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NOTE

From:	Presidency
On:	29 April 2014
To:	Working Party on Integration, Migration and Expulsion
No. prev. doc.:	8159/14 MIGR 36 RECH 130 EDUC 105 CODEC 897
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 4 April, the Working Party on Integration, Migration and Expulsion had an exchange of views on the Presidency's compromise suggestions in Articles 26, 26A, 26B, 26C, 26D and 26E.

At the meeting of 29 April, the discussions will focus on Articles 21, 22, 23 and 24 along with Recitals 34a and 36. The Presidency compromise suggestions that were presented for the meeting on 4 April and that were not discussed due to the lack of time will also be addressed on 29 April if there is sufficient time for this.

New text is indicated with **☞addition in bold☞**; the deleted text is indicated with **☞[...]**.

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

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

- Recital 4
- Recitals 9, 9a, 9b
- Recital 24a
- Recital 18
- Recital 24a
- Recital 28
- Recital 29
- Recital 32
- Recital 42
- Article 3(f)
- Article 6a
- Article 7(1bis)
- Article 9(1), (1a), (2), (4), (5)
- Article 10(1)(c)
- Article 10a(1)
- Article 11(1bis), (1), (1)(f), (2bis), (2bis)(d)
- Article 13(1)
- Article 14(1), (1)(c)
- Article 16(1), (3), (5), (6), (7), (10)
- Article 17(1)
- Article 18(1), (2), (3)
- Article 19(1), (1a), (1aa), (4)
- Article 24(1)
- Article 28
- Article 29(3)

ANNEX

↓ 2004/114/EC, 2005/71/EC (adapted)

⇒ new

2013/0081 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

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

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

[RECAST]²

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

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

Acting in accordance with the ordinary legislative procedure,

Whereas:³

² **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.

³ **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 service⁴ and Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research⁵. 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 Directives⁶ to remedy the identified weaknesses, and to offer a coherent legal framework for different groups coming to the Union from third countries. It should therefore simplify and streamline the existing provisions for the different groups in a single instrument. Despite differences between the groups covered by this Directive, they also share a number of characteristics which makes it possible to address them through a common legal framework at Union level.
- (3) This Directive should contribute to the Stockholm Programme's aim to approximate national legislation on the conditions for entry and residence of third-country nationals. Immigration from outside the Union is one source of highly skilled people, and in particular students and researchers are increasingly sought after. They play an important role to form the Union's key asset – human capital - in ensuring smart, sustainable and inclusive growth, and therefore contribute to the achievement of the objectives of the Europe 2020 Strategy.

⁴ OJ L 375, 23.12.2004, p. 12.

⁵ OJ L 289, 3.11.2005, p. 15.

⁶ COM(2011) 587 final and COM(2011) 901 final

(4) The [...] implementation reports of the two Directives [...] pointed out certain insufficiencies of the two instruments in relation mainly with the admission conditions, rights, procedural safeguards, students' access to the labour market during studies, intra-Union mobility provisions [...]. **Also specific improvements were considered necessary** regarding the optional categories of third-country nationals. Subsequent wider consultations have also pointed out the need for better job-seeking possibilities for researchers and students and better protection of au-pairs⁷ and remunerated trainees [...] by extending the scope of [...] the current instruments for [...] the latter two categories.⁸

↓ 2004/114/EC recital 1

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

↓ 2004/114/EC recital 2 (adapted)

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

⁷ ES: reservation.

⁸ 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.~~ ⇒ should promote the generation and acquisition of knowledge and skills⁹. ⇐ ⊗ 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.

⁹ **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~~ procedure
~~for researchers~~ should be based on collaboration between ~~the~~ research organisations and the
immigration authorities in the Member States. It should give the former a key role in the
admission procedure with a view to facilitating and speeding up the entry and residence of
third-country researchers in the ~~Community~~ ⊗ Union ⊗ while preserving Member States'
prerogatives with respect to immigration ~~policy~~ ⊗ policy ⊗. Research organisations
approved in advance by the Member States¹⁰ 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 ↻ [...] ⇐ ↻ activity¹¹ ⇐ . 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.

¹⁰ ES: reservation.

¹¹ AT, CY prefer "*research project*" since it is narrower and in order to limit abuse as much as possible.

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

⇒ (⇒ [...] ⇒ 9b [previous 9a]) Member States should have the right to ⇒ [...] ⇒ provide for an approval procedure for respective entities to host pupils, remunerated and unremunerated trainees ⇒ [...] volunteers ⇒ or au pairs . This approval should be in accordance with the procedures set out in the national law or administrative practice of the Member State concerned, while Member State would have the possibility to apply this procedure to some or all of the categories of the host entities. ¹³

¹² **PL** does not see the justification for the inclusion of a fast-track procedure. **ES:** this recital should also mention researchers as a group with access to the fast-track procedure.

¹³ **DE:** the link between Recitals 9a and 9b should be clearer as they seem to supplement each other.

↓ 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 ⇒ [...] ☒ ⇒ should¹⁴ ☒ ⇒ be encouraged ☒ therefore ⇒ , where appropriate, to ☒ recruit more researchers in the years to come, the research organisations ~~potentially eligible~~ ☒ that can be approved ☒ under this Directive ☒ ⇒ [...] ☒ ⇒ could ☒ ☒ belong to either the public or private sectors.

↓ 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 admitted with them, ⇒ [...] ☒ benefit from intra- Union mobility provisions and ⇒ [...] ☒ have access to the labour market¹⁶ ⇐.

¹⁴ **AT, CY, DE** against "should". In case "should" is kept, the wording "*where appropriate*" needs to be added.

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) Where appropriate, → and for the purpose of this Directive, ← Member States should be encouraged to → [...] ← → consider ← → doctoral ← → [...] ← → students ←¹⁷ as researchers.

↓ 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.

¹⁷ **AT**: "doctoral" is better than the original "PhD candidates" but since rules are different in Member States this could lead to confusion. **EE** prefers "*doctoral candidates*" in line with the terminology in the document "Towards a European Framework for Research Careers" of 21 July 2011 where doctoral candidates are considered "first stage researchers". **EE**: add higher institution lecturers as a category of researchers.

↓ 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.

¹⁸ COM(2011) 567 final

↓ new

→ Council

(15) The extension and deepening of the Bologna process launched through the Bologna Declaration¹⁹ 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 researchers²⁰, 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.²¹

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

²⁰ EE prefers the original term "*academic staff*" over "researchers".

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

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

↓ 2004/114/EC recital 10

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

↓ 2004/114/EC recital 12

↻ Council

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

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

↓ 2004/114/EC recital 13

⇒ new

⇒ Council

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

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

↓ new

→ Council

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

(20) → [...] [→ [...]]²⁴

(21) → [...] [→ [...]] → As far as au-pairs are concerned²⁵, Member States could decide to apply this Directive in order [→ [...]] to address their specific needs → [...] [→ [...]]²⁶ . This Directive should foresee conditions to be fulfilled by both the au-pair and the host family, in particular as regards the agreement between them which should include elements such as → a minimum sum of money as [→ [...]] → [...] [→ [...]] pocket money to be received^{27 28} .

²⁴ **HU**: insert a new recital clarifying who should be considered a worker.

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

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

²⁷ Council of Europe European Agreement on "au pair" Placement, Article 8

²⁸ **ES**: reservation. **AT** proposes to delete this recital.

- (22) Once all the general and specific conditions for admission are fulfilled, Member States should issue an authorisation, \Rightarrow [...] \Leftarrow 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 \Rightarrow every facility to obtain \Leftarrow the requisite visa \Rightarrow or equivalent permit \Rightarrow [...] \Leftarrow allowing entry \Leftarrow .²⁹
- (23) Authorisations should mention the status of the third-country national concerned \Rightarrow [...] \Leftarrow . Member States may indicate additional information \Rightarrow including \Rightarrow [...] \Leftarrow relevant information on EU \Rightarrow [...] \Leftarrow or multilateral programmes that comprise mobility measures \Leftarrow in paper format or electronically, provided this does not amount to additional conditions.³⁰
- (24) The different periods of duration regarding authorisations under this Directive should reflect the specific nature of the stay of each group.

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

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

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

(25) Member States may charge applicants for ☞ [...] ☞ ☞ handling³¹ ☞ applications for authorisations. The ☞ [...] ☞ ☞ level of the fees shall 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 ☞ [...] ☞ ☞ .³²

↓ 2004/114/EC recital 8
☞ Council

(27) ☞ [...] ☞

³¹ **AT:** reservation on the inclusion of the new wording "handling".

³² **CY:** reservation on the second part of the paragraph. **AT:** against including third-country nationals staying on the basis of a visa.

↓ 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.~~

↓ 2004/114/EC recital 15 (adapted)

→ Council

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

↓ 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 (adapted)

⇒ new

⇒ 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 might enter, stay and 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** in accordance with the provisions governing mobility under this Directive. ⇒ [...] ⇒ ⇒ For researchers, this Directive should ⇒ [...] ⇒ allow for the short-term mobility on the basis of a ⇒ hosting agreement ⇒ **or a contract** ⇒ concluded with the host entity in the first Member State ⇒ [...] ⇒ **while also** ⇒ [...] ⇒ **providing** for simplified rules in case of researchers' long-term mobility to the second Member States. ⇒ ⇒ In order to prevent circumvention of the distinction between short-term and long-term mobility ⇒ **in case of researchers** ⇒ , a short-term mobility in the same Member State should be limited to a certain period of time. ⇒

Short-term mobility for researchers [...] should cover stays in the second Member States for a period of up to [...] 180 days in [...] any 360-day period per Member State. Improvements should be also made regarding the situation of students [...] by allowing them to enter and stay in [...] the second Member States [...], provided that they fulfil the [...] mobility conditions laid down in this Directive. [...] In order to ensure the continuity of studies during the whole semester, students' [...] mobility in the second Member States should last for up to 180 days in 360-day period per Member State **with a possibility of extension if the conditions are still met. In the case of students who are covered by Union programmes that include mobility measures and in order to ensure the continuity of studies during the whole period of one or more semesters in the second Member States, mobility in the second Member States should last for a period of up to 360 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. ☐

➔ (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 is moving to its territory for the purpose of accompanying or joining the researcher. 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 rules and ➔ [...] © ➔ EU ➔ [...] © and multilateral © programmes ➔ [...] © ➔ that comprise © mobility measures³³ 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. ©³⁴ ➔ [...] ©

³³ **ES:** reservation on multilateral programmes that comprise mobility measures.

³⁴ **AT, DE, PL:** in relation to Article 16(4), Member States should be competent to decide the maximum period of stay for students and researchers. **ES:** reservation on multilateral programmes.

↓ 2004/114/EC recital 18 (adapted)

⇒ new

↻ Council

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

↓ new

→ Council

(34) As part of the drive to ensure a well-qualified workforce for the future, Member States should³⁵ allow students who graduate in the Union to remain on their territory with the intention to identify work opportunities or to set up a business for → [...] → the period specified in this Directive → after expiry of the initial authorisation. They should³⁶ also allow researchers to do so upon completion of their research → [...] → activity → as defined in the hosting agreement. This should not amount to an automatic right of access to the labour market or to set up a business. They may be requested to provide evidence in accordance with → [...] → the requirements of this Directive. →³⁷

→ (34a) This Directive does not aim to harmonise national laws or practices of Member States → [...] → with respect to worker's status. → [...] →³⁸

(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.

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

³⁶ **CY:** replace "should" with "*could*".

³⁷ **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*".

³⁸ **AT:** concerns about the inclusion of temporary agencies.

