has subscribed to a third-party insurance policy ↻ accepting ↻ [...] ↻ responsibility for him/her throughout his/her stay, in particular as regards his/her subsistence ↻ ; ~~and accepts full responsibility for him/her throughout his/her stay, in particular as regards his/her subsistence, healthcare and return travel costs;~~¹³⁶

↓ 2004/114/EC

↻ Council

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

↻ Volunteers participating in a European Voluntary Service scheme shall not be required to present evidence under paragraph (c) and, where applicable, paragraph (d). ↻

¹³⁶

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

↓ (new)

↻ Council

Article 14

↻ [...] ↻

↓ 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.~~

↓ new

↻ Council

CHAPTER III

AUTHORISATIONS AND DURATION OF RESIDENCE

Article 15

Authorisations¹³⁷

↻ 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", ↻ [...] ↻ "school pupil"¹³⁸, "remunerated trainee", "unremunerated trainee" ↻ or "volunteer" ↻ ↻ [...] ↻ ↻¹³⁹

¹³⁷ Concerning the inclusion of codes (numerical, acronyms):

- In favour: **LT, CZ**

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

DE, supported by **AT**: against new wording; it prefers the original wording. **CION**: its proposal does not refer to a new type of permit and the original proposed text was already clear that the permit was not a new one.

¹³⁸ **HU**: against the mention of "school pupils", since it would like to extend the scope to other types of pupils.

¹³⁹ **DE, PL**: it is technically cumbersome and not practical to enter this info under the heading "type of permit", the "remarks" section should be used instead. **CION**: there is sufficient space under "type of permit". Furthermore, additional information can be added either electronically or in paper format.

➤ 2. When the authorisation is in form of a long-stay visa¹⁴⁰, Member States shall enter a reference stating that it is issued to the "researcher", "student", ➤ [...] Ⓞ "school pupil", "remunerated trainee", "unremunerated trainee" or "volunteer" ➤ [...] Ⓞ under the heading "remarks" on the visa sticker. Ⓞ

➤ [...] Ⓞ

➤ 3. For third-country nationals, researchers and students coming to the Union in the framework of a specific EU or multilateral programme, that comprises mobility measures, or an agreement between two or more recognised higher education institutions, the authorisation shall make a reference to that specific programme or agreement. Ⓞ¹⁴¹

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

➤ 5. When an authorisation in the form of a residence permit is issued for the purpose of student's mobility, Member States shall enter "student – ➤ [...] Ⓞ mobility"¹⁴² under the heading "type of permit", in accordance with point (a) 6.4 of the Annex to Regulation (EC) No 1030/2002. Ⓞ¹⁴³

¹⁴⁰ **HU:** this should not be about the entrance visa but rather a long-term visa. It would be useful to have a reference in this Article to Article 24(3).

¹⁴¹ **AT:** there must a clear reference on the authorisation clarifying that this is a special residence permit allowing the third-country national to stay in a second Member State for the duration of one year. **LT:** the paragraph should be deleted as it is not clear who this reference would be for, what exactly should be written as a reference, there is limited space on visa stickers and permits etc.

¹⁴² **FR:** the deletion of the term "extended" is not clear.

¹⁴³ **AT:** this paragraph cannot be applied to students covered by programmes as they do not get new authorisations in the case of mobility. Also, this paragraph could not be applied in the case of long-stay visas.

↓ 2005/71/EC (adapted)

⇒ new

⇒ Council

Article 16

Duration of [...] authorisation ~~permit~~¹⁴⁴

1. Member States shall issue or renew, if applicable, an authorisation for a third-country national for whom the competent authorities have taken a positive decision in accordance with the relevant provisions of this Directive, when there are no relevant grounds provided for in Articles 18 and 19. [...]
2. The period of validity of [...] ⇒ an authorisation for researchers ⇐ shall be of [...] at least one year or for the duration of the research activity, in case this is shorter. In both cases, [...] the authorisation shall be renewed, [...] if the conditions laid down in Articles 6, ~~and~~ 7 ⊗ [...] and 9 ⊗ [...] are still met **and if the grounds laid down in Article 19 do not apply** . [...]

¹⁴⁴ SE: this Article should be revised in order to harmonise the different paragraphs.

↓ new

→ Council

→ [...] → 3. The period of validity of → [...] → an authorisation for students → [...] → shall be → of at least one year¹⁴⁵ → or for the duration of studies, in case this is shorter → . In both cases → , → [...] → the authorisation shall be renewed, → → [...] → if the conditions laid down in Articles 6 → [...] → , → 10 → and, where applicable, 10a → [...] → are still met → → [...] → **and if the grounds laid down in Article 19 do not apply** → .

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

→ 4. By way of derogation from paragraphs (2) and (3), researchers and students who are covered by EU → [...] → or multilateral programmes that comprise mobility measures **or by an agreement between two or more recognised higher education institutions**, shall be issued an authorisation covering the whole duration of their stay¹⁴⁶ in the Member States participating in the programme, **as long as the programme they are covered by enables them to meet the conditions under point (f) of Article 6(1)**. → Member States retain the right to withdraw the authorisation in accordance with Article 19 of this Directive. → →

¹⁴⁵ CY suggests to make reference to "academic year" or "semester" instead of "one year".

¹⁴⁶ AT, DE, ES, LT, FI, PT, SE, SK: Member States should have more flexibility in determining the duration of the authorisation. It should be possible to have a shorter authorisation with the possibility of an extension if necessary. AT, DE, PL: Member States should be able to establish a maximum duration of the authorisation. SE: this should be a "may" provision.

5. The period of validity of an authorisation for school pupils and, where applicable, accompanying teachers shall be of equal duration to the exchange scheme or the educational project, in case those are shorter than one year, or for a maximum of one year. Member States may decide to allow the renewal of the [...] authorisation of the school pupils and accompanying teachers once for the time period needed to complete the pupil exchange scheme or the educational project [...], if the conditions laid down in Articles 6 and 11 are still met and if the grounds laid down in Article 19 do not apply [...].¹⁴⁷

6. [...]

↓ 2004/114/EC (adapted) ⇒ new ⇒ Council

7. The period of validity of an ~~residence permit~~ authorisation for unremunerated and remunerated trainees shall be of equal duration to the training period, in case this is shorter than one year, or for a maximum of one year.¹⁴⁸ If the duration of the relevant training programme is longer than one year, the duration of the validity of the authorisation may correspond to the period concerned according to national law .

¹⁴⁷ **CY:** the length of the residence permit should match the period of study. **DE** prefer the text in the existing Directive and the originally proposed **CIION** text ("*Member States shall issue an authorisation for a maximum period of one year*"). **SE:** there is no need to grant permits longer than one year.

¹⁴⁸ **AT:** it would be acceptable only as a may-clause, otherwise cannot accept a maximum duration of 1 year.

Member States may decide to allow the renewal of the authorisation [...] once [...] and exclusively for [...] the time period [...] needed to [...] complete the traineeship, insofar as this is provided for in national [...] law and the conditions laid down in Articles 6 and [...] 12 are still met **and the grounds laid down in Article 19 do not apply** [...] ¹⁴⁹

8. The period of validity of an ~~residence permit~~ authorisation for volunteers shall be of equal duration to the voluntary service scheme, in case this is shorter than one year, or for a maximum period of one year.¹⁵⁰
If the duration of the relevant programme is longer than one year, the duration of the validity of the ~~residence permit~~ authorisation may correspond to the period concerned according to national law.

9. Member States may determine that, in case the validity of the travel document of the third-country national is shorter than one year or shorter than the duration of the programmes in cases referred to in paragraph 4, the validity of the requested authorisation shall not exceed the validity of the travel document. ¹⁵¹

¹⁴⁹ AT underlines the link of this paragraph with Article 19 of this proposal.

¹⁵⁰ AT: it would be acceptable only as a may-clause, otherwise cannot accept a maximum duration being set in this Directive.

¹⁵¹ SK: scrutiny reservation.

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

153


Article 17

Additional information

1. Member States may provide that additional information shall be either indicated in paper format, or stored in electronic format, as referred to in Article 4 of Regulation (EC) No 1030/2002 and point (a) 16 of the Annex thereto. This information may be relating to the residence and, in cases covered by Article 23, the economic activities of the third-country national and include in particular the full list of Member States that the researcher or student intends to go to or a specific EU or multilateral programme that comprises mobility measures or an agreement between two or more recognised higher education institutions, in cases covered by Articles 26 and 28E.