(36) To make the Union more attractive for third-country national researchers, students, pupils, ~~remunerated or unremunerated~~ trainees, volunteers and au pairs, it is important to ensure their fair treatment in accordance with Article 79 of the Treaty. [...] ~~Students should continue to be covered by~~ Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State³⁹ , with the possible exceptions that apply under that Directive . More favourable rights to equal treatment with nationals of the host Member State as regards branches of social security as defined in Regulation No 883/2004 on the coordination of social security schemes should be maintained for [...] researchers, in addition to the rights granted under Directive 2011/98/EU. Currently the latter foresees a possibility for Member States to limit equal treatment with regard to branches of social security, including family benefits⁴⁰, and this possibility of limitation could affect researchers. ~~Equal treatment under Directive 2011/98/EU, with the possible exceptions that apply under that Directive, should also apply to other categories of third-country nationals falling under the scope of this Directive, when they are authorised to work under Union or national law.~~ In addition, independently on whether Union or national law of the host Member State gives [...] school pupils, volunteers, unremunerated ~~and remunerated~~ trainees and au-pairs access to the labour market, they should enjoy equal treatment rights with nationals of the host Member State as regards access to goods and services and the supply of goods and services made available to

³⁹ OJ L 343, 23.12.2011, p. 1.

⁴⁰ AT: delete "including family benefits."

↓ 2004/114/EC recital 23

↻ Council

- (37) ↻ [...] ↻ The residence permits provided in this Directive shall be issued by the competent authorities of the Member State using the uniform format as laid down in ↻ Council Regulation (EC) No 1030/2002 of 13 June 2002 ↻ [...] ↻⁴².

⁴¹ **CZ:** equal treatment should be granted to researchers only, not the other groups. **ES:** not in favour of the recognition of equal treatment for social rights of third-country nationals. **EE:** this recital does not contribute to making the EU more attractive to the groups involved. **FI:** compatibility with the corresponding text in the Single Permit Directive should be ensured. **CION:** this recital is in line with the existing Researchers Directive and Single Permit Directive. **BG** suggests the following wording: “To make the Union more attractive for third-country national researchers, students, pupils, remunerated or unremunerated trainees, volunteers and au pairs, it is important to ensure their fair treatment in accordance with Article 79 of the Treaty. Students should continue to be covered by Directive 2011/98/EU of the European Parliament and of the Council, with the possible exceptions that apply under that Directive. *The right to equal treatment* with nationals of the host Member State as regards branches of social security as defined in Regulation No 883/2004 on the coordination of social security schemes and Regulation No. 1231/2010 should be *applicable* for researchers *and other categories of third-country nationals falling under the scope of this Directive, when they are authorised to work under Union or national law. For these categories Member States should be allowed to limit equal treatment with regard to branches of social security, including family benefits in accordance to the practice, established by Directives 2011/98 and 2009/50.* In addition, independently on whether Union or national law of the host Member State gives researchers, students, school pupils, volunteers, unremunerated and remunerated trainees and au-pairs access to the labour market, they should enjoy equal treatment with nationals of the host Member State as regards access to goods and services and the supply of goods and services made available to the public. “

⁴² OJ L 157, 15.6.2002, p. 1.

↓ 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 nationals⁴³.~~

↓ 2004/114/EC recital 4 (adapted)

⇒ new

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

↓ 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.~~

⁴³ OJ L 157, 15.6.2002, p. 1.

↓ 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. ⁴⁴

↓ 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.~~

⁴⁴ **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.

↓ 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.⁴⁵

↓ 2004/114/EC recital 24 (adapted)

⇒ new

⇒ Council

(41) Since the objective of this Directive, namely to determine the conditions of admission ⊗ entry and residence ⊗ of third-country nationals for the purposes of ⊗ research ⊗ ⊗ [...] ⊗ and studies, as mandatory provisions and ⊗ [...] ⊗ pupil exchange, unremunerated ⇒ or remunerated ⇐ training, voluntary service ⊗ [...] ⊗ ⇒ or au pairing ⇐ ⊗, as optional provisions ⊗, cannot be sufficiently achieved by the Member States and can, by reason of its scale or effects, be better achieved at Community ⊗ Union ⊗ level, the Community ⊗ Union ⊗ may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that article, this Directive does not go beyond what is necessary to achieve that objective.⁴⁶

⁴⁵ LV : it is premature to consider "the transmission of such documents to be justified" since the assessment has not been carried out yet.

⁴⁶ AT, DE: reservation on the inclusion of groups other than researchers and students, in particular au-pairs. CY: against the insertion of references to mandatory and optional provisions. CZ: Member States should decide whether to include some of these categories and the text of the recital should better reflect this.

↓ 2005/71/EC recital 23 (adapted)

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

↓ 2004/114/EC recital 22 (adapted)

↻ Council

(42) Each Member State should ensure that ↻ [...] ↻ ↻ [...] ↻ ↻ adequate, ↻ regularly updated ↻ ↻ information is made available to the general public, notably on the Internet, ☒ ↻ [...] ↻ ☒ ↻ [...] ↻ ↻ concerning ↻ ☒ information about ☒ the establishments ↻ ↻ research organisations and institutions ↻ defined in this Directive, ↻ [...] ↻ ↻ the conditions and procedures for admission of third-country nationals to the territory of the Member States for the purpose of this Directive. ↻ ⁴⁷

⁴⁷ **AT, EE:** concerns from a data protection viewpoint.

↓ 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. ↻ ↻ [...] ↻⁴⁸

⁴⁸ 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 Community⁴⁹, 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.~~

⁴⁹ ~~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 service⁵⁰.~~

↓ 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.~~

⁵⁰ 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 Community⁵¹.~~

↓ 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.~~

⁵¹ See page 26 of this Official Journal.

↓ 2005/71/EC recital 20 (adapted)

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

↓ 2005/71/EC recital 21 (adapted)

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

↓ 2005/71/EC recital 26 (adapted)

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

↓ 2005/71/EC recital 27 (adapted)

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

↓ new

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

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

↓ 2004/114/EC (adapted)

⇒ new

☉ Council

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter⁵²

This Directive determines:

- (a) the conditions ~~for admission~~ of entry to and residence as well as the rights⁵³ of third-country nationals and, where applicable, of their family members [...] in the territory of the Member States for a period exceeding ~~three months~~ 90 days for the purposes of research, studies, pupil exchange scheme or educational project, remunerated and unremunerated training, voluntary service or au pairing;⁵⁴

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

⁵² **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. **EL** also stated that this proposal does not comply sufficiently with the proportionality principle. In particular, the modification of the current optional categories into binding categories reduces the degree of flexibility that is necessary for the Member States which should be left to decide whether to implement the EU legislation for the categories provided as optional by the current Directives.

⁵³ **ES:** reservation. **CY** (supported by **ES**) suggested to insert the following “...as well as the rights and obligations of third-country nationals..”.

⁵⁴ **CION:** the term "90 days" is expected to be established upon adoption of the amended Schengen Borders Code.

↓ new

↻ Council

(b) ↻ [...] ↻ the conditions of entry to and residence, and the rights, of researchers and ↻ [...] ↻ students ↻ [...] ↻, referred to in point (a), in Member States other than the Member State which first grants the third-country national an authorisation on the basis of this Directive. ↻,⁵⁵

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

(c) ↻ [...] ↻

↓ 2005/71/EC (adapted)

~~CHAPTER I~~

~~GENERAL PROVISIONS~~

~~Article 1~~

~~Purpose~~

⁵⁵ **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 ↻ [...] ↻.⁵⁶

↻ Member States may also decide to apply this Directive to third-country nationals who apply to be admitted for the purposes of ↻ [...] ↻ ↻ a ↻ pupil exchange ↻ scheme or educational project ↻ , remunerated or unremunerated training, voluntary service or ↻ [...] ↻ au pairing.⁵⁷ ↻

⁵⁶ **EE** would like to add "higher institutions lecturers" to be considered as researchers.

⁵⁷ **CY, EE, FI**: against the inclusion of all school pupils in the scope. **HU, BE**: against extending the scope to primary school pupils. **DE** (supported by **AT, SE, SK**): reservation on the inclusion of accompanying teachers; cannot see the need for it as no exchange programmes exist for primary school pupils. **DE** suggested to exclude primary school pupils from the scope. **FR**: secondary school pupils can also be accompanied by teachers. **SE**: Member States who wish to cover accompanying staff could do so through provisions in their national law. **Cion**: reservation on these categories being optional.

➔ 1bis. _____ ➔ [...] Ⓞ Ⓞ

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

- (a) ~~third-country nationals~~ residing in a Member State as asylum-seekers, or under subsidiary forms of protection, or under temporary protection schemes;⁵⁸
- (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/EC⁵⁹ ➔ [...] Ⓞ ;
- (e) ➔ [...] Ⓞ

⁵⁸ **HU** suggested to use the terminology of the Qualification Directive: " (a) (...) *seeking for international protection, or are beneficiaries of international protection in accordance with the Directive 2011/95/EU of the European Parliament and of the Council, or beneficiaries of temporary protection in accordance with the Council Directive 2001/55/EC in a Member State.*"

⁵⁹ 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) trainees who come to the Union in the context of an intra-corporate transfer under [Directive 2013/xx/EU on intra-corporate transfers],⁶⁰

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

↓ 2004/114/EC (adapted)

Article 3

Definitions

For the purposes of this Directive:

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

⁶⁰ **DE:** the boundaries between trainees in this proposal and "graduate trainees" in the ICT Directive proposal are not clear. **ES:** the reference to "trainee" should be the same as the one used in the ICT Directive. **CION:** the scheme set up in the ICT Directive is a separate scheme which contains objective criteria for the determination of who is to be considered as "graduate trainee" under that Directive. **PL:** no overlap between both this proposal and the ICT Directive and proposed the deletion of 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 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;⁶¹

⁶¹ **ES:** make clear that post-doctoral students are also covered by the definition of "researcher".
HU: this definition should also include a reference to *hosting agreements* or else researchers who comply with the definition but have no hosting agreement could not be admitted according to Article 5(3) of this proposal. **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 course ⁶²of 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;⁶³

⁶² **EE, ES:** concerns about the reference to "full-time course". This may indicate that students shall study during the whole day which would be in contradiction with the provision in Article 23(3) of this proposal stipulating a minimum of hours per week that students are entitled to work.

⁶³ **FR** suggested the following rephrasing : "*“student” means a third country national enrolled by a higher education institution and admitted to the territory of a Member State to pursue as his/her main activity a full-time higher education, including all types of courses of study or sets of courses study, training or training for research, which may cover a preparatory course prior to such education according to its national legislation, and leading to a higher education qualification recognised by the Member State, including degrees, diplomas, or certificates awarded by a higher education institution*"
EE suggested "higher education programme" instead of a "higher education institution" as in EE there is a recognition system for groups of curricula.

(d) ~~(e)~~ 'school pupil' means a third-country national admitted to the territory of a Member State to follow a [...] recognised and/or State or Regional programme of [...] education in the context of an exchange scheme or educational project operated by [...] an education establishment in accordance with its national legislation or administrative practice;⁶⁴

(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 ;⁶⁵

↓ 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

⁶⁴ **EE:** reservation. **HU:** the definition is not completely clear.

⁶⁵ **AT, DE, SE, SK:** against the inclusion of teachers in the scope.

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, SE:** it is not clear whether vocational training is included in the category of trainees. **CION:** training can cover vocational training. **CION:** reservation on this group becoming optional and subject to national law. This would result in a very low level of harmonisation.

↓ 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 scheme⁷²;

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. **CION**: reservation against this group becoming optional and subject to national law. This will result in a very low level of harmonisation.

⁷² **DE**: against the deletion of "recognised". **PRES**: "recognised" already appears in the definition of "voluntary service scheme"; not necessary to repeat it.

↓ 2004/114/EC (adapted)

→ Council

(h)(~~e~~) 'voluntary service scheme' means a programme of → practical → solidarity activities⁷³
→ [...] , 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 ;⁷⁴

↓ new

→ Council

(i) 'au pair' means a third-country national who is → [...] received by a → host family in
the territory of a Member State → in order to improve his/her linguistic skills and his/her
knowledge of the host country → in exchange for light housework and taking care of children
→ [...] ;⁷⁵

⁷³ **RO:** reservation on "practical solidarity activities".

⁷⁴ **DE:** no added value in regulating volunteers at EU level and questions whether the subsidiarity principle was taken into account. **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.

⁷⁵ **DE:** on the basis of the subsidiarity principle, no need to include this category. **NL:** given the "anecdotal" evidence of abuse concerning au pairs no need to include this category in the proposal.

↓ 2005/71/EC

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

(k) ~~(c)~~ 'research organisation' means any public or private organisation which conducts research and which has been approved for the purposes of this Directive by a Member State in accordance with the latter's legislation or administrative practice;⁷⁶

↓ 2004/114/EC (adapted)
↻ Council

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

↻ (l^{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 ~~(m)~~ necessarily ~~(n)~~⁷⁷ requiring a mutual exchange of pupils; ~~(o)~~

⁷⁶ ES suggests the following wording: "'research organisation' means any public or private organisation which conducts research and *recruits researchers*."

⁷⁷ 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. ◯⁷⁸

→ (lb) → [...] ◯ ◯

→ (lc) 'host entity' means → [...] ◯ a research organisation, a higher education institution, an education establishment, an organisation responsible for a voluntary service scheme, an enterprise, a vocational training establishment → [...] ◯ → , an organisation mediating au pairs ◯⁷⁹ established in the territory of the Member State concerned, regardless of its legal form, in accordance with national law, to which the third-country national is assigned for the purposes of this Directive ; ◯⁸⁰

(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;

⁷⁸ **ES:** the definition is too broad wondering whether business schools would also be included and suggesting to insert a recital clarifying this.

⁷⁹ **AT:** does this term refer to au pair agencies or temporary work agencies? **SK:** a definition of an organisation mediating au pairs should be added. **ES:** reservation on the inclusion of au pairs in the scope as this is not in line with the purpose of the Directive.

⁸⁰ **ES, PL:** a very broad notion mixing together different notions. **CY, FR** reservation: "regardless of its legal form" is unclear. **SE:** against including a list in the definition that would exclude other possibilities.

- (o) 'first Member State' means the Member State which first grants a third-country national an authorisation on the basis of this Directive;
- (p) 'second Member State' means any Member State other than the first Member State;
- (q) ' [...] or multilateral⁸¹ 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 ;⁸²
- (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;

⁸¹ **DE, PL** reservation: this proposal should not regulate the mobility programmes of multilateral nature. **ES**: reservation on multilateral programmes. **DE, EE**: do "multilateral programmes" include programmes with the participation of a third country? **CY** opposes the inclusion of multilateral programmes when these involve agreements between private higher institutions.

⁸² **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/EC⁸³ Ⓞ~~

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

~~⤵ (v) 'employer' means any natural person or any legal entity, for or under the direction and/or supervision of whom or which the employment is undertaken; Ⓞ⁸⁴~~

↓ 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.~~

⁸³ OJ L 251, 3.10.2003, p. 12.

⁸⁴ **SK:** add "*legislation of the Member State concerned*".

~~Article 3~~

Scope

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

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

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

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

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

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

↓ 2005/71/EC (adapted)

~~Article 4~~

More favourable provisions

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

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

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

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

↓ 2004/114/EC (adapted)

⇒ new

↻ Council

Article 4

More favourable provisions

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

2. This Directive shall be without prejudice to the right of Member States to adopt or maintain provisions that are more favourable to the persons to whom it applies \Rightarrow with respect to Articles \Rightarrow 16, \Leftarrow 21, 22, 23, 24, 25 and 29 \Rightarrow [...] \Leftarrow \Leftarrow .⁸⁵

⁸⁵ **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 Directive 2009/50/EC of May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment: "*This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for persons to whom it applies ...*". **DE**: currently applies more favourable admission criteria. **DE, RO**: this proposal should bring a minimum level of harmonisation and let Member States decide the more favourable provisions to be applied. **NL**: the possibility of applying more favourable admission criteria to better attract researchers and students and suggests the following deletion in paragraph 2: "*This Directive shall be without prejudice to the right of Member States to adopt or maintain provisions that are more favourable to the persons to whom it applies with respect to Articles 21, 22, 23, 24, 25 and 29, especially in the context of Mobility Partnerships.*" **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**ON against parallel schemes. Admission conditions should be harmonised in the EU, but it does not oppose that Member States are able to apply more favourable rights. **CI**ON is open to accepting more flexibility concerning admission conditions, but once agreed on a certain level for admission conditions. **CI**ON is in favour of a single scheme.

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~~ 14 applies to the relevant category.⁸⁶

⁸⁶

HU: further clarification of “documentary evidence” is required. **CION** indicated that Article 10 complements this article since it stipulates the types of evidence that have to be provided. **CION** no purpose to limit the interpretation just to documents; language tests and interviews could also fall in the notion of “documentary evidence”.

↓ new

→ Council

2. Once all the general and specific conditions for admission are fulfilled, applicants shall be entitled to → an authorisation⁸⁷ → [...] → . If a Member State issues residence permits only on its territory → [...] → and all the admission conditions laid down in this Directive are fulfilled, the Member State concerned shall → grant → [...] → the third-country national → every facility to obtain⁸⁸ → the requisite visa → or an equivalent permit → [...] → allowing entry to⁸⁹ the territory of the Member State concerned → .⁹⁰

⁸⁷ **DE:** "authorisation" should not apply to trainees and au-pairs. **PL:** the term "authorisation" multiplies the number of terms used and therefore it makes the text more complicated.

⁸⁸ **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.

⁸⁹ **DE:** request for a clear reference to non-Schengen Member States.

⁹⁰ **CZ:** third-country nationals should primarily apply for a residence permit, if the legislation of the Member State allows it, and maintain the national responsibility on the issuance of long-term visas. **EE:** against restricting the right of Member States to consider whether access of a third-country national to the EU should be granted and suggested "*may be issued*" instead of "shall be entitled" or to delete the first sentence of the paragraph. **CY:** reservation; a reference to the volumes of admission is necessary, since third-country nationals are given the possibility to work in the territory of the Member States. **CION:** the provision on stay after the end of research/study gives a right to "job-seeking" rather than "access" to the labour market. Member States will therefore retain full control of access to their labour market.

➤ 3. [This Directive shall be without prejudice to the right of Member States to issue residence permits other than those regulated by this Directive for any purpose referred to in Article 2 for third-country nationals who fall outside the scope of this Directive] ©⁹¹

↓ 2004/114/EC ➤ Council

➤ Article 5a

Volumes of admission

This Directive shall not affect the right of a Member State to determine the volumes of admission of third-country nationals referred to in Article 2(1), with the exception of students⁹², when they are in an employment relationship with an employer established in the Member State concerned. On this basis and for the purposes of this Directive, an application for authorisation may be either considered inadmissible or be refused. ©⁹³

⁹¹ **HU:** need to clarify further "who fall outside the scope of this Directive". **PRES:** in cases where third-country nationals do not fall within the scope of this Directive, Member States could apply their national schemes. **ES:** reservation on this paragraph. **DE:** no added value since Member States will apply their rules if a person does not fall within the scope of this Directive. More favourable national rules could also be applicable.

⁹² **ES:** exclude "*volunteers*" from the volumes of admission.

⁹³ **CY, DE:** wording too general; needs further clarification. It has to be specified to what groups the volumes of admission applies. **ES** reservation: should not apply to volunteers and students. **FI:** clarify that the determination of volumes of admission relates to the evaluation of labour market needs.

Article 6⁹⁴

General conditions⁹⁵

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

⁹⁴ **CZ** proposed, inspired by Article 7 of Directive 2003/86/EC, to add a new article, for example after Article 6 on general conditions, allowing Member States to require third-country nationals to comply with integration measures, in accordance with national law. It has established preparatory one-day, free of charge, courses for adaptation and integration of newly arrived third-country nationals during the first 6 months (or at the latest during the first year) of stay. These courses are an important tool of integration/adaptation for third-country nationals.

⁹⁵ **NL**: include the notion of "*conditionality*". The JHA Council Conclusions of June 2011 on the EU strategy on Readmission use the concept of "conditionality" as an instrument to press third countries to fulfil their international-legal obligations regarding the re-admission of their nationals. **NL** suggests the inclusion of a new paragraph as follow:

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

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

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

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

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

- (a) present a valid travel document as determined by national legislation ~~and~~ 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)

- (b) if he/she is a minor under the national legislation of the host Member State, present a parental authorisation or equivalent for the planned stay;
- (c) have sickness insurance ~~in respect of~~ for all risks normally covered for ~~its own~~ nationals ~~in~~ of the Member State concerned;⁹⁶

⁹⁶ **CZ:** insert “*cost of repatriation for medical reasons and repatriation of remains*” as a criterion for admission. Since these costs are not covered by public health insurance, because they do not fall under the “risks normally covered for nationals of the Member State concerned”. **CZ:** set a clear indication that health insurance is arranged without the participation of the insured person and for the whole period of his/her residence in the territory of the State concerned. **BE** supports adding that health insurance should be “*for the whole period of his/her residence in the territory of the State concerned.*” **PL:** include a reference to “travel health insurance”. **LT** suggests the following wording: “have sickness insurance for all risks normally covered for nationals of the Member State concerned *for the whole period of his/her residence in the territory of that Member State*”.

▼ 2004/114/EC

↻ Council

- (d) not be regarded as a threat to public policy, public security or public health;
- (e) provide proof, if the Member State so requests, that he/she has paid the fee for
↻ [...] ↻ handling ↻ the application on the basis of Article ~~203~~1.

↵ new

↻ Council

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

➤ 2. Member States may require the applicant to provide, at the latest at the time of the issuance of the authorisation⁹⁷, the address of the third-country national concerned in the territory of the Member State. ☹

➤ 3. Where a certain category of third-country nationals covered by this Directive are or⁹⁸ intend to be⁹⁹ in an employment relationship with an employer established in the Member State concerned, the Member State may take into account the situation of its labour market while deciding on applications for admission of these third-country nationals. ☹¹⁰⁰

⁹⁷ **CY:** replace "issuance of the authorisation" by "*issuance of residence permit*".

⁹⁸ **BE:** delete "are or" since a third-country national applying to be admitted under this Directive cannot be already employed in a MS.

⁹⁹ **BG:** deletion of "intend to be".

¹⁰⁰ **ES** reservation: the employment element should not be included. **DE:** against inclusion of "take into account". **HU:** clarify further whether this will cover all categories or only certain categories and which activities are considered as employment activities. **PRES** pointed out that it is difficult to say since in some Member States some categories are considered as workers and in other Member States are not. **CION** reservation: this paragraph as currently worded could apply to students who should not be subject to a labour market test.