¹⁵² **CY:** long-stay visa should remain a matter for the Member States to regulate. **HU:** this paragraph refers to long-stay visas and not to entry visas, which are linked to residence permits, and asks whether this provision applies to non-Schengen countries. **CION** would like to keep the text as proposed. **CION** would also like to distinguish between an application to enter the territory and an application to renew the authorisation. **CION:** reservation on the deletion of the last part of the paragraph.

¹⁵³ **LT** suggested to add a provision specifying what the third-country nationals concerned must do at the end of the maximum period of their stay (similarly to Article 14 of the Seasonal Workers Directive).

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. 

↓ 2004/114/EC (adapted)

CHAPTER IV

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

Article 12

~~Residence permit issued to students~~

~~1. A residence permit shall be issued to the student for a period of at least one year and renewable if the holder continues to meet the conditions of Articles 6 and 7. Where the duration of the course of study is less than one year, the permit shall be valid for the duration of the course.~~

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

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

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

~~Article 13~~

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

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

~~Article 14~~

~~**Residence permit issued to unremunerated trainees**~~

~~The period of validity of a residence permit issued to unremunerated trainees shall correspond to the duration of the placement or shall be for a maximum of one year. In exceptional cases, it may be renewed, once only and exclusively for such time as is needed to acquire a vocational qualification recognised by a Member State in accordance with its national legislation or administrative practice, provided the holder still meets the conditions laid down in Articles 6 and 10.~~

~~Article 15~~

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

~~A residence permit issued to volunteers shall be issued for a period of no more than one year. In exceptional cases, if the duration of the relevant programme is longer than one year, the duration of the validity of the residence permit may correspond to the period concerned.~~

↓ new

→ Council

Article 18

Grounds for → [...] → rejection → [...]

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

(a) where the general conditions laid down in Article 6 → , 6a or → [...] the relevant specific conditions laid down in Articles 7, → [...] → 8, 9, → 10 to → 13 or → 16 are not met;

→ (aa) → [...] ; →

(b) where the documents presented have been fraudulently acquired, falsified or tampered with;¹⁵⁴

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

¹⁵⁴ LU suggested adding the following wording in line with the Directive 2003/86/EC on Family Reunification: "*where false or misleading information, false or falsified documents or authorisations were used, fraud was otherwise committed or other unlawful means were used to enter or reside on the territory or for the purpose of enabling a third person to enter or reside in the Member State*".

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

[:¹⁵⁵

[...]

[...]

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

(a) [...]

(aa) [...] :

(b) where the host entity [...] or another institution in accordance with Article 13(1)(b) and (c) or a third party in accordance with Article 11 (1)(d) [...] has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions [...] ;¹⁵⁶

(c) where applicable, if [...] the host entity 's business is being or has been wound up under national insolvency laws or [...] no economic activity¹⁵⁷ is taking place [...] ;

(cbis) where the host entity [...] does not have adequate financial resources to grant satisfying conditions [...] of residence to the third-country national.

¹⁵⁵ **AT:** include also the possibility when the family members have been sanctioned. **SE:** this should be either a "may-provision" or it should be made clear that the proportionality principle as stated in Recital 28 applies.

¹⁵⁶ **DE:** inclusion of "*infringement against labour rights*". **SE** (supported by **DE**) suggested the following new ground of rejection in order to protect trainees: "*(bbis) where the terms of employment according to applicable laws, collective agreements or practices in the Member State where the host entity is established are not met*".

¹⁵⁷ **AT:** "... no *substantial* economic activity..."

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

⊖ (cccbis) ⊖ [...] ⊖ ⊖

(d) ⊖ [...] ⊖¹⁵⁸

(e) ⊖ [...] ⊖¹⁵⁹

⊖ (3) ⊖ [...] ⊖ ⊖

⊖ (4) In case a third-country national applies to be admitted to fill a specific vacancy, Member States may verify whether the vacancy in question could be filled by nationals of the Member State concerned or by other Union citizens, or by third-country nationals lawfully residing in that Member State, in which case they may reject the application. This paragraph shall apply without prejudice to the principle of preference for Union citizens as expressed in the relevant provisions of the relevant Acts of Accession. ⊖

¹⁵⁸ CY against the deletion.

¹⁵⁹ CY against the deletion.

↓ 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 ⇐¹⁶⁰

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 ~~[...]~~ ~~:~~ ⇐¹⁶¹

↓ new

⇒ Council

(a) ⇒ where the holder no longer meets the general conditions laid down in Article 6,
except for Article 6(1)(d), 6a or the relevant specific conditions laid down in Articles 7,
⇒ 8, 9, ~~10 to 13~~ or 16 were not met or are no longer met; ~~:~~¹⁶²

⇒ (b) ~~:~~ where authorisations ~~[...]~~ ~~or~~ ~~:~~ documents presented have been fraudulently
acquired, falsified or tampered with;

¹⁶⁰ **AT, CY:** volumes of admission should be included as a ground for withdrawal or non-renewal.

¹⁶¹ **AT, HU:** against the deletion of that part of the paragraph.

¹⁶² **BE:** a reference to Article 24 should be added.

➔ [...] (c) where the third-country national ➔ [...] resides or carries out as his/her main activity one which has ➔ [...] purposes other than those for which he/she was authorised to reside;

➔ [...] (d) where the host entity was established ➔ [...] for the ➔ main ➔ [...] purpose of facilitating entry ➔ of third-country nationals falling under the scope of this Directive ;

➔ (dbis) if the host entity ➔ [...] or another institution ➔ [...] in accordance with Article 13(1)(b) and (c) or a third party in accordance with Article 11(1)(d) ➔ [...] has been sanctioned in conformity with national law for undeclared work and/or illegal employment.¹⁶³

(d) ➔ [...]

(e) ➔ [...]

(f) ➔ [...]

➔ 1a. ➔ [...]

➔ [...]

➔ 1a a. Member States may withdraw or refuse to renew an authorisation ➔ [...] :¹⁶⁴

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

(b) where applicable, if ➔ [...] the host entity ➔ 's business is being or has been wound up under national insolvency laws or ➔ [...] no economic activity¹⁶⁵ is taking place ➔ [...] ;

¹⁶³ ES: reservation. SE: this should be either a "may-provision" or it should be made clear that the proportionality principle as stated in Recital 28 applies.

¹⁶⁴ PL: add "where *the third-country national does not provide proof that he/she is looking for a job or have a good chance to find one*".

¹⁶⁵ AT: "... no *substantial* economic activity..."

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

(c) ➔ [...] ⌚

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

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

➔ (f) ➔ [...] ⌚

➔ (fbis) ➔ [...] ⌚ ⌚

↓ 2004/114/EC

⇒ new

➔ Council

➔ 2. In case of withdrawal, when assessing the progress¹⁶⁶ in the relevant studies, as referred to in paragraph 1a(d), a Member State ➔ [...] ⌚ ➔ may consult with¹⁶⁷ ⌚ 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.¹⁶⁸

¹⁶⁶ **CION**: the wording "assessing the progress" is too vague. **PL**: the "lack of progress" should be considered as a ground for non-renewal.

¹⁶⁷ **CION** prefers the previous wording "shall consult with".

¹⁶⁸ **CZ** drafting suggestion: "[...] possible threat to public policy, public security or public health". **AT**: this should be a shall-clause.

↓ 2005/71/EC

Article 10

Withdrawal or non-renewal of the residence permit

~~1. Member States may withdraw or refuse to renew a residence permit issued on the basis of this Directive when it has been fraudulently acquired or wherever it appears that the holder did not meet or no longer meets the conditions for entry and residence provided by Articles 6 and 7 or is residing for purposes other than that for which he was authorised to reside.~~

~~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

CHAPTER V

~~RESEARCHERS'~~ RIGHTS

Article ~~12~~ 21

Equal treatment¹⁶⁹

↓ new

↻ Council

↻ 1. ↻ [...] ↻ [...] ↻ [...] ↻ Students, ↻ [...] ↻ trainees and volunteers shall be entitled to equal treatment with nationals of the host Member State as provided for by paragraphs 1 and 2 of Article 12 of Directive 2011/98/EU, when they fall within the meaning of point (b) of Article 2 of that Directive. ↻ [...] ↻ [...] ↻¹⁷⁰

↻ [...] ↻

↻ [...] ↻

¹⁶⁹ **AT, BG, CZ, FI:** reservation.
EL, ES, LT, PL, RO: scrutiny reservation. **AT** submitted a note contained in document 11706/14. The **AT** suggestions were considered a good basis for discussions by **BE, DE, FI, FR, LT, LV** (in particular support for suggested paragraph (2a).), **PL, SE** (wanting 12 months in paragraph (2a)) and **SI**.