➤ 4. Member States may lay down a reference amount which they regard as constituting “sufficient resources” as referred to under paragraph (1)(f), which may take into account the level of minimum national wages, and, where applicable, the number of family members. The assessment of the sufficient resources shall be based on an individual examination of the case. ➤ [...] ⌂ ⌂

➤ 4a. ➤ [...] ⌂ ⌂

➤ 5. Applications from third-country nationals wishing to be admitted for the purpose set out in this directive shall be considered and examined when the third-country national concerned is residing outside the territory of the Member State to which he or she wishes to be admitted. ⌂

➤ 6. By way of derogation from paragraph 5, Member States may accept, in accordance with their national legislation, an application submitted when the third-country national concerned is already legally present in their territory. ⌂

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

➤ 8. ➤ [...] ⌂ ⌂

↓ 2004/114/EC (adapted)

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

↓ 2005/71/EC (adapted)

~~CHAPTER III~~

~~ADMISSION OF RESEARCHERS~~

~~Article 7~~

~~Conditions for admission~~

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

~~(a) present a valid travel document, as determined by national law. Member States may require the period of the validity of the travel document to cover at least the duration of the residence permit;~~

~~(b) present a hosting agreement signed with a research organisation in accordance with Article 6(2);~~

~~(c) where appropriate, present a statement of financial responsibility issued by the research organisation in accordance with Article 6(3); and~~

~~(d) not be considered to pose a threat to public policy, public security or public health.~~

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

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

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

↓ new

→ Council

→ Article 6a¹⁰¹

Approval of the host entity → [...] ←

1. Member States may → decide to ← provide → for an approval procedure for any host entity¹⁰²

→ [...] ← → **to which third-country nationals are assigned as** ← → [...] ← pupils,
remunerated and unremunerated trainees → [...] ← →, ← volunteers → or au pairs ←¹⁰³
→ [...] ← → [...] ← 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. ←¹⁰⁴

¹⁰¹ **CI**ON: reservation; this Article should not mean that the approved host entity is the only route for acceptance of third-country nationals under this Directive.

¹⁰² **NL**: add "...or be involved in the exchange of..".

¹⁰³ **CZ, ES**: reservation on the inclusion of au pairs even as an optional category. **LV**: not in favour of including au pairs but if they should be referred to in this paragraph. However, it is not clear whether au pairs can only be received through approved host entities.

¹⁰⁴ **AT, ES** do not support a *shall*-clause. **BE**: the text should reflect clearly the fact that the approval procedure is optional for Member States. **BE** also asked whether the approval procedure would have to be applied to other categories as well if it is applied to one or is it optional regarding every category.

Article 7

Specific conditions for researchers¹⁰⁵

1. In addition to the general conditions laid down in Article 6, a third-country national who applies to be admitted for the purpose of [...] research activity¹⁰⁶ shall:
 - (a) present either a hosting agreement or a contract¹⁰⁷ signed with a research organisation in accordance with Article 9(1) and Article 9(2);
 - (b) where appropriate, present a statement of financial responsibility issued by the research organisation [...] as referred to in Article [...] 8 (3).¹⁰⁸

1bis. Article 7(1)(a) is without prejudice to the right of the Member State to determine whether the third-country national should present a hosting agreement or a contract.

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

¹⁰⁵ **DE:** the conditions imposed on researchers are overly restrictive.

¹⁰⁶ **AT:** reservation on the use of "research activity" instead of the original "research project".

¹⁰⁷ **AT:** would cross-border contracts be covered? **IT** suggests to insert "a *scientific cooperation* contract". **PL:** the difference between a hosting agreement and a contract is not clear. **FR:** it is important for cases involving intra-EU mobility that the same set of conditions of entry are applied by all Member states. **Pres:** Article 9(1a) refers to mandatory elements to be included in the hosting agreement or the contract.

¹⁰⁸ **FR:** Article 7(1)(b) overlaps with Article 6(f) "on sufficient resources" and therefore it is redundant. **CIION** considers this provision necessary as Article 7(1)(b) links to Article 8(3) and 9(3) where Member States may require an undertaking by the host organisation to reimburse the costs of return and others.

3.  [...] 

4.  [...] 

5.  [...] 

6.  [...] 

↓ 2005/71/EC (adapted)

~~CHAPTER II~~

~~RESEARCH ORGANISATIONS~~

Article ~~58~~

Approval  of research organisations ¹⁰⁹

↓ 2005/71/EC

 Council

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

¹⁰⁹ **ES** proposes the following options for redrafting the Article: keeping the *shall*-clause in paragraph 1 and including the "*private sector*" in paragraph 2a OR changing the *shall*-clause into a *may*-clause in paragraph 1.

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

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

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

3. Member States may require, in accordance with national legislation, a written undertaking of the research organisation that in cases where a researcher remains illegally in the territory of the Member State concerned, the said organisation is responsible for reimbursing the costs related to his/her stay¹¹⁰ and return incurred by public funds. The financial responsibility of the research organisation shall end at the latest six months after the termination of the hosting agreement.

⇒ In case the right of residence of the researcher is extended in accordance with the provisions of Article 24, the responsibility of the research organisation shall be limited to the starting date of the residence permit for the purposes of job searching or entrepreneurship. ☹¹¹¹

¹¹⁰ **CZ** suggests the following addition: "[...] *the said organisation is responsible for reimbursing the costs related to his/her stay, including all of the costs of healthcare, and return incurred by public funds. [...]*". The organisation should be required to pay all the costs of healthcare received, and not only the ones which are covered by public health insurance, for example healthcare provided by non-contracting providers of medical services not covered by public health insurance.

¹¹¹ **IT** suggests the following wording: "In case the right of residence of the researcher is extended in accordance with the provisions of Article 24, the responsibility of the research organisation shall *last until the date of the request of the residence permit.*"

4. Member States may provide that, within two months of the date of expiry of the hosting agreement concerned, the approved organisation¹¹² shall provide the competent authorities designated for the purpose by the Member States with confirmation that the work has been carried out for each of the research ~~...~~ ~~activities~~ in respect of which a hosting agreement has been signed pursuant to Article ~~69~~.

↓ 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~~ .¹¹³

↓ 2005/71/EC

→ Council

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

¹¹² ES: all references to "the approved organisation" should be deleted in the text.

¹¹³ ES: this should be a *may*-clause.

7. Member States may determine in their national legislation the consequences of the withdrawal of the approval or refusal to renew the approval for the existing hosting agreements, concluded in accordance with Article ~~69~~, as well as the consequences for the residence permits of the researchers concerned.

↓ 2005/71/EC (adapted)
 ↻ Council

Article ~~69~~

Hosting agreement ↻ or a contract Ⓒ ¹¹⁴

1. A research organisation wishing to host a researcher shall sign ↻ **either** Ⓒ a hosting agreement ↻ or a contract Ⓒ with the latter ↻ without prejudice to Ⓒ ~~whereby the researcher undertakes to complete the research project and the organisation undertakes to host the researcher for that purpose without prejudice to Article~~ ☒ ↻ [...] Ⓒ Articles 6 and ☒ 7
 ☒ ↻ [...] Ⓒ ☒.¹¹⁵

¹¹⁴ **ES, DE:** as much flexibility for Member States as possible, since even minimum mandatory requirements could harm the recruitment of researchers. **DE:** research organisations in its territory do not use hosting agreements and this Article could bring some problems for them. **DE:** the complex admission procedure could have negative effects for the admission of researchers. **AT:** prefers to go back to the old version as proposed by **CION**. **BE:** these provisions are too flexible. **BE:** concerned about the mobility implications. **CION** said that it prefers its original proposal. There are already some elements which are obligatory in the current Directive on researchers, so it does not agree to reduce the minimum binding provisions.

¹¹⁵ **ES:** the notions of "financial means" and "health insurance" should also be included in the points of this first paragraph.

↓ new

→ Council

→ 1a. → [...] → Member States shall require the hosting agreement or the contract to contain¹¹⁶ :

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

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

(c) → an undertaking by the organisation to host the researcher for the purpose of completing the research activity; →¹¹⁷

(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.** →

¹¹⁶ **DE:** a mere agreement should suffice; requests of titles and further information have no added value. Therefore they prefer to delete the whole paragraph 1a, or at least to make it a "may" provision.

¹¹⁷ **SE:** prefers the text originally proposed by the CION.

⇒ 1b. ⇒ Member States may also require the hosting agreement or the contract to contain: ⇒

⇒ [...] ⇒ (a) ⇒ information on the legal relationship between the research organisation and the researcher;

⇒ [...] ⇒ (b) ⇒ information on the working conditions of the researcher ⇒ in accordance with the national law or applicable collective agreements or practice¹¹⁸ of the Member States concerned ⇒ .¹¹⁹

⇒ (c) information ⇒ [...] ⇒ on the source of the financial means for the completion of the research. ⇒¹²⁰

↓ 2005/71/EC
⇒ Council

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

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

¹¹⁸ LU considers "or practice" superfluous; the term brings no added value and can even create confusion.

¹¹⁹ BG: delete point f) or add the following: "information on the working conditions of the researcher *that is specified in the hosting agreement or a specific agreement between the host entity and the researcher*".

¹²⁰ SE: delete " the completion of" since it is difficult to know when research can be considered complete. CION: reservation on this requirement as it constitutes a burden and it runs against the principle of attractiveness of the scheme for researchers.

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

↓ 2005/71/EC (adapted)

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

↓ 2005/71/EC
↻ Council

3. ↻ [...] ↻
4. The hosting agreement ↻ or the contract ↻ shall automatically lapse when the researcher is not admitted or when the legal relationship between the researcher and the research organisation is terminated.

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

↓ 2004/114/EC (adapted) → Council

Article ~~7~~10

Specific conditions for students¹²¹

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

¹²¹ **ES:** include a specific reference to "*means of subsistence*" in this Article.

~~(b) provide the evidence requested by a Member State that during his/her stay he/she will have sufficient resources to cover his/her subsistence, study and return travel costs. Member States shall make public the minimum monthly resources required for the purpose of this provision, without prejudice to individual examination of each case;¹²²~~

- (c) provide evidence, if the Member State so requires, of sufficient knowledge of the language of the course to be followed by him/her;¹²² [...] If the student cannot prove that he/she [...] fulfils this requirement and when Member States foresee it according to [...] their national legislation, the student [...] may benefit from [...] language training in the [...] Member State concerned. In this case, [...] Member States [...] may require from the student a written undertaking that he/she will follow the [...] language training.¹²³

¹²² **AT:** this content is now in Article 6(1)(f) and it is not consistent with other migration instruments, like the Seasonal Workers Directive in which, for instance, the concept of "*not having recourse to social assistance*" is included, while in Article 6(1)(f) is lacking.

¹²³ **SE** prefers the deletion of the second sentence and insists on the deletion of the last sentence. **CION:** what is the added-value of this addition since Member States can already offer language courses without it being mentioned in this proposal.

☞ (d) provide evidence, if the Member State so requires, ☞ [...] ☞ that he/she will have sufficient resources to cover his/her study costs. ☞¹²⁴

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

☞ Article 10a

Approval of higher education institutions¹²⁵

1. The Member States may ☞ [...] ☞ decide to ☞ [...] ☞ ☞ **provide for** ☞ an approval procedure for any higher education institution wanting to host a student under the admission procedure laid down in this Directive.¹²⁶
2. The approval of ☞ [...] ☞ public or private higher education institutions shall be in accordance with procedures set out in the national law or administrative practice of the Member State ☞ [...] ☞ concerned and ☞ [...] ☞ shall be ☞ [...] ☞ based on their statutory tasks.

¹²⁴ **HU** disagrees and points out that Article 6 covers every category while in this point we are dealing with study costs which only applies to those who want to study in education institutions, which should remain in the specific conditions. **CION** wondered whether this point (d) is not already covered by Article 6.

¹²⁵ **FI:** this Article should be removed as the Directive is not a tool for setting up a national approval procedure.

¹²⁶ **BE** wants the text to reflect clearly the fact that the approval procedure is optional for Member States. **CION** reiterated that this scheme should not be the only way in for students and stated that this Article seems to contradict Article 6a.

3. By way of derogation, Member States may decide to exempt higher public education institutions from the approval procedure of paragraph 1. ©

~~Article 8~~

~~Mobility of students~~

~~1. Without prejudice to Articles 12(2), 16 and 18(2), a third-country national who has already been admitted as a student and applies to follow in another Member State part of the studies already commenced, or to complement them with a related course of study in another Member State, shall be admitted by the latter Member State within a period that does not hamper the pursuit of the relevant studies, whilst leaving the competent authorities sufficient time to process the application, if he/she:~~

~~(a) meets the conditions laid down by Articles 6 and 7 in relation to that Member State;~~

~~and~~

~~(b) has sent, with his/her application for admission, full documentary evidence of his/her academic record and evidence that the course he/she wishes to follow genuinely complements the one he/she has completed; and~~

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

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

~~3. The competent authorities of the first Member State shall, at the request of the competent authorities of the second Member State, provide the appropriate information in relation to the stay of the student in the territory of the first Member State.~~

↓ 2004/114/EC (adapted)
↻ Council

Article ~~9~~11

Specific conditions for school pupils ↻ and teachers Ⓒ

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

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

↓ 2004/114/EC

→ Council

- (a) not be below the minimum → [...] ← nor above the maximum age → or grade ← set by the Member State concerned → , insofar as this has been established by the Member State . For the purpose of → [...] ← defining the grade, reference may be made by the Member States to the education levels of International Standard Classification of Education (ISCED) ← ;
- (b) provide evidence of acceptance by an → [...] ← education establishment;
- (c) provide evidence of participation in a → [...] ← → recognised and/or State or Regional programme of education in the context of an ← → [...] ← exchange scheme → or educational project ← → [...] ← operated by a → [...] ← → host entity ← → [...] ← in accordance with → [...] ← → Member State's ← national legislation or administrative practice;¹²⁷
- (d) provide evidence that the → [...] ← → host entity → [...] ← , or – as far as provided for by national law - a third party¹²⁸ → [...] ← ← 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 ← ;

¹²⁷ **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.

¹²⁸ **AT, CY, ES, FR, PL, PT** request clarification of the term "third party" and eventually a definition. **PL**: reservation concerning this term since it increases the number of entities involved and goes against the clarity of the text. **FR**: reservation until the term is not defined.

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

~~(f) provide evidence, if the Member State so requires, of sufficient knowledge of the language of the course to be followed by him/her. [...] If the pupil [...] cannot prove that he/she fulfils [...] this requirement and [...] when Member States foresee [...] it in their national legislation [...], the pupil [...] may benefit from [...] language training in the [...] Member State concerned.~~¹²⁹

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

~~(2bis) A third-country national who applies to be admitted as an [...] accompanying teacher in a pupil exchange scheme or educational project shall in addition to the general conditions laid down in Article 6:~~¹³⁰

~~(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;~~

¹²⁹ **SE** prefers the deletion of the second sentence. **CION**: what is the added-value of this addition since Member States can already offer language courses without it being mentioned in this proposal?

¹³⁰ **FR**: the same conditions should apply to pupils and teachers as they travel together. The conditions should be in the same provision. **PRES**: there are some conditions that only apply to pupils.

- (c) be accommodated throughout his/her stay by a special accommodation facility within the education establishment or – as far as provided for by national law - any other facility meeting the conditions set by the Member State concerned and selected in accordance with the rules of the pupil exchange scheme or educational project;
- (d) provide evidence, if the Member State so requires, of ↻ [...] ⌚ knowledge of the language of the respective course. ⌚¹³¹

↓ 2004/114/EC (adapted)

⇒ new

↻ Council

Article ~~10~~12

Specific conditions for ~~unremunerated~~ ↻ unremunerated and remunerated ⌚ trainees¹³²

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:

¹³¹ **EE:** this requirement seems unreasonable.

¹³² **LV** can support the admission of trainees only under licensed education programmes and providing they are students or pupils. **RO** objects to the merging of unremunerated and remunerated trainees in the same category since the former is a category closer to students and the latter is a category closer to employees, which have access to the labour market. **LT** and **PL** point out that it is very difficult to differentiate remunerated trainees from employees. **PL:** remunerated trainees should be subject to the labour market test. **BE** proposes that accommodation and assumption of responsibility by the organisation should also be added as conditions.

- (a) have signed a [...] trainee agreement, which provides for a theoretical and practical training and is approved, if [...] required, by the [...] competent authority [...] of the Member State concerned in accordance with its national legislation or administrative practice, for ~~an unremunerated~~ a [...] [...] traineeship with a host entity. ¹³³ The agreement shall describe the training programme, including the educational objective or learning components, its duration, the placement and supervision conditions of the traineeship, the traineeship hours, the legal relationship between the trainee and the host entity as well as, in case of a remunerated trainee, the remuneration granted to him/her. Member States may require the terms upon which the trainee agreement has been based and concluded to meet requirements established in national law or practice. ¹³⁴

¹³³ **DE:** clarification of the meaning of: "[...] in accordance with its national legislation or administrative practice [...]".

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

¹³⁴ **ES** reservation, since this last part should not be included.

↓ new

→ Council

(b) → [...] → provide evidence → , if the Member State so requires, that they have previous relevant education or → relevant → qualifications → [...] → to benefit from the → [...] → traineeship → .¹³⁵

→ (ba) provide evidence requested by the Member State that during his/her stay he/she will have sufficient resources to cover his/her training costs¹³⁶; →

↓ 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;~~

¹³⁵ **DE:** it is not clear whether a labour market test can be performed. **DE**, supported by **CY** and **LT**: trainees with low-level qualifications are not admitted. **AT:** the mere evidence of relevant education or relevant qualifications or experience, as required in this point, may not exclude the use of unskilled workers as "trainees", in particular when the underlying agreement is not an education agreement, but merely a training programme which may include any practical activity.

¹³⁶ **FR:** reservation regarding the requirement of sufficient resources.

↓ 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.¹³⁷

→ (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

→ [...] →

2. → [...] → Member States may require the training programmes referred to in paragraph 1 to be certified in accordance with national law.¹³⁸

→ 2bis. Member States may require the host entity to submit a declaration from the competent authority of the Member State concerned that the third-country national does not fill a vacant post.¹³⁹

¹³⁷ **DE:** it is not clear whether the third-country national is required to have already some knowledge of the language.

¹³⁸ **AT, DE, SI:** this provision is insufficient to prevent abuses; a labour market test should be possible under this provision. **CION** against this paragraph, which opens too widely the possibility for Member States to have parallel schemes.

¹³⁹ **CION:** such a provision no longer appears in the ICT Directive and it should be deleted here too.

↓ 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 years.**

Member States may determine a maximum age limit for third-country nationals

who apply to be admitted to a voluntary service scheme ↻;

↓ 2004/114/EC

↻ Council

↻ [...] ~~(b)~~ ↻ (b) ↻ [...] ↻ provide an agreement with the ↻ [...] ↻ host entity ↻ ↻ [...] or, as far as provided for by national law, other institution¹⁴⁰ ↻ [...] responsible in the Member State concerned for the voluntary service scheme in which he/she is participating ↻ [...] ↻ . The agreement shall describe the voluntary service scheme, its duration, the placement and supervision conditions, of the voluntary service scheme, the volunteering hours, ↻ [...] ↻ the obligation of the host entity ↻ [...] or, as far as provided for by national law, other institution ↻ [...] to cover his/her accommodation ↻ [...] ↻ costs and ↻ a minimum sum of money¹⁴¹ 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;¹⁴²

¹⁴⁰ **AT, ES:** this is quite a broad and vague concept. **DE**, supported by **FR**, considers that the host entity and the entity with which the volunteer has an agreement are not always the same, so this needs to be reflected in the text.

¹⁴¹ **AT:** a broad and vague concept to be clarified in a recital.

¹⁴² **ES:** reservation, it should not be mandatory. **SE:** same wording of Article 12(1)(e).

↓ 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;~~¹⁴³

↓ 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 ↻ [...] ↻ ↻ ↻ [...] ↻ introduction¹⁴⁴ to the language, history ↻ [...] ↻ ↻ , ↻ political and social structures of that Member State.

¹⁴³ **AT, PL, RO:** the insurance should cover more (subsistence, healthcare and return travel costs). **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.

¹⁴⁴ **AT** prefers the previous wording of "knowledge" asking what form would the introduction . **CION:** the idea is that someone with no prior knowledge of the language could also come as a volunteer.

↓ (new)

☞ Council

Article 14

Specific conditions for au-pairs¹⁴⁵

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

☞ [...] ☞ ☞ (a) ☞ ☞ [...] ☞ ☞ provide ☞ an agreement between the au-pair and the host family defining his/her rights and obligations, including specifications about ☞ [...] ☞ ☞ a minimum sum of money as ☞ pocket money¹⁴⁶ to be received, ☞ [...] ☞ adequate arrangements allowing him/her to attend courses ☞ referred to in Article 3(i) and the maximum hours of ☞ ☞ [...] ☞ participation in day-to-day family duties;

☞ [...] ☞ ☞ (b) ☞ ☞ [...] ☞ ☞ fulfil ☞ [...] ☞ the age between eighteen (18) and thirty (30). ☞ [...] ☞ In exceptional cases, Member States may allow the admission of a third-country national, as an au-pair, who is above the maximum age limit; ☞¹⁴⁷

¹⁴⁵ **PL:** linguistic reservation concerning the term "au-pairs". **AT:** reservation due to problems with the subsidiarity principle and the legal basis, as well as to the fact that experience shows that this group is prone to abuse and circumventing activities. **AT:** Member States need to have the opportunity to refuse to grant a residence permit when the purpose of stay actually pursues a different aim than the one foreseen in this proposal.

¹⁴⁶ **SE** does not agree with the use of the term "pocket money" and requests it to be replaced by another concept, for example "*allowance*" or "*remuneration*".

¹⁴⁷ **AT, DE:** the maximum age limit should be left for Member States to define. **NL** supported by **AT:** suggests the following wording: "*Member States may determine a maximum and a minimum age limit [...]*".

☞ [...] ☞ (c) ☞ provide evidence that the host family ☞ [...] ☞ ☞ [...] ☞¹⁴⁸ ☞ **or an organisation operating mediating au pairs, as far as provided for by national law,** ☞ accepts responsibility for him/her throughout his/her ☞ [...] ☞ ☞ stay ☞ in the territory of the Member State concerned, in particular with regard to ☞ [...] ☞ ☞ living expenses, ☞ accommodation ☞ [...] ☞ and ☞ [...] ☞ accident risks;

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

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

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

3. Member States may require the members of the host family to be of different nationality than the third-country national who applies to be admitted for the purpose of working as an au-pair and not to have any family links with the third-country national concerned.¹⁴⁹

4. The maximum length of performance of the au-pair duties by the third-country national, as foreseen in the agreement referred to in the paragraph 1 (a), shall not exceed 25¹⁵⁰ hours per week. The third-country national shall have at least one day per week free of au-pair duties.

¹⁴⁸ **DE:** insert "*or -as far as provided for by national law - a third party*".

¹⁴⁹ **BE, SE:** the issues of nationality should be deleted since it could raise some legal questions. **DE** is in favour of keeping this provision. **HU:** against the concepts of "nationality" and "family link". It asked more information about what "family link" exactly means.

¹⁵⁰ **DE, LU** prefer 30 hours per week. **ES, FR** suggest to leave it to the national law.

5. Member States shall ¹⁵¹ set a minimum sum of money as pocket money to be paid to the third-country national according to the paragraph 1 (a). ◀

↪ 6. ↪ [...] ◀ ◀

152

↓ 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.~~

¹⁵¹ **DE:** reservation on "shall".