¹⁷⁰ **AT, BE, DE, FR, SE:** benefits that apply to those who work and those who do not work should be listed instead of individual categories and cross-references to Directive 2011/98/EU.

☞ [...] ☞ 2. ☞ Researchers ☞ [...] ☞ shall be entitled to ☞ [...] ☞ equal treatment with nationals of the host Member State as ☞ [...] ☞ **provided for by Article 12(1) of Directive 2011/98/EU.** ☞ ¹⁷¹

☞ 2 ☞ a ☞ [...] ☞. Third-country nationals under this Directive moving to a third country, or their survivors ☞ [...] ☞ residing in a third country and deriving rights from them, shall receive, **in relation to old age, invalidity and death**, statutory pensions based on the previous employment¹⁷² of the third-country nationals concerned and acquired in accordance with the legislation ☞ [...] ☞ **referred to in Article 3 of Regulation (EC) 883/2004**, under the same conditions and at the same rates as the nationals of the Member States concerned when they move to a third country. ☞

¹⁷¹ **AT**, supported by **NL**, suggested to specify that there should be equal treatment between researchers and nationals "*in the same situation*". **DE** suggested to include tax exemptions. **AT, DE, FI, FR, LT, LV, MT**: concerns that Member States would no longer have the possibility to set conditions on the right to family benefits of researchers where that would be justified in particular when the third-country national is staying temporarily. **BG**: the procedure applicable to researchers should be similar to the Blue Card Directive. **CY**: suggests the following wording: "*Member States may decide not to grant equal treatment to researchers residing in a Member State for a period less than six months in relation to the right to family benefits.*" **FR**: since researchers may or may not be in an employment relationship in a particular Member State, it should be left to a national legislation of that Member State to determine to what extent they qualify for equal treatment, especially in the field of social security. **CI** the aim is to keep the same level of rights for researchers as in the current Researchers Directive, the current version of the Article is not in line with Recital 36 which reconfirms this aim. **DE, PL** wanted to keep the phrase "*and without prejudice to bilateral agreements*". **EL, SE** considered bilateral agreements important. In response, **Pres** referred to recital (36d) which is the same as in the Single Permit Directive.

¹⁷² **LT**: "*..the previous employment in the Member State..*"

↻ [...] ↻ ↻ 3. ↻ ↻ [...] ↻ ↻ **Students**, ↻ volunteers, ↻ remunerated or ↻ unremunerated trainees ↻ [...] ↻ ↻ [...] ↻ **even if they do not fall within the meaning of point (b) of Article 2 of Directive 2011/98/EU**, ↻ 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 ↻, **as well as, where applicable, in relation to recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures and insofar as it is necessary to pursue the objectives set forth in this Directive** ↻. ¹⁷³

↻ ↻ [...] ↻ Member States may decide not to grant equal treatment to **students**, school pupils, volunteers, remunerated or unremunerated trainees ↻ [...] ↻ in relation to procedures for obtaining housing ↻ [...] ↻ and /or services provided by public employment ↻ [...] ↻ **offices** in accordance with national law. ↻

↓ 2005/71/EC (adapted)
 ↻ Council

Article ~~11~~ 22

Teaching ☒ by researchers ☒

~~11~~ Researchers admitted under this Directive may ↻ in addition to research ↻ [...] ↻ activities, ↻ teach in accordance with national legislation.~~2~~ Member States may set a maximum number of hours or of days for the activity of teaching.¹⁷⁴

¹⁷³ **ES:** reservation. **AT:** deletion of the paragraph. **DE, SE:** exclusion of study and vocational training grants from the scope of this paragraph. **BE:** exclusion of disability benefits. **MT:** the paragraph is unclear when read together with paragraph 1.

¹⁷⁴ **ES:** scrutiny reservation suggesting the following wording: "*Third-country nationals* admitted under this Directive may teach in accordance with national legislation *if they carry out a research activity as researchers or as PhD students*. Member States may set a maximum number of hours or of days for the activity of teaching."

↓ 2004/114/EC (adapted)

⇒ new

↻ Council

~~CHAPTER IV~~

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

Article ~~17~~ 23

Economic activities by students

1. Outside their study time and subject to the rules and conditions applicable to the relevant activity in the host Member State, students shall be entitled to be employed and may be entitled to exercise self-employed economic activity¹⁷⁵. The situation of the labour market in the host Member State may be taken into account.¹⁷⁶
2. Where necessary, Member States shall grant students and/or employers prior authorisation in accordance with national legislation.

¹⁷⁵ **CY:** further clarification of "students [...] may be entitled to exercise self-employed economic activity".

¹⁷⁶ **EL:** Member States should check the situation of the national labour market, as a mandatory clause, having the right not to, as an optional derogation.

~~23.~~ Each Member State shall determine the maximum number of hours per week or days or months per year allowed for such an activity, which shall not be less than ~~10~~ ~~⇒ [...] ☐ ⇒ [15] ☐ ⇐¹⁷⁷~~ hours per week, or the equivalent in days or months per year¹⁷⁸.

~~3. Access to economic activities for the first year of residence may be restricted by the host Member State.¹⁷⁹~~

4.¹⁸⁰ 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 ~~☐ and/or an obligation to keep a record of the work authorisation ☐¹⁸¹ ⇒ [...] ☐. ⇒~~ The second Member State may require the student exercising mobility to its territory in accordance with Articles 26B and 26C, and wishing to work on its territory, to provide information about his/her working activities and the number of hours worked in the first Member State. ☐

¹⁷⁷ **ES, NL:** reservation. **AT, BG, ES, LV, MT, NL, RO** insisted on "...10 hours per week...". This is a minimum so Member States still enjoy a degree of flexibility. **SE:** further flexibility is needed. **FR** and **CION:** in favour of 20 hours per week.

¹⁷⁸ **FR:** "... or the equivalent in days or months per year, *and shall not exceed a maximum duration of 20 hours per week, or the equivalent in days, or months per year.*"

¹⁷⁹ **AT, CY:** reservation on the deletion, Member States should be able to set a minimum time period after which students are allowed to work.

¹⁸⁰ **EL** wanted to maintain the possibility for Member States to take into account the situation in the labour market and/or to issue any kind of prior authorisation for work in case of mobility.

¹⁸¹ **AT, EL:** scrutiny reservation on obligation for employers to keep a record of the work authorisation.

5.¹⁸² In case of mobility [...] to one or several Member States in accordance with Article [...] 26C, if the student has already reached or exceeded, in the first Member State, the maximum number of hours per week or days or months per year that he/she is allowed to work in the second Member State, the second Member State may deny him/her access to its labour market or reduce the number of hours he/she is allowed to work accordingly . |¹⁸³

↓ new

→ Council

Article 24

_ [...] [...] Stay [...] for the purposes of [...] job-searching [...] or [...] entrepreneurship for researchers and students¹⁸⁴

¹⁸² **AT:** reservation and , **EL, ES, FR, HU, PT, RO, SK, SE:** scrutiny reservation expressing doubts how this provision, which is related to recital (33a), could be applied and enforced in practice. **SK:** it could be hard for the second Member State to know how many hours the student has already worked in the first Member State. In this context, **Pres** referred to Article 32.

¹⁸³ **EL** did not see the added value of a second Member State to add up the working hours in the first and in the second Member State and check if the student has exceeded the maximum hours he/she is allowed to work in the second Member State. Furthermore, **EL** suggested to strengthen the provisions on fighting abuse.

¹⁸⁴ **FR** preferred the version of the title that referred to an extension of stay.

1. After [...] the completion of research [...] in the Member State, [...] third-country nationals shall [...] be entitled [...] to stay on the territory of the Member State that granted [...] an authorisation under Article 15 for a period of at least [12]¹⁸⁵ [...] months in order to [...] seek employment or set up a business.¹⁸⁶

An authorisation to this end shall be issued by the Member State concerned if the conditions laid down in Article 6(1) points (a) and (c) to (f) and, if applicable, in Articles 6(2) and 6(4) [...] are still fulfilled. This [...] authorisation shall be [...] issued [...] after a [...] confirmation by the host entity of the completion of the research activity [...].

2. After [...] the completion of [...] studies in the Member State, [...] third-country nationals shall [...] be entitled [...] to stay on the territory of the Member State that granted [...] an authorisation under Article 15 for a period of at least [6] [...] months in order to [...] seek employment or set up a business.