¹⁵² **NL** proposes to add a new paragraph 7 as follows: "7. Member States may determine that an au-pair can be admitted to its territory only once for the purpose of au pairing." **NL:** au-pairs are a category of migrants which are vulnerable to misuse and abuse as cheap domestic workers. This risk of misuse and abuse increases when the au-pair is allowed to reside on the territory of a Member State for a longer period which might give au-pairs the possibility of circulating from family to family during several years. **NL** wishes to prevent this by admitting the au-pair only once and for a maximum period of one year. Such a restricted admission is more in conformity with the real purpose of au-pairing: to learn more of the culture of the country of destination. According to **NL**, supported by **AT**, by adding this new paragraph, an application can be refused on the grounds of Article 18(1). Given that this proposal contains a 'may-clause' Member States are free to apply this provision.

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

↓ new

↻ Council

CHAPTER III

AUTHORISATIONS AND DURATION OF RESIDENCE

Article 15

Authorisations¹⁵³

↻ 1. When the authorisation is in form of a residence permit, under the heading "type of permit", in accordance with point (a) 6.4 of the Annex to Regulation (EC) No 1030/2002, Member States shall enter "researcher", "student", "volunteer", "school pupil"¹⁵⁴, "remunerated trainee", "unremunerated trainee" or "au pair". ↻

¹⁵³ Concerning the inclusion of codes (numerical, acronyms):

- In favour: **CZ**

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

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

¹⁵⁴ **HU**: against the mention of "school pupils", since it would like to extend the scope to other types of pupils.

➔ 2. When the authorisation is in form of a long-stay visa¹⁵⁵, Member States shall enter a reference stating that it is issued to the "researcher", "student", "volunteer", "school pupil", "remunerated trainee", "unremunerated trainee" or "au pair" under the heading "remarks" on the visa sticker. 🗑️

➔ [...] 🗑️

↓ 2005/71/EC (adapted)
⇒ new
➔ Council

Article 8 16

Duration of ➔ [...] 🗑️ ➔ authorisation 🗑️ permit¹⁵⁶

➔ 1. Member States shall issue ➔ or renew 🗑️ 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. 🗑️

¹⁵⁵ **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).

¹⁵⁶ **SE:** this Article should be revised in order to harmonise the different paragraphs.

2. The period of validity of an authorisation for researchers shall be of at least one year or for the duration of the research activity, in case this is shorter, and the authorisation shall be renewed, if the conditions laid down in Articles 6, ~~and~~ 7 and 9 are still met.¹⁵⁷

↓ new

→ Council

3. The period of validity of an authorisation for students shall be of at least one year¹⁵⁸ or for the duration of studies, in case this is shorter, and the authorisation shall be renewed, if the conditions laid down in Articles 6, 10¹⁵⁹ and 10a are still met.

¹⁵⁷ **RO:** this paragraph is in relation with Article 4(2) and wonders whether the new wording should respect the national rules stipulating that Member State can give an authorisation for the duration of the research activity. **PRES:** the changes in paragraphs 2 and 3 are structural and not intended to change the substance and, as long as the conditions are met, the authorisation can be renewed. **IT:** this paragraph should take into account the principle that *links the validity period of documents necessary for staying in the EU to the length of the course of study that the student commits himself/herself to complete*, irrespective of the profit checks which are necessary for the confirmation of the residence permit.

¹⁵⁸ **CY** suggests to make reference to "academic year" or "semester" instead of "one year".

¹⁵⁹ **DE:** reference to Article 19 should be added.

- ➔ 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 measures¹⁶⁰, shall be issued an authorisation¹⁶¹ covering the whole duration of their stay¹⁶² in the Member State participating in the programme. ☹
- ➔ 5. The period of validity of an authorisation for school pupils ☹ and ☹ **accompanying** ☹ teachers ☹ shall be of equal duration to the exchange scheme or the educational project, in case those are shorter than one year, or for a maximum of one year. Member States may decide to allow the renewal of the ☹ [...] ☹ authorisation ☹ **of the school pupils and accompanying teachers** ☹ once ☹_☹ **for the time period needed to complete the pupil exchange scheme or the educational project** ☹ [...] ☹ ☹ [...] ☹, if the conditions laid down in Articles 6 and 11 are still met ☹ [...] ☹_☹¹⁶³

¹⁶⁰ **ES:** reservation on multilateral programmes that comprise mobility measures.

¹⁶¹ **SE:** reservation related to intra-EU mobility.

¹⁶² **AT, DE, ES, FI, SE:** Member States should have more flexibility in determining the duration of the authorisation. It should be possible to have a shorter authorisation and then give the possibility of an extension. An authorisation that covers several years takes away the possibility for Member States to check whether the conditions (e.g. the required sufficient resources or accommodation) are still fulfilled after several years. **AT, DE, PL:** Member States should be able to establish the maximum duration of the authorisation. **IT:** the duration of the authorisation could be tied to the duration of the stay.

¹⁶³ **CY:** the length of the residence permit should match the period of study. **DE, SE,** prefer the text in the existing Directive and the originally proposed **CION** text ("*Member States shall issue an authorisation for a maximum period of one year*"). **AT** underlines the link of this paragraph with Article 19 of this proposal.

6. The period of validity of an authorisation for au pairs shall be of a maximum period of one year.¹⁶⁴ Member States may decide to allow the renewal of the authorisation once **and for the maximum period of six months, after a justified request by the host family**, if the conditions laid down in Articles 6 and 14 are still met.¹⁶⁵

↓ 2004/114/EC (adapted)

⇒ new

⇒ Council

7. The period of validity of an ~~residence permit~~ authorisation for ~~unremunerated~~ unremunerated and remunerated trainees shall be of equal duration to the training period, in case this is shorter than one year, or for a maximum of one year.¹⁶⁶ If the duration of the relevant training programme is longer than one year, the duration of the validity of the authorisation may correspond to the period concerned according to national law.

Member States may decide to allow the renewal of the authorisation once and exclusively for the time period needed to complete the traineeship, insofar as this is provided for in national law and the conditions laid down in Articles 6 and 12 are still met.¹⁶⁷

¹⁶⁴ **ES:** reservation on the duration of residence for au-pairs; since it does not agree with the inclusion of this category in the proposal. **DE** supported by **AT:** one year is too much since au-pairs are allowed to stay significantly less time in **DE**.

¹⁶⁵ **DE:** the stay of au-pairs should not be extendable. **HR:** renewal should be left for Member States to regulate in their national legislation.

¹⁶⁶ **AT:** it would be acceptable only as a may-clause, otherwise cannot accept a maximum duration being set in this Directive.

¹⁶⁷ **AT** underlines the link of this paragraph with Article 19 of this proposal.

8. The period of validity of an ~~authorisation~~ ~~residence permit~~ for volunteers shall be of equal duration to the voluntary service scheme, in case this is shorter than one year, or for a maximum period of one year.¹⁶⁸ 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.¹⁶⁹

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

10. In cases where Member States allow entry and residence during the first year on the basis of a long-stay visa, an application for a residence permit shall be submitted before the expiry of the long-stay visa. The residence permit shall be issued if the conditions laid down in Article 6 and, where relevant, Articles 6a, 7, 8, 9, 10, 10a, 11, 12, 13 or 14 are still met.¹⁷⁰

¹⁶⁸ **AT:** it would be acceptable only as a may-clause, otherwise cannot accept a maximum duration being set in this Directive.

¹⁶⁹ **AT** underlines the link of this paragraph with Article 19 of this proposal.

¹⁷⁰ **CY:** long-stay visa should remain a matter for the Member States to regulate. **HU:** this paragraph refers to long-stay visas and not to entry visas, which are linked to residence permits, and asks whether this provision applies to non-Schengen countries. **CION** would like to keep the text as proposed. **CION** would also like to distinguish between an application to enter the territory and an application to renew the authorisation. **CION:** reservation on the deletion of the last part of the paragraph.

Article 17

Additional information¹⁷¹

1. Member States may [...] indicate that additional information [...] relating to the [...] residence and, in cases covered by Article 23, the economic activities of the third-country national, such as the full list of Member States that the researcher or student intends to go to or a specific EU [...] or multilateral programme that comprises mobility measure¹⁷²s, shall be indicated either in paper format, [...] or store [...] such data in electronic format [...] as referred to in Article 4 of Regulation (EC) No 1030/2002 and [...] point (a) 16 of the Annex thereto.

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.

¹⁷¹ **AT:** include a reference to recital 23 in this article.

¹⁷² **ES:** reservation.

CHAPTER IV

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

~~Article 12~~

~~Residence permit issued to students~~

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

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

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

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

~~Article 13~~

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

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

~~Article 14~~

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

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

~~Article 15~~

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

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

↓ new

→ Council

Article 18

Grounds for → [...] → rejection → [...] →¹⁷³

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

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

→ (aa) → [...] → ; →

(b) where the documents presented have been fraudulently acquired, falsified or tampered with;¹⁷⁴

¹⁷³ **AT, DE:** inclusion of that "*willingness of the applicant to return*".

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

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

¹⁷⁴ **LU** suggests adding the following wording in line with the Directive 2003/86/EC on Family Reunification: "*where false or misleading information, false or falsified documents or authorisations were used, fraud was otherwise committed or other unlawful means were used to enter or reside on the territory or for the purpose of enabling a third person to enter or reside in the Member State*".

(c) where the host entity [...] was established [...] for the main [...] purpose of facilitating the entry of third-country nationals falling under the scope of this Directive ;¹⁷⁵

1a [...]

[...]

([...]) where [...] the host entity [...] has been sanctioned in conformity with national law for undeclared work and/or illegal employment . [...] ;¹⁷⁶

[...]

[...]

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

(a) [...]

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

¹⁷⁵ **RO:** merge points (b) and (c).

¹⁷⁶ **ES:** reservation. **AT:** include also the possibility when the family members have been sanctioned. **LV** cannot support the addition of points (e) and (f) since such provisions go beyond the principle of proportionality. Neither do they appear in other migration directives. **SE:** this should be a "may-provision".

(b) where the host entity [...] or another institution in accordance with Article 13(1)(b) and (c) or a third party in accordance with Article 11 (1)(d) **or an organisation mediating au pairs in accordance with Article 14(1)** has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions [...];¹⁷⁷

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

(cbis) where the host entity or the host family do not have adequate financial resources to grant satisfying conditions [...] of residence to the third-country national.¹⁷⁸

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

(cccbis) where [...] a member of the host family [...] has been sanctioned in conformity with national law for breach of the conditions and/or objectives of au-pair placements . [...];¹⁷⁹

¹⁷⁷ **DE:** inclusion of "*infringement against labour rights*". **DE, SE:** against the deletion of a reference to the terms and conditions of employment according to applicable laws, collective agreements or practices.

¹⁷⁸ **SE:** how should it be determined whether the host family has sufficient resources?

¹⁷⁹ **ES:** reservation.

(d) ↻ [...] ⌂¹⁸⁰

(e) ↻ [...] ⌂¹⁸¹

↻ (3) ↻ [...] ⌂ ⌂

↓ 2004/114/EC (adapted)

↻ new

↻ Council

Article ~~16~~ 19

↻ Grounds for ⌂ ~~Withdrawal or non-renewal~~ ↻ ~~or non-renewal~~ ⌂ ~~of residence permits~~
↻ of an authorisation ⌂¹⁸²

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 ↻ [...] ⌂ : ⌂¹⁸³

¹⁸⁰ **CY** against the deletion.

¹⁸¹ **CY** against the deletion.

¹⁸² **AT, CY**: a reference to volumes of admission is missing.

¹⁸³ **AT, HU**: against the deletion of part of paragraph.