¹⁸⁵ **BE**: scrutiny reservation. **CZ**: prefers 3 months; this provision should be optional. **CY**: accepts 12 months for researchers, but not for students. Alternatively, it should be left to the Member States to decide. **AT, EL, ES, LT, LU, MT, NL, RO, SE, SK, SI**: in favour of a minimum period of 6 months.

¹⁸⁶ **AT, CZ, EL, ES, FR, LU, MT, NL, PT, SI**: "be entitled to" is too strong, there should be a right to apply to stay on the territory for the purpose of job searching. **HR**: the purpose for which students and researchers are allowed to stay on the territory of the Member State concerned should be better clarified in the text. **EL** opposes the proposed distinction between "employment seeking" and "access to the labour market".

➔ An authorisation to this end shall be issued by the Member State concerned ☹ if the conditions laid down in ➔ Article 6(1) ☹ points (a) and (c) to (f) ➔ and, **if applicable, in Articles 6(2) and 6(4) ☹ ➔ [...]** ☹ are still fulfilled. ➔ This ➔ [...] ☹ **authorisation shall be ➔ [...]** ☹ **issued ➔ [...]** ☹ after the student has provided ➔ [...] ☹ evidence of having obtained a higher education ➔ diploma, certificate or other evidence of formal ☹ qualifications ➔ [...] ☹. ☹¹⁸⁷

➔ [...]

➔3. (former paragraph 4) For the purpose of stay referred to in paragraphs 1 and 2, ➔ [...]

Member States, upon **an application by ➔ [...]** ☹ the researcher or the student, shall issue ➔ [...] ☹ an authorisation for job searching to the third-country national ➔ [...] ☹ in accordance with their national law. This authorisation shall be different from the one for admission ➔ [...] ☹ foreseen in Article 15 ➔ [...] ☹. **Where applicable, the permit foreseen under Article 25 shall be extended accordingly.** ☹¹⁸⁸

➔ 3a. **Member States may require that the application of the respective third-country national and, where applicable, the members of his/her family, shall be submitted before the expiry of the residence permit.** ☹

¹⁸⁷ FR suggested to define the minimum level of the university degree required by adding the following: "... of formal qualifications *equivalent to a Master's degree* in case of students." Alternatively, Member States could be given the possibility to define the minimum level of a diploma, certificate or other evidence of formal qualifications required (supported by BE, PT). NL: the required level should be a Bachelor's degree instead. AT, SE: against setting a specific level of studies.

¹⁸⁸ CZ, DE, EL: Member States should be able to apply Article 5a when deciding as to whether to issue an authorisation. ES, MT: Member States should be able to apply a labour market test when deciding on granting this authorisation.

4. (former paragraph 3) After a [...] minimum of [3] months¹⁸⁹ from the issuance of the authorisation by the Member State concerned, the latter may [...] require third-country nationals [...] to prove that they have a genuine chance of being engaged or of launching a business.¹⁹⁰

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 **and/or level** [...] of research or the field of studies completed or the skills gained by the third-country national.

[...]

5. If the conditions provided for in paragraph 1, 2 or [...] 4 are no longer fulfilled, Member States shall¹⁹¹ be entitled to withdraw the authorisation of the third-country national and his/her family members according to their national law. [...]

6. [...] Second Member States [...] may apply this Article to researchers and/or students who reside or have resided in the second Member State concerned in accordance with the provisions of Articles 26A, 26B, 26C and 26C(bis) [...]

7. [...]

¹⁸⁹ **DE:** against any time limitations; MS should be able to set the deadline.

¹⁹⁰ **AT:** Member States should be able to provide the intervals after which evidence of trying to find employment is checked. **LT** expressed doubts as to whether the verification procedure would work in practice. **HU:** how to check whether in practice somebody is doing the necessary to set up a business?

¹⁹¹ **AT:** this should be a may-provision.

Article 25

Researchers' family members

1. For the purpose of allowing [...] researchers' family members to accompany the researcher Member States shall apply Directive 2003/86/EC with the [...] **the derogations laid down in this Article.**¹⁹²

1a. By way of derogation from Articles 3(1) and 8 of Directive 2003/86/EC, the granting of an authorisation to family members shall not be made dependent on the requirement of having reasonable prospects of obtaining the right of permanent residence and having a minimum period of residence.

1b. 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 therein may only be applied after the persons concerned have been granted an authorisation.

1c. By way of derogation from Articles 4(5) and 4(6) of Directive 2003/86/EC, Member States shall not apply provisions on a minimum age of the spouse or, if applicable, a maximum age of minor children.

2. Member States shall allow the application of the family members accompanying the researcher [...] to be submitted at the same time as the application for admission of the researcher foreseen under Article 6¹⁹³. The authorisation for family members shall be granted only if the researcher is granted an authorisation in accordance with Article 16(1).

¹⁹² **FR** suggested to delete all references to Directive 2003/86/EC in this Article since it does not apply to family members of researchers who have no "reasonable prospects of obtaining the right of permanent residence" as provided for in Article 3 of that Directive. This Directive should instead contain specific provisions allowing family members of researchers to accompany them during their stay in the EU.

¹⁹³ **AT**: why is there a reference to Article 6?

3. 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. ☞.**¹⁹⁴

☞ In case the family members are accompanying a researcher in the framework of an EU or multilateral programme the time for taking a decision on the complete application shall be at most 60 days¹⁹⁵. ☞

☞ [...] ☞

☞ [...] ☞

4. By way of derogation from Articles 13(2) and 13(3) **☞ [...] ☞** of Directive 2003/86/EC, the duration of validity of the authorisation of family members shall **☞ [...] ☞ ☞**, as a general rule, **be the same as that of the authorisation of the researcher insofar as the period of validity of their travel document allows it. This shall include, where applicable,** authorisations issued to the researcher **☞ [...] ☞ ☞ [...] ☞** for the purpose of job-searching or entrepreneurship as foreseen in Article 24(1) ☞ ☞ [...] ☞.

5. By way of derogation from the second sentence of Article 14(2) of Directive 2003/86/EC, Member States **☞ [...] ☞ ☞ may ☞** not apply any time limit in respect of access to the labour market.¹⁹⁶

¹⁹⁴ **AT, FI, LU:** time-limits 90/60 days are too short. **ES:** 90-day time-limit is too long.

¹⁹⁵ **AT, NL, DE:** the time-limit should be 90 days.

¹⁹⁶ **AT, HU, MT:** reservation on the immediate access of family members to the labour market. It should also be up to the second Member State to regulate the conditions of access to its labour market.

CHAPTER VI

MOBILITY BETWEEN MEMBER STATES¹⁹⁷

↓ 2005/71/EC

↻ Council

↻ Article 26

Intra-EU mobility¹⁹⁸

↻ [...] ↻

↻ 1. A third-country national who holds ↻ [...] ↻ a valid ↻ authorisation for the purpose of research or studies issued by the first Member State may enter ↻ and ↻ stay ↻ [...] ↻ in order to ↻ carry out part of his/her research or studies in one or several second Member States on the basis of that authorisation ↻ [...] ↻ and a valid travel document under the conditions laid down in Articles 26A, 26B ↻, ↻ ↻ [...] ↻ 26C, 26C(bis) ↻ ↻ [...] ↻ ↻ and subject to Article 26 ↻ [...] ↻ ↻ G ↻ .¹⁹⁹ ↻

¹⁹⁷ ES considered that the views of the Council's Working Party on Frontiers should be sought with a view to avoiding problems in the application of the Directive.

¹⁹⁸ CZ: scrutiny reservation on mobility.

DE: while an autonomous scheme is justified for students, there is no need to deviate from the Schengen system in the case of researchers. HR, SE: the proposed scheme, especially the notification system, creates burdensome administrative procedures. AT (reservation), BE, PL: the proposed scheme is too complex both for the applicant and the authorities. FR: it should be clarified which Member State assumes the responsibility for following the intra-EU mobility of a third-country national; it should preferably be the Member State of first admission.

¹⁹⁹ HU: it should be clarified in which cases the authorisation issued by the first Member State can be used for mobility in other Member States.

2. During the mobility referred to in paragraph 1, researchers may, in addition to research activities, teach and students may, in addition to their studies, work , in one or several second Member States in accordance with the conditions laid down in Articles 22 and 23 respectively.

3. When a researcher moves to a second Member State in accordance with Article 26B and in case his/her family was already constituted in the first Member State, the members of his/her family shall be authorised to accompany or join the researcher under the conditions laid down in Article 26 Bbis.

²⁰⁰ FR suggested to add the following sentence: "If the activities take place in different Member States, the maximum duration set by each of them shall not be added up. The first Member State remains responsible for the third-country national in case of extension of the right of residence as stated in Article 24."