↓ new

→ Council

- (a) → where the holder no longer meets the general conditions laid down in Article 6, except for Article 6(1)(d), 6a or the relevant specific conditions laid down in Articles 7, → 8, 9, → 10 to 14 or 16 were not met or are no longer met; →¹⁸⁴
- (b) → where authorisations → [...] → or → documents presented have been fraudulently acquired, falsified or tampered with;¹⁸⁵
- [...] → (c) → where the third-country national → [...] → resides or carries out an activity¹⁸⁶ → for purposes other than¹⁸⁷ 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 → ;

¹⁸⁴ **BE:** a reference to Article 24 should be added.

¹⁸⁵ **LU:** text to be added in line with the Directive 2003/86/EC on Family Reunification: "*where false or misleading information, false or falsified documents or authorisations were used, fraud was otherwise committed or other unlawful means were used to enter or reside on the territory or for the purpose of enabling a third person to enter or reside in the Member State*".

¹⁸⁶ **CION** questions the added-value of the addition of this wording and points out that the drafting is unclear.

¹⁸⁷ **DE:** add "*mainly*" as follows: "[...] *mainly* for purposes other than [...]".

➔ (dbis) if the host entity ➔ [...] ☒ or another institution ➔ [...] ☒ in accordance with Article 13(1)(b) and (c) or a third party in accordance with Article 11(1)(d) ➔ or an organisation mediating au pairs in accordance with Articles 14(1) ☒ has been sanctioned in conformity with national law for undeclared work and/or illegal employment.¹⁸⁸ ☒

(d) ➔ [...] ☒

(e) ➔ [...] ☒

(f) ➔ [...] ☒

➔ 1a. ➔ [...] ☒ ☒

➔ [...] ☒

➔ 1a a. Member States may withdraw or refuse to renew an authorisation ➔ [...] ☒:¹⁸⁹

(a) if the host entity ➔ [...] ☒ has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions ➔ [...] ☒;¹⁹⁰

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

¹⁸⁸ ES: reservation.

¹⁸⁹ PL: add "where *the third-country national does not provide proof that is looking for a job or have a good chance to find one*".

¹⁹⁰ ES: reservation.

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

(c) ➔ [...] ➔

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

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

➔ (f) where the student does not fulfil the condition set out by the written undertaking in accordance with Article 10.1(c); ➔¹⁹¹

➔ (fbis) if a member of the host family ➔ [...] ➔ has been sanctioned in conformity with national law for breach of the conditions and/or objectives of au-pair placements. ➔¹⁹² ➔

¹⁹¹ **CION:** against the need to produce a written undertaking for the language course.
¹⁹² **ES:** reservation.

↓ 2004/114/EC

⇒ new

⇒ Council

⇒ 2. In case of withdrawal, when assessing the progress¹⁹³ in the relevant studies, as referred to in paragraph 1a(d), a Member State ⇒ [...] ⇒ may consult with¹⁹⁴ ⇒ 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.¹⁹⁵

⇒ 4. ⇒ [...] ⇒

↓ 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.~~

¹⁹³ **CION:** the wording "assessing the progress" is too vague. **PL:** the "lack of progress" should be considered as a ground for non-renewal.

¹⁹⁴ **CION** prefers the previous wording "shall consult with".

¹⁹⁵ **CZ** drafting suggestion: "[...] *possible threat to public policy, public security or public health*".

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

↓ new

↻ Council

Article 20

Grounds for non-renewal of an authorisation

↻ [...] ↻

↓ 2005/71/EC (adapted)

CHAPTER V

~~RESEARCHERS'~~ RIGHTS

Article ~~12~~ 21

Equal treatment¹⁹⁶

¹⁹⁶ **AT, BG, CZ, ES, FI:** reservation. **CZ** against the inclusion of equal treatment rights in social security for non-economically active groups since, due to the lack of economic activity, they do not contribute to the national social security systems. **AT:** full equal treatment seems to be exaggerated in view of the temporary nature of the activities. **PL:** Article should be drafted more clearly. **CION:** the rights stemming from this article are relatively limited and should not affect significantly the social security systems of the Member States.

↓ new

➔ Council

➔ 1. Unremunerated and remunerated trainees, ➔ [...] ➔ volunteers and au-pairs, when they are in an employment relationship with an employer established in the Member State concerned or are allowed to work¹⁹⁷ by virtue of the national law of the Member State concerned, and students shall¹⁹⁸ enjoy equal treatment as provided for by Directive 2011/98/EU. ➔¹⁹⁹

¹⁹⁷ **FI:** delete "or are allowed to work" in order to align the text to the Single Permit Directive.

¹⁹⁸ **AT** prefers a "may" clause.

¹⁹⁹ **ES:** reservation on this paragraph, which deals with employment relationships. **DE, ES, FI, IT:** this paragraph should be brought in line with the Single Permit Directive. **CZ:** does not agree with the extensive approach to equal treatment on social security; equal treatment should only be for researchers. **AT:** insert the following: "... enjoy equal treatment as provided for by Directive 2011/98/EU *with the exception of family benefits*". **CION:** this proposal is different from the proposals on seasonal workers and intra-corporate transferees due to the different categories included which are not all covered by the Single Permit Directive (covering only workers and third-country nationals authorised to work).

2. By way of derogation²⁰⁰ from Article 12(2)(b) of Directive 2011/98/EU, researchers shall²⁰¹ be entitled to equal treatment with nationals of the host Member State as regards provisions in national law regarding the branches of social security, as defined in Article 3 of Regulation (EC) No 883/2004 and without prejudice of bilateral agreements. Member States may decide to exclude researchers²⁰² residing in a Member State for a period less than six months from the right to family benefits.²⁰³ In the event of mobility between Member States Council Regulation (EU) No 1231/2010 shall apply accordingly.²⁰⁴

²⁰⁰ **CZ:** expression "by way of derogation" is unclear. **CIION** taking into account the changes in the text, this expression may not be needed anymore.

²⁰¹ **AT** prefers a "may" clause.

²⁰² **CIION** does not agree with this exclusion of researchers; it would mean a step backwards for this proposal.

²⁰³ **BG:** this sentence should be displayed in a separate paragraph.

²⁰⁴ **BG:** the last sentence of the paragraph should read instead: "In the event of intra-EU mobility as stipulated in Chapter VI of this Directive, Council Regulation (EU) No 1231/2010 shall apply accordingly."

²⁰⁵ **DE, FI, HU, PL:** the relationship of this paragraph with the Single Permit Directive is unclear. **BG:** the procedure applicable to researchers should be similar to the Blue Card Directive. **AT, DE, IT, LT, LV, MT:** against the inclusion of family benefits in this provision. **DE:** according to the Single Permit Directive, equal treatment, including family benefits, applies only to researchers residing in the territory over 6 months. **CY:** suggests the following wording: "*Member States may decide not to grant equal treatment to researchers residing in a Member State for a period less than six months in relation to the right to family benefits.*" **AT:** delete "residing in a Member State for a period less than six months" in the second sentence of the paragraph. A legal and permanent residence in AT that is necessary for entitlement to family benefits depends on the specific circumstances of each and every case. **CIION** aim is to keep the same level of rights for researchers as in the current Researchers Directive.

☞ [...] ☞ 3. ☞ ☞ [...] ☞ Volunteers, ☞ remunerated or ☞ unremunerated trainees and au-pairs, irrespective of whether they are allowed to work in accordance with Union or national law, ☞ and school pupils ☞ shall be entitled to equal treatment in relation to access to goods and services and the supply of goods and services made available to the public, ☞ [...] ☞ as provided for by national law.²⁰⁶

☞ By way of derogation, Member States may decide not to grant equal treatment to school pupils, volunteers, remunerated or unremunerated trainees and au-pairs in relation to procedures for obtaining housing, study and vocational training grants and loans and / or services provided by public employment services in accordance with national law. ☞²⁰⁷

↓ 2005/71/EC (adapted)

Article ~~11~~ 22

Teaching ☒ by researchers ☒

~~11~~ Researchers admitted under this Directive may teach in accordance with national legislation.~~2~~ Member States may set a maximum number of hours or of days for the activity of teaching.²⁰⁸

²⁰⁶ **ES:** reservation. **CION:** reservation on the text at the end of the paragraph. **AT:** deletion of the paragraph. **DE:** exclusion of study and vocational training grants from the scope of this paragraph. **LV:** the exclusion of employment services. **BE:** exclusion of disability benefits. **SE:** add at the end of the paragraph: "*The rights in this paragraph do not include study and vocational training grants and loans*".

²⁰⁷ **CION:** reservation. **SE:** add at the end of the first paragraph: "*The rights in this paragraph do not include study and vocational training grants and loans*" and delete "study and vocational training grants and loans" in the second paragraph.

²⁰⁸ **ES** suggests the following wording: "*Third-country nationals* admitted under this Directive may teach in accordance with national legislation *if they carry out a research activity as researchers or as PhD students*. Member States may set a maximum number of hours or of days for the activity of teaching."

↓ 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 activity²⁰⁹. The situation of the labour market in the host Member State may be taken into account.²¹⁰
2. Where necessary, Member States shall grant students and/or employers prior authorisation in accordance with national legislation.

²⁰⁹ **CY:** further clarification of "students [...] may be entitled to exercise self-employed economic activity".

²¹⁰ **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] ☐ ←²¹¹~~ hours per week, or the equivalent in days or months per year.

~~3. Access to economic activities for the first year of residence may be restricted by the host Member State.²¹²~~

4. Member States may require students to report, in advance or otherwise, to an authority designated by the Member State concerned, that they are engaging in an economic activity. Their employers may also be subject to a reporting obligation ⇒ [..] ☐ .

⇒ 5. In case of mobility, the provisions of this article shall apply accordingly. ☐

²¹¹ **ES, NL:** reservation. **AT, BG, CZ, ES, MT, NL, RO** prefer 10 hours. This is a minimum so Member States still enjoy a degree of flexibility. **CZ** could agree, as an alternative to a minimum figure, on a general provision dealing with the right of the Member States to decide the exact figure. **SE:** further flexibility is needed. **CION:** in favour of 20 hours per week.

²¹² **AT, CY:** reservation on the deletion, Member States should be able to set a minimum time period after which students are allowed to work.

↓ new

→ Council

Article 24

→ Extension of the right of residence for the purposes of → job-searching → [...] → or → entrepreneurship for researchers and students²¹³

→ 1. → After → [...] → the completion → of research or studies in the Member State, → [...] → third-country nationals shall²¹⁴ → [...] → have the right to apply²¹⁵ → to stay on the territory of the Member State for a period of → at least [6]²¹⁶ → [...] → months in order to → [...] → seek employment → or set up a business, if the conditions laid down in → Article 6(1) → points (a) and (c) to (f) → [...] → are still fulfilled. → This right shall be applied, without prejudice to Member States' right to take into account their labour market, followed by a positive evaluation of the host entity → **for the completion of the research activity** → in case of researchers²¹⁷ or by evidence of having obtained a higher education → **diploma, certificate or other evidence of formal** → qualifications in case of students. →²¹⁸

²¹³ **CY:** against the extension of the residence for the purposes of job-searching for researchers and students. **HU:** how to check whether in practice the fact somebody is doing the necessary to set up a business. **EL:** against this provision being mandatory. **EL:** strong concerns regarding the right of third-country nationals to have an automatic right to seek job or set up a business. Member States should have the right to decide whether they will grant that right of extra residence period for that purpose while taking into account the situation in the national labour market. In this spirit, **EL** opposes the proposed distinction between "job seeking" and "access to the labour market".

²¹⁴ **AT, HR, IT:** this should be a "may" clause. **CION** prefers the originally proposed "*shall be entitled to stay*", once the conditions are fulfilled.

²¹⁵ **CION:** it should be redrafted to say that the person has the right to stay on the territory of the Member State.