⤵ [...] Ⓞ

⤵ 1. A third-country national who has been admitted as a researcher under this Directive and who holds a valid authorisation issued by the first Member State shall be entitled to ⤵ enter and Ⓞ stay ⤵ [...] Ⓞ ⤵ in order to Ⓞ carry out part of his/her research in any research organisation in one or several second Member States for a period of up to ⤵ [...] Ⓞ 90 days in any ⤵ [...] Ⓞ 180-day period per Member State, subject to the conditions laid down in this Article. Ⓞ²⁰³

²⁰¹ **FR**: scrutiny reservation on the Article. **SK**: scrutiny reservation on the Article but welcoming 90/180 days

²⁰² **ES, NL** wanted to maintain the provision on short-term mobility for researchers because family reunification should also be possible in case of short-term mobility. **EL, HU**: scrutiny reservation on deletion this issue. In response, **Pres** indicated that family reunification is still possible under the Schengen rules. **AT, DE**: short-term mobility of researchers and students should be in line with Article 21 of the Schengen Convention; the procedural issues should be in line with the appropriate provisions of the Visa Code. In this context, **DE** indicated that for assessing the need for a new and separate regime for short-term mobility of researchers, it is important to have statistics available on third-country national researchers researchers working in the private sector. In response, **Cion** indicated that the Schengen acquis does not prevent Member States to require a work permit from a third-country national researcher. **AT**: confirmation or documentation of the "accepted" notification should be considered for the purpose of border controls. Only the consulates of Member States should be able to process notifications. **FR** (supported by **AT**): it should be specified that a researcher needs to have spent at least 6 months in the first Member States before he/she can exercise mobility and the stay in the first Member State should be longer than in the second Member State. **AT** noted that only the consulates of the Member States are able to process a notification (dealing with the application, calling the applicant for an interview etc).

²⁰³ **EL, FR** considered 180 days instead of 90 days more appropriate to avoid confusion with the Schengen acquis and because researchers often do research in a second Member State for a period longer than 90 days. **NL** suggested 180/360 in combination with obligatory notification or, if this would be supported by a majority in Council, 90/180 without obligatory notification.

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

3. The second Member State may require the notification [...] to include the transmission of some or all of the [...] following documents and information:²⁰⁴

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

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

[...]

(c) evidence that the researcher has sickness insurance for all the risks normally covered for nationals of the Member State concerned.²⁰⁵

[...]

²⁰⁴ **PL** expressed concerns about the ways in which these provisions should be implemented in practice asking especially how third-country nationals or host entities would exchange information with the authorities of the second Member State while being in the first Member State. **Cion** referred to Article 32 in this respect. **NL**: Article 3(b), (c), (d) and Article 4 (a) and (b) should be replaced with the following: "*evidence as required in Article 6, with the exception of paragraphs 5 and 6, and Article 7, with the exception of paragraph 1(b).*"

²⁰⁵ **HR**: it should be mentioned in all relevant provisions that the sickness insurance covers the same duration as the authorisation.

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

➔ (e) ➔ [...] the address of the third-country national concerned in the second Member State.

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

➔ 4. ➔ [...] Following the notification referred to in paragraph 2 ➔ [...] the second Member State may object to the mobility of the researcher to its territory within ➔ [...] ➔ 30 days²⁰⁶ from having received the ➔ complete notification, where:

➔ (a) the requirements set out in paragraph ➔ [...] 3 ➔ [...] are not fulfilled;

➔ (b) ➔ [...] ➔ one of the grounds for rejection set out in points ➔ [...] (b) or (c) of Article 18(1) or in Article 18(1a) or in points ➔ [...] (b), (c), (cbis) or (ccbis) of Article 18(2) applies ;²⁰⁷

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

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

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

²⁰⁶ SE: the deadline for objection should be 60 days.

²⁰⁷ NL suggested the following instead: "*one of the grounds for rejection, set out in Article 18, with the exception of paragraph 1(a), applies.*"

➔ [...] Ⓞ

➔ [...] Ⓞ

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

➔ 6. ➔ The competent authorities of the second Member State shall inform in writing without delay the competent authorities of the first Member State and²⁰⁸ either the research organisation in the first Member State ➔ ➔ [...] Ⓞ or²⁰⁹ the third-country national ➔ [...] Ⓞ Ⓞ ➔, depending on who submitted the notification, Ⓞ ➔ about their objection to the mobility. In such a case and where the mobility has not yet taken place, the researcher shall not be allowed carry out part of his/her research in the research organisation in the second Member State. Where the mobility has already taken place, Article 26G(4) applies. Ⓞ

➔ 7. Where ➔ [...] Ⓞ the second Member State has not raised any written objection to the mobility of the researcher in accordance with paragraph ➔ [...] Ⓞ ➔ ➔ [...] Ⓞ 6 Ⓞ, the mobility is considered to be approved ➔ [...] Ⓞ ➔ [...] Ⓞ Ⓞ²¹⁰

²⁰⁸ NL: "or"

²⁰⁹ AT: "and/or"

²¹⁰ SI noted that, on the basis of its legal system, approval of a request cannot be done implicitly after a certain deadline has passed. Instead an explicit decision by the competent authorities is needed.

➤ Long-term mobility of researchers ◀

➤ [...] ◀

➤ 1. In relation to a third-country national who has been admitted as a researcher under this Directive and who holds a valid authorisation issued by the first Member State and intends to enter and stay [...] in order to carry out part of his/her research in any research organisation in one or several second Member States for more than [...] 90 days²¹¹ per Member State [...] , the second Member State [...] shall [...] either: ◀

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

➤ or ◀

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

➤ [...] ◀ The second Member State may define a maximum period of the long-term mobility of a researcher which shall not be less than 360 days [...] .²¹²

²¹¹ **NL** wanted 180 days in combination with obligatory notification for short-term mobility or, if this would be supported by a majority in Council, 90/180 days without obligatory notification for short-term mobility.

FR: scrutiny reservation with the remarks that **FR, RO** could support the **NL** suggestion on having a time period of 180 days and, supported by **PT**, that harmonisation of time-limits would contribute to making the EU more attractive for third-country national researchers.

²¹² **ES, SI**: scrutiny reservation. **SI** preferred 180 days. **ES**: "... which shall not be less than 3 years."

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

(a) the researcher or the research organisation in the first Member [...] shall present [...] to the second Member State the [...] following documents and information:²¹³

(i) a valid travel document, as provided for in point (a) of Article 6(1) and a valid authorisation issued by the first Member State;²¹⁴

(ii) [...] evidence as required in [...] points (c) , (e) and (f) of Article 6(1) and Article 6(4) ;

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

²¹⁵

[...]

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

²¹³ CZ suggested to provide for the following possibility: " (a) the researcher shall present at the latest 60 days before *either* the intended mobility to the second Member State *or the end of short-term mobility* the following documents and information:". **AT, DE**: the deadline should correspond to the procedural time limit of 90 days. **AT**: it should be clarified what happens if the residence title issued by the first Member State expires in the meantime. **BE**: the dates and duration of mobility should also be specified in the application. Furthermore, the researcher should demonstrate that the long-term mobility he/she applies for is in the context of a research activity that has already begun. **HU**: it should be clear that it is up to a Member State to decide whose responsibility it is to notify, as provided for in Article 6(7).

²¹⁴ **BE**: the authorisation must be valid until his/her departure to the second Member States, otherwise the application in the second Member States should be treated as an initial application.

²¹⁵ **EL**, supported by **PT**, noted that the general rule should be that the hosting agreement or the contract is concluded with the research organisation on the territory of the second Member State and that a second Member State may accept a hosting agreement with a research organisation in the first Member State.

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

(b) the competent authorities of the second Member State shall take a decision on the application for long-term mobility and notify in writing [...] either the research organisation in the first Member State or²¹⁶ the researcher, depending on who has submitted the application, [...] as soon as possible, but not later than [...] 90 days after [...] the competent authorities of [...] the second Member State has received the [...] complete [...] application and the documents foreseen in point (a). Member States may provide for a shorter deadline for taking the decision on the application.²¹⁷

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

3. The competent authorities of the Member States may reject an application for long-term mobility where:²¹⁸

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

[...]

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

²¹⁶ **AT:** "and/or".

²¹⁷ **AT:** it needs to be specified as to what happens if the second Member State does not comply with this deadline.

DE: reservation and **ES:** scrutiny reservation on implicit decision after time period has lapsed. **Cion** considered 90 days too long.

²¹⁸ **DE** suggested to add the following ground for rejection: "*(c) if applicable, labour and research conditions are not in line with national law, collective agreements and practices.*"

BE, LT: as this is an application for a new authorisation, the grounds for rejection should be the same as in Article 18.

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

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

5. Where the competent authorities of the second Member State take a positive decision on the application for long-term mobility as referred to in paragraph 2, the researcher shall be issued an authorisation in accordance with Article 15(4).²¹⁹

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

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

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

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

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

²¹⁹ **BE, LT:** as the researcher receives a new authorisation in the second Member State, grounds for withdrawal as set out in Article 19 should also apply. **SE:** there is a contradiction with Article 16(4).

²²⁰ **AT** suggested to insert a reference to Article 6(4).

Long-term mobility of researchers' family members ☹

➔ 1. In case the researcher is accompanied by his/her family members in the framework of a long-term mobility, and when Member States apply the procedure laid down in paragraph 1(a) of Article 26B²²², the notification referred to in paragraph 3 of Article 26A shall include:

(a) the documents and information required under points (a), (c) and (d) of paragraph 3 of Article 26A related to the family members accompanying the researcher.

(b) evidence that the family member has resided as a member of the family of the researcher in the first Member State in accordance with Article 25.

Paragraphs 4 to 7 of Article 26A²²³ shall apply to those family members accordingly.

2. In case the researcher is accompanied by his/her family members in the framework of a long-term mobility, and when Member States apply the procedure laid down in paragraph 1(b) of Article 26B, the application shall be submitted by the researcher or by the family members of the researcher²²⁴ ➔ [...] ☹²²⁵ to the competent authorities of the second Member State, presenting the following documents and information in relation to the family members: ²²⁶

221 **EL, ES:** scrutiny reservation. **ES:** it is not clear what procedures apply for family members in the case of short-term mobility.

NL: scrutiny reservation wondering what rules would apply to family members that join the researcher only in the second Member State. .

222 **DE:** scrutiny reservation wanting to clarify whether notification is enough.

223 **AT, DE:** scrutiny reservation on references.

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

225 **AT:** why has the reference to a time-limit been deleted?

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

(a) a valid authorisation issued by the first Member State²²⁷

(b) evidence as required in Article 6, with the exception of paragraph 5 ➡ [...] Ⓞ ;

(c) evidence that they have resided as members of the family of the researcher in the first Member State in accordance with Article 25.²²⁸

Member States may require the applicant to present the documents listed above in an official language of the Member State concerned.

When Member States apply the procedure provided in this paragraph, paragraphs 2(b), 2(c), 3, 4, 5, 6, 6bis and 7 of Article 26 B shall apply accordingly.²²⁹

3. The duration of validity of the authorisation of the researchers' family members shall, as a general rule, end on the date of expiry of the researcher's authorisation issued by the Member State concerned.²³⁰

4. ➡ [...] Ⓞ Ⓞ

²²⁷ **AT:** there should be an explicit reference to a valid travel document too.

²²⁸ **HU:** the address should be requested instead.

²²⁹ **AT, DE, PL:** scrutiny reservation on references.

²³⁰ **AT:** reference should also be made to the validity of the travel document.

↓ new

↻ Council

↻ Article 26 ↻ [...] ↻ C

↻ [...] ↻

↻ [...] ↻

↻ Mobility of students ↻²³¹

231

AT, ES, FR, PL: scrutiny reservation.

FR: it should be specified that the diploma is awarded by the first Member State and not the second Member State. Furthermore, **FR** considered that students other than those covered by EU or multilateral programmes or by an agreement between recognised higher education institutions should be able to submit their request without being obliged to return to the first Member State. **FR** requested information as to what cases are covered by mobility programmes so as to be able to ascertain whether mobility of individual students is needed at all.

AT: the provisions for the mobility of students are overly complicated and are open for circumvention. Students doing long-term mobility should have comparable requirements as researchers doing long-term mobility.

DE (supported by **FR**): mobility on the basis of an authorisation issued by the first Member State should be limited to students participating in study programmes authorised by Member States. In response, **Cion** indicated that promoting mobility of students in general is an EU policy objective that inter alia is supported through the Bologna process. Many students practice mobility outside study programmes. Finally, it is noted that the current Students Directive allows individual mobility of students that have a residence permit for two years. Therefore, excluding individual mobility in the recast would imply a step backwards. **ES** supported the reasoning of the **Cion**.

DE considered it furthermore unlikely that students would need to move for a period of less than 6 months as a semester is normally 9 months long. Students wishing to move to second Member States for study purposes should apply for a long-stay visa in the consulate of the relevant Member State. It should also be specified that the duration of mobility should be shorter than the duration of the initial stay in the first Member State. Mobility on an individual basis could be regulated at national level.

1. A [...] student admitted [...] under this Directive and who holds a valid authorisation [...] issued by the first Member State shall be entitled to enter and stay in order to carry out part of his/her studies in any higher education institution in one or several second Member States for a period of up to 180 days in any 360-day period per Member State subject to the conditions laid down in this Article.²³²

[...]

2. The period referred to in paragraph 1 shall be up to 360 days per Member State²³³ for students [...] admitted [...] under this Directive, [...] who hold [...] a valid authorisation issued by the first Member State [...] and [...] are covered by [...] EU or multilateral [...] programmes²³⁴ [...] that comprise [...] mobility measures [...] or by an agreement between two or more recognised higher education institutions, [...] [...] subject to the conditions laid down in [...] paragraphs 3 and 4 [...] .²³⁵

2a. In the cases referred to in paragraph 1 the student shall submit an application for an authorisation in the second Member State in accordance with Articles 6 and 10 [...] and, where applicable, Article 10a .²³⁶

²³² **SE:** scrutiny reservation wanting to allow Member States to give an authorisation that has a longer duration than 180 days.

²³³ **LT:** against students spending more than 90 days in a second Member State without any documents having been issued by that Member State. In LT, an authorisation is needed in order to qualify for benefits and services. **AT:** scrutiny reservation raising the question how the relevant authorities would know that this concerns legal residence and when the period starts running?

²³⁴ **DE:** "... national or Union programmes...."

²³⁵ **PL:** should mobility programmes for researchers also be covered?

²³⁶ **Cion** wanted individual students to have the possibility to submit a notification like students under a programme so as to avoid a heavy procedure in many Member States.

AT suggested to specify that such students can only make an application as long as the authorisation of the first Member State is valid. If otherwise, the student would be staying illegally.

PL suggested to specify more directly which category of students is covered by paragraph 3.

EL wanted for individual students (paragraph 3) a similar arrangements as for students covered by a programme (paragraph 2). **Cion** clarified that student under paragraph 3 must make a normal application but does not have to leave the territory of the second Member State.

By way of derogation from Article 6(5), students 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.

3. For students referred to in paragraph 2, the higher education institution in the first Member State or the student shall notify the competent authorities of the first Member State and of the second Member State of the intention of the student to carry out part of his/her studies in the higher education institution in the second Member State. The notification shall take place at the latest [...] 30 days before the intended mobility. Member States may provide for a shorter deadline for notification.²³⁷

4²³⁸. The notification shall include the transmission of [...] the following documents and information:²³⁹

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

(b) [...] evidence that the student carries out part of his/her studies in the framework of an EU or a multilateral programme that comprises mobility measures or of an agreement between two or more recognised higher education institutions²⁴⁰ [...]

²³⁷ CZ suggested the following: "*The second Member State may require the higher education institution in the first Member State to notify the competent authorities...*". FR: the deadline should be 60 days. AT, LU: the deadline should be 90 days. PL: it should be specified as to whether the mobility can take place immediately or whether the student has to wait for a decision by the second Member State.

²³⁸ DE: scrutiny reservation.

²³⁹ CZ suggested the following: "*The second Member State may require the notification to include the transmission of the following documents and information:*". PL: similarly to Article 10(1)(b) it should be possible to verify whether the fees charged by the higher education institution are paid. NL suggested to delete points (b)-(e) of paragraph 3 and points (a)-(e) of paragraph 4 and replace them with the following: "*(b) evidence as required in Article 6, with the exception of paragraphs 5 and 6, and Article 10, paragraph 1(b)*".

²⁴⁰ NL: scrutiny reservation considering it unclear what influence public authorities can exert on agreements between higher education institutions.

➔ (c) ➔ [...] ➔ the planned duration and dates of the mobility where not specified under point (b) ²⁴¹ ➔; ➔

➔ [...] ➔

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

➔ [...] ➔

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

➔ (a) evidence that during his/her stay the third-country national has sufficient resources to cover his/her subsistence ➔, his/her study costs, as well as ➔ [...] ➔ travel costs to re-enter ➔ the first Member State ➔ in the cases referred to in Article 26G(4)(b) ➔ and will not have recourse to the Member State's social assistance system ➔ ²⁴² ➔ [...] ➔ ;

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

➔ [...] ➔

➔ [...] ➔

(➔ [...] ➔ f) ➔ [...] ➔ the address of the third-country national concerned in the territory of the second Member State. ➔ ➔ ²⁴³

²⁴¹ NL suggested to clarify the phrase "where not specified under point (b)".

²⁴² AT: scrutiny reservation.

²⁴³ AT: the student should also be required to provide evidence of adequate accommodation.

Member States may require the [...] higher education institution in the first Member State or the student to present the documents listed in [...] paragraphs 4 and 5 in an official language of the Member State concerned.

6. Based on the notification referred to in paragraph 3 [...], the competent authorities of the second Member State may object to the mobility of the student to its territory [...] as soon as possible, but not later than 30 days from the moment of having received the complete notification²⁴⁴, where:

(a) the requirements set out in paragraph 4 and, where applicable, paragraph 5 of this Article and/or in Article 10a are not fulfilled;

(b) [...] one of the grounds for rejections set out in points (b) [...] or (c) of Article 18(1) or in Article 18(1a) or in points (b), (c) [...] (cbis) and (ccbis) of Article 18(2) applies ;²⁴⁵

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

(d) [...]

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

²⁴⁴ **AT:** a time-limit of 90 days should be provided for. **FR:** the deadline should be 60 days.

²⁴⁵ **NL** suggested the following wording instead: "*one of the grounds for rejection, set out in Article 18, with the exception of paragraph 1(a), applies.*" **AT:** exceptions could be listed only.

☞_☞ [...] ☞8. The competent authorities of the second Member State shall inform without delay ☞ in writing ☞ the competent authorities of the first Member State and ☞ either ☞ the higher education institution in the first Member State ☞, or the student, depending on who has submitted the ☞ [...] ☞ notification²⁴⁶ about their objection to the mobility. ☞

☞_☞ [...] ☞9. Where, following the notification referred to in paragraph 3, ☞ [...] ☞ the second Member State has not raised any written objection to the mobility of the student, in accordance with paragraph ☞ [...] ☞ 8, the mobility is considered to be approved and may take place in the second Member State. ☞ [...] ☞_☞²⁴⁷

☞ [...] ☞

²⁴⁶ **AT** suggested to insert "*or application*".

²⁴⁷ **SI**: scrutiny reservation noting that, on the basis of its legal system, approval of a request cannot be done implicitly after a certain deadline has passed. Instead an explicit decision by the competent authorities is needed.

➔ **Article 26 C(bis)**

Extension of mobility of students in the framework of approved EU or multilateral programmes or of an agreement between two or more recognised higher education institutions ◀

➔ 1.²⁴⁸ Students referred to in paragraph 2 of Article 26(C) shall be entitled to extend their mobility to a second Member State for a maximum period of 180 days, provided that:

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

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

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

(d) the student continues to fulfil the conditions and requirements set out in ➔ paragraphs 6(a), (b) and 7 of ◀ Article 26C.

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

➔ [...] ◀

248

DE, supported by **CZ**, **LT**, **SI**, suggested a maximum period for mobility of students in Article 26C without the possibility for extension. **LT** is in favour of providing for 1 maximum period of 12 months without the possibility of extending it. **AT**: critical of the possibility of extension.

NL: against extension of the period of mobility given the already long initial mobility period. For stays longer than the initial duration, students should apply for a normal residence permit.

DE expressed doubts about extension given that it would cover a period of 360 + 180 = 540 days and suggested instead a maximum time without possibility of extension.

Cion indicated that an extension of 180 days should be sufficient for almost all students.

PL suggested to include in the Article a reference to Article 18 on grounds for refusal.

➔ Article 26E

➔ [...] ➔

➔ [...] ➔

➔ [...] ➔

➔ Article 26 ➔ [...] ➔ ➔ G ➔

Safeguards ➔ [...] ➔ and sanctions ➔²⁴⁹ ➔

➔ [...] ➔

➔ 1. Where the authorisation for the purpose of research or studies is issued by the competent authorities of a Member State not applying the Schengen acquis in full and the researcher or student crosses an external border, the competent authorities of the second Member State shall be entitled to require as evidence that the researcher or student is moving to the second Member State either for the purpose of research or studies respectively:²⁵⁰ ➔

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

➔ or ➔

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

➔ [...] ➔ ➔ ➔

²⁴⁹ **AT:** the Article should be revised on the basis of the relevant provisions in the ICT Directive. **PL:** the reference to sanctions is not relevant as the Article does not contain any.

²⁵⁰ **DE:** how would this be implemented in practice? **ES** suggested the following:
"Where [...] the researcher or student crosses an external border *when moving to the second Member State*, the competent authorities [...] *for border checks* shall be entitled to require as evidence that the researcher or student is moving to the second Member State either for the purpose of research or studies respectively."

➔ In case of the family members of the researcher, the competent authorities of the second Member State²⁵¹ shall be entitled to require as evidence a valid authorisation issued by the first Member State and evidence that they have been ➔ [...] ➔ admitted to the Member State concerned. ➔

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

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

➔ [...] ➔

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

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

²⁵¹ ES: ".. the competent authorities for border checks shall be.."

➔ (b) ☉ The first Member State shall, upon request of the second Member State, allow re-entry of the researcher or student ➔ and, where applicable, of his or her family members ☉ without formalities and without delay ➔ [...] ☉ ➔ [...] ☉ ➔ [...] ☉ This shall also apply if the authorisation issued by the first Member State has expired within the previous six months²⁵² or has been withdrawn during the period of mobility within the second Member State **as referred to in Articles 26A, 26B, 26B(bis), 26(C), 26C(bis).**²⁵³ ☉

252

ES: scrutiny reservation on the 6-month period.

253

NL suggested the following wording for this paragraph: "The first Member State shall, upon request of the second Member State, allow re-entry of the researcher or student and, where applicable, of his or her family members without formalities and without delay *during the validity of the authorisation issued by the first Member State. During this validity* the first Member State shall remain responsible also for the return of the researcher or the student to his/her country of origin. *After expiration of the validity of this authorisation the second Member State becomes responsible for this return to his/her country of origin.*" **EE**, supported by **NL**, wanted to specify further that the first Member State is not responsible for sending the third-country national back to his or her country of origin when he/she remains on the territory of the second Member States after the authorisation of the first Member State expired. The first Member State should not be held responsible for persons who have illegally resided in the second Member State for a long time. **PL** (scrutiny reservation): the first Member State should readmit the family members only if they had previously resided in the first Member State pointing out that the Return Directive should apply here. **FR** (reservation): against provisions on return which are in contradiction with the Return Directive. **LT**: the responsibility of the first Member State should be limited in time suggesting a period of 6 months as in the case of host entities. **AT** (supported by **DE**): the first Member State remains responsible unless the second Member State has issued an authorisation suggesting that it might not be necessary to have rules on return in this Directive. **DE**: no time-limit should be applied to the responsibility of the first Member State. **EL**: the wording if the paragraph is unclear. **ES** suggested the following: "The first Member State shall [...] allow re-entry of the researcher or student without formalities and without delay and, where applicable, of his or her family members. This shall also apply, *upon request of the second Member State*, 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."

➔ 5. In cases where the researcher or his/her family members or the student crosses the external border of a Member State applying the Schengen acquis in full, that Member State shall consult the Schengen information system. That Member State shall refuse entry or object to the mobility²⁵⁴ of persons for whom an alert for the purposes of refusing entry and stay has been issued in the Schengen information system. ◀

➔ 6. Member States may impose sanctions against the host entity established on its territory²⁵⁵, where:²⁵⁶

(a) the host entity has failed to notify the mobility of the researcher or student in accordance with Article 26A, ➔ 26B or ◀ ➔ [...] ◀ 26C ➔ [...] ◀²⁵⁷;

(b) the residence permit has been used for purposes other than that for which it was issued;²⁵⁸

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

259

254 ES: delete "or object to mobility".

255 AT suggested to insert "...or, where applicable, the employer of a student or a family member..".

256 AT: sanctions should be applied also in case employment conditions are not met.

257 NL: reference to 26B should be included.

258 SE: this point should be deleted as it is not reasonable to hold the host entity responsible for the conduct of a student or a researcher.

259 AT suggested to insert a new point (d): " *“the host entity or the employer of a student or a family member has failed to meet its legal obligations regarding social security, taxation, labour rights, working conditions or application for prior authorisation or reporting, in advance or otherwise, to an authority designated by the Member state concerned.”*

Article 27



Article 28



↓ 2005/71/EC (adapted)

~~CHAPTER V~~

~~PROCEDURE AND TRANSPARENCY~~

~~Article 14~~

~~Applications for admission~~

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

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

~~Article 15~~

Procedural safeguards

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

~~2. If the information supplied in support of the application is inadequate, the consideration of the application may be suspended and the competent authorities shall inform the applicant of any further information they need.~~

~~3. Any decision rejecting an application for a residence permit shall be notified to the third-country national concerned in accordance with the notification procedures under the relevant national legislation. The notification shall specify the possible redress procedures available and the time limit for taking action.~~

~~4. Where an application is rejected, or a residence permit, issued in accordance with this Directive, is withdrawn, the person concerned shall have the right to mount a legal challenge before the authorities of the Member State concerned.~~

CHAPTER ~~V~~ VII

PROCEDURE AND TRANSPARENCY

Article ~~18~~ 29²⁶⁰

Procedural guarantees and transparency

~~1. A decision on an application to obtain or renew a residence permit shall be adopted, and the applicant shall be notified of it, within a period that does not hamper the pursuit of the relevant studies, whilst leaving the competent authorities sufficient time to process the application.~~

²⁶⁰ ES proposed a new section in Article 29 which to simplify procedures that shall at least include:
(a) *exempting the applicant from presenting some of the evidence referred to in Article (..); and/or*
(b) *a fast-track admission allowing the authorisations to be issued withing a shorter time; and/or*
(c) *facilitated and/or accelerated procedures in relation to the issuance of the requisite visas.*

↓ new

→ Council

1. The competent authorities of the Member State [...] concerned shall [...] adopt a decision on the [...] application for an authorisation or a renewal of it and [...] notify the applicant²⁶¹, as defined in Article 6(7), in writing, in accordance with the notification procedures laid down in the national law of the Member State concerned, as soon as possible [...] but no later than [...] 90 days [...] of the complete application [...] being lodged [...].²⁶²
- 1a. By way of derogation from paragraph 1, in case the [...] the admission procedure is related to [...] a research organisation, an approved host entity or an approved higher education institution, as referred to in Articles 6a, 8 and 10a, the time for taking a decision on the complete application shall be at most 60 days²⁶³.

²⁶¹ **PL:** it should be clarified who the applicant is.

²⁶² **HU:** a shorter deadline. **HU:** 21 days in its national legislation. **CION:** 90 days is too long; it would like to maintain the time limits shorter as originally proposed since they are more in line with the needs of the categories concerned.

²⁶³ **HU:** the period is too long. **HU:** 21-day period for researchers, and a 15-day period for students in its legislation. **CION:** since some MS have shorter deadlines, the figure in this text could even be reduced to 30 days. **DE:** prefers not to specify a time limit and leave MS to decide. **FR:** reservation on the fast-track procedure.

↓ 2004/114/EC (adapted)

⇒ new

⇒ Council

2. ⇒ [...] ⇒ Where ⇒ the information ⇒ or documentation ⇒ supplied in support of the application is ⇒ [...] ⇒ incomplete²⁶⁴ ⇒ , ~~processing of the application may be suspended~~ and the competent authorities shall ⇒ [...] ⇒ notify ⇒ the applicant ⇒ within a reasonable period ⇒ of ⇒ [...] ⇒ the additional ⇒ information ⇒ [...] ⇒ that is required ⇒ ⇒ and ⇒ [...] ⇒ set ⇒ a reasonable deadline ⇒ [...] ⇒ for providing it ⇒ . The period referred to in paragraph ⇒ s ⇒ 1 ⇒ and 1a ⇒ shall be suspended until the authorities have received the additional information ⇒ or documents ⇒ required ⇒ . If additional information or documents have not been provided within the deadline, the application may be ⇒ [...] ⇒ rejected ⇒ ↵ .²⁶⁵
3. ⇒ [...] ⇒ Reasons for a ⇒ decision ⇒ [...] ⇒ declaring inadmissible or ⇒ refusing an application for ~~a residence permit~~ ⇒ an authorisation ⇒ ↵ ⇒ [...] ⇒ or refusing renewal ⇒ shall be ⇒ [...] ⇒ given in writing to the applicant. Reasons for a decision withdrawing an authorisation shall be given in writing to ⇒ [...] ⇒ the third-country national ⇒ [...] ⇒ . Reasons for a decision withdrawing an authorisation may also be given in writing to the host entity or the host family. ⇒

²⁶⁴ AT prefers to use another term such as "*inappropriate*" instead of "incomplete". It prefers the previous wording of paragraph 2.

²⁶⁵ AT: against the wording of this paragraph and suggests it should be in line with the other Directives in this field.

4. ~~⌚ [...] ⌚~~ ~~⌚~~ Any decision declaring inadmissible or rejecting the application, refusing renewal, or withdrawing an authorization shall be open to a legal challenge in the Member State concerned, in accordance with national law. The written notification shall specify the court and/or administrative authority where an appeal may be lodged and the time-limit for lodging the appeal. ⌚

~~Article 19~~

~~Fast-track procedure for issuing residence permits or visas to students and school pupils~~

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

↓ new

⌚ Council

~~Article 30~~

~~Transparency and access to information²⁶⁶~~

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

²⁶⁶ **PL:** difficult to make available the information requested by this article due to the heterogeneity of the groups targeted by this proposal.

↓ 2004/114/EC

⇒ new

⇒ Council

Article ~~20~~ 31

Fees

Member States may require applicants to pay fees for the ⇒ [...] ⇐ ⇒ handling ⇐ of
⇒ notifications and ⇐ applications in accordance with this Directive.²⁶⁷ ⇒ The ⇒ level of such fees
shall not be disproportionate or excessive. ⇒ [...] ⇐ ⇐

↓ 2005/71/EC (adapted)

~~CHAPTER VI~~

~~FINAL PROVISIONS~~

~~Article 16~~

~~Reports~~

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

²⁶⁷ NL suggested the following: "Member States may require *the host entity or the researcher or student* to pay fees for the handling of *notifications* or applications in accordance with this Directive."

Article 17

Transposition

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

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

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

Article 18

Transitional provision

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

~~Article 19~~

~~Common Travel Area~~

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

~~Article 20~~

~~Entry into force~~

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

~~Article 21~~

~~Addressees~~

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

CHAPTER ~~VI~~ VIII

FINAL PROVISIONS

Article 32

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

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

Article 33

Statistics²⁶⁸

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

²⁶⁸ **AT:** the period for communicating statistics should be in line with Eurostat periods. It also suggests to transmit to **CION** data on authorisations to take up employment.

▼ 2004/114/EC (adapted)

⇒ new

↻ Council

Article ~~21~~ 34

Reporting

Periodically, and for the first time by ☒ [five years after the date of transposition of this Directive] ☒ ~~12 January 2010~~, the Commission shall ⇒ ↻ [...] ↻ ⇐ report to the European Parliament and the Council on the application of this Directive in the Member States and propose amendments if appropriate.

Article 22

~~Transposition~~

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

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

~~Article 23~~

~~**Transitional provision**~~

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

~~Article 24~~

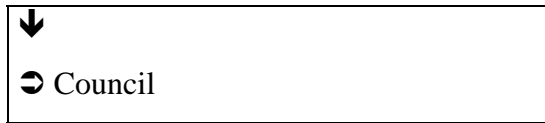
~~**Time limits**~~

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

~~Article 25~~

~~**Entry into force**~~

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



Article 35

Transposition²⁶⁹

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [two years²⁷⁰ 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.

²⁶⁹ **LV** referred to the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, which stipulates that Member States undertakes to accompany, in justified cases, the notification of their transposition measures. Recital 40 of this proposal, in its final sentence, says that "with regard to this Directive, the legislator considers the transmission of such documents to be justified". Given that the legislator has not yet made the corresponding assessment, therefore the statement regarding transmission of relevant documents as justified is premature.

²⁷⁰ **FI, LT, SE** prefer 3 years.

Article 36

Repeal²⁷¹

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*.

²⁷¹ Please note that the amendment of Recital 43 is linked with this article.

Article ~~26~~ 38

Addressees

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

Done at Brussels,

For the European Parliament

The President

For the Council

The President

ANNEX I



Part A

Repealed Directive with list of its successive amendments

(referred to in Article 37)

Directive 2004/114/EC 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	-