²¹⁶ **DE:** can support a period of 18 months as in its legislation. **CZ:** prefers 3 months; this provision should be optional. **CY:** accepts 12 months for researchers, but not for students, au-pairs and the other categories. Alternatively, it should be left to the Member States to decide.

²¹⁷ **ES:** unnecessary administrative burden.

²¹⁸ **AT:** the paragraph is not clear, it should be split in two.

In a period of more than 3 and less than 6 months, Member States may require third-country nationals [...] to prove that they seek employment or have a genuine chance of being engaged or are in the process of setting up a business.²¹⁹

After a period of 6 months²²⁰ and in case of Member States have granted a period of more than six months, Member States may require²²¹ third-country nationals [...] to prove that they have a genuine chance of being engaged or of launching a business.²²²

Member States may require that the employment the third-country national is seeking or the business he/she is in the process of setting up corresponds to the area or level²²³ of research or the field of studies completed or the skills gained by the third-country national.²²⁴

²¹⁹ **AT:** the consequences of this are not clear.

²²⁰ **DE:** against 6 months and any time limitations; MS should be able to set the deadline.

²²¹ **AT** suggests to explicitly indicate as the need to provide for an application for family members, before the authorisation expires.

²²² **MT:** access to benefits should be excluded.

²²³ **SE:** delete "or level" sine it is difficult to determine whether an employment corresponds to the level of research or studies.

²²⁴ **IT:** delete this provision since it would hold back and restrict the chance of finding a job as well as it would confer excessive discretionary powers to the competent authorities.

➔ 2. For the purpose of stay referred to in paragraph 1, provided that conditions laid down in Article 6(1) points (a) and (c) to (f) are fulfilled, Member States shall issue or renew an authorisation other than foreseen in Article 15²²⁵ to the third-country national and, where relevant, to his family members according to their national law. ©²²⁶

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

²²⁵ **PL** supported by **AT**: "an authorisation other than foreseen in Article 15" should be redrafted, since it can suggest that researchers and students, who are allowed to stay on the territory of Member States in order to look for a job or set up a business, shall be granted documents other than visa and residence permit. The provisions concerning granting the authorisations to the family members should be included in Art. 25 of the proposal. Placing these provisions in Art. 24 suggests that the directive not only grants the right to stay to the family members of researchers but also to the family members of students.

²²⁶ **AT**: this paragraph should be optional whether the Member State grants a residence permit or a visa. Detailed provisions on the procedure are lacking, for example that the third-country national must lodge his application before the expiry of the valid residence permit as a student or a researcher, or even the necessary submission of an applications itself. **BE**: this paragraph clarifies the question of change of status and the residence permit should not be renewed.

➔ 3. If the conditions provided for in paragraph 1 are no longer fulfilled, Member States shall²²⁷ withdraw the authorisation of the third country national and his/her family members according to their national law. Member States may²²⁸ also withdraw the authorisation if the third-country national is seeking employment or is in the process of setting up a business which does not correspond to the level or area²²⁹ of research or the field of studies finalised or the skills gained by the third-country national. ☹²³⁰

Article 25

Researchers' family members

1. By way of derogation from Article 3(1) and Article 8 of Directive 2003/86/EC, ➔ [...] ☹
➔ the issuance of the residence permit to the family members of the researcher admitted to a Member State shall not be made dependent on the requirement of a minimum period of residence of the researcher.²³¹ ☹ .

²²⁷ **AT:** this should be a may-provision.

²²⁸ **ES:** reservation on "may".

²²⁹ **DE, EE** suggest: "*level or area of research*".

²³⁰ **IT:** this provision creates excessive limits for the completion of studies in a MS and for the seeking of employment afterwards. It is difficult for the authority to check these requirements: it is administratively onerous and can give rise to arbitrary decisions. **FR:** need to pay attention to the degree of detail put in this paragraph, it deals with the withdrawal of authorisation, and if it is too detailed it can give rise to litigation and can be quite an administrative burden. **PL:** the optional ground for the withdrawal of the authorisation suggests that researchers and students are not allowed to seek employment or be in the process of setting a business, which does not correspond to the level of research or studies finalised by the third-country national. Such a requirement is, however, not provided in paragraph 1 of this Article, which determines the prerequisites to grant third-country nationals the authorisation for the purposes of job-searching or setting up a business.

²³¹ **CION:** reservation. **BE:** the paragraph refers to Articles 3(1) and 8 of Directive 2003/86 but the content only concerns Article 8.

2. By way of derogation from the last subparagraph of Article 4(1) and Article 7(2) of Directive 2003/86/EC, the integration conditions and measures referred to in those provisions may only be applied after the persons concerned have been granted family reunification.
3. ☞ Without prejudice to Article 24(2) and ☹ by way of derogation from the first subparagraph of Article 5(4) of Directive 2003/86/EC, authorisations for family members shall be granted, where the conditions for family reunification are fulfilled, within 90 days from the date on which the application was lodged ☞ [...] ☹.²³²
4. By way of derogation from Article 13(2) ☞ [...] ☹ of Directive 2003/86/EC, the duration of validity of the authorisation of family members shall ☞ [...] ☹ ☞, as a general rule, end on the date of expiry²³³ of the ☹ authorisation ☞ [...] ☹ ☞ issued ☹ to the researcher ☞ [...] ☹.
5. By way of derogation from the second sentence of Article 14(2) of Directive 2003/86/EC, Member States ☞ [...] ☹ ☞ may ☹ not apply any time limit in respect of access to the labour market.²³⁴

²³² **AT, IT, LU, SE:** time-limits 90/60 days are too short. **IT:** time-limit set of 180/90 days. **SE:** it would be preferable not to have time-limits in the proposal since it gives Member States less flexibility. **HU:** 60-day time limit applicable in the case of Union programmes including mobility measures deleted in the current version of the text.

²³³ **AT** criticised the fact of stating the necessary period here.

²³⁴ **AT:** reservation; the acceptance of family members from day one is a problem.

CHAPTER VI

MOBILITY BETWEEN MEMBER STATES²³⁵

↓ 2005/71/EC

↻ Council

↻ Article 26

Intra-EU mobility

↻ [...] ↻

↻ 1. A third-country national who holds an authorisation for the purpose of research or studies issued by the first Member State may enter, stay and 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 and 26C and subject to Article 26D. ↻

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

²³⁵ SE: reservation regarding intra-EU mobility.

➤ 3. When a researcher moves to a second Member State in accordance with Articles 26A or 26B and in case his/her family was already constituted in the first Member State, the members of his/her family shall be authorised to accompany or join the researcher, provided that they are not considered to pose a threat to public policy, public security or public health for the second Member State concerned. ☹

➤ 4. When researcher's family members are authorised to accompany or join the researcher in the second Member State the provisions of Article 25, with the exception of paragraph 3, shall apply accordingly. ☹

➤ [...] ☹ Article ~~13~~ 26 ➤ A ☹

➤ [...] ☹ ➤ Short-term mobility of researchers ☹

➤ [...] ☹

➤ 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 stay and carry out part of his/her research in any research organisation 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. ☹

➤ 2. The research organisation in the first Member State shall 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 at the latest 20 days before the intended mobility. ☹

➤ 3. The notification shall include the transmission of the following documents and information: ☹

- (a) a valid authorisation issued by the first Member State covering the total period of short-term mobility; ☹
- (b) the hosting agreement or the contract in the first Member State, if the mobility is known at the time of application in the first Member State. In cases where the mobility becomes known at a later stage, the second Member State may decide either to require a revised hosting agreement or a contract with the research organisation in the first Member State, or a letter from the research organisation in the second Member State containing the information about the mobility; ☹
- (c) a valid travel document, as provided for in point (a) of Article 6(1); ☹
- (d) evidence that the researcher has sickness insurance for all the risks normally covered for nationals of the Member State concerned; ☹
- (e) evidence that during his/her stay the researcher has sufficient resources to cover his/her subsistence. ☹
- Member States may require the applicant to present the documents listed in points a, b, c, d and e of paragraph 3 in an official language of the Member State concerned. ☹
- 4. Based on the notification referred to in paragraph 2, the second Member State may object to the mobility of the researcher to its territory within 20 days from having received the notification, where: ☹
 - (a) the requirements set out in paragraph 3 of this Article are not fulfilled; ☹
 - (b) the documents presented have been fraudulently acquired, or falsified, or tampered with; ☹

⇒ (c) the maximum duration of stay as defined in paragraph 1 of this Article has been reached. ◀

⇒ The competent authorities of the second Member State shall inform without delay the competent authorities of the first Member State and the research organisation in the first Member State about their objection to the mobility. ◀

⇒ 5. In case the authorisation is renewed by the authorities of the first Member State, the renewed authorisation shall continue to authorise its holder to carry out part of his/her research in the second Member State notified, subject to the maximum duration stated in paragraph 1 of this Article. ◀

⇒ 6. 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. ◀

⇒ Article 26B ◀

⇒ Long-term mobility of researchers ◀

⇒ [...] ◀

⇒ 1. In relation to a third-country national who has been admitted as a researcher under this Directive and who holds a valid authorisation issued by the first Member State and intends to stay and carry out part of his/her research in any research organisation in one or several second Member States for more than 180 days per Member State, the second Member State may decide to: ◀

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

➔ or ☹

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

➔ 2. Where an application for long-term mobility is made: ☹

➔ (a) the researcher shall present at the latest 60 days before the intended mobility to the second Member State the following documents and information: ☹

➔ (i) a valid authorisation issued by the first Member State; ☹

➔ (ii) the hosting agreement or the contract in the second Member State; ☹

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

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

➔ (v) evidence that during his/her stay the third-country national has sufficient resources to cover his/her subsistence; ☹

➔ Member States may require the applicant to present the documents listed in points i, ii, iii, iv and v of paragraph 2a in an official language of the Member State concerned. ☹

➔ (b) the competent authorities of the second Member State shall take a decision on the application for long-term mobility and notify the applicant in writing, as soon as possible, but not later than 60 days after the second Member State has received the application and the documents foreseen in point (a); ☹

➤ (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: ◀

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

➤ (b) the documents presented have been fraudulently acquired, or falsified, or tampered with. ◀

➤ 4. Where the competent authorities of the second Member State takes 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. ◀

➤ 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. ◀

↓ new

➤ Council

➤ Article 26C ◀

➤ [...] ◀

➤ *Mobility of students* ◀

➤ 1. A third-country national who holds a valid authorisation for students issued by the first Member State shall be entitled to stay and 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. ◀

- 2. A third-country national who is covered by Union programmes including mobility measures and who holds a valid authorisation issued by the first Member State shall be entitled to carry out part of his/her studies in the higher education institution in one or several second Member States for a period of up to 360 days. ☹
- 3. The higher education institution in the first Member State 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 20 days before the intended mobility. ☹
- 4. The notification shall include the transmission of the following documents and information: ☹
- (a) a valid authorisation issued by the first Member State covering the total period of mobility; ☹
 - (b) evidence that the student has been accepted by a higher education institution to follow a course of study in the second Member State; ☹
 - (c) a valid travel document, as provided for in point (a) of Article 6(1); ☹
 - (d) evidence that the third-country national has sickness insurance for all the risks normally covered for nationals of the Member State concerned; ☹
 - (e) evidence that during his/her stay the third-country national has sufficient resources to cover his/her subsistence. ☹

➤ Member States may require the applicant to present the documents listed in points a, b, c, d and e of paragraph 4 in an official language of the Member State concerned. ☹

➤ 5. Based on the notification referred to in paragraph 3, the competent authorities of the second Member State may object to the mobility of the student to its territory within 20 days from having received the notification, where: ☹

➤ (a) the requirements set out in paragraph 4 of this Article are not fulfilled; ☹

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

➤ (c) the maximum duration of stay as defined in paragraph 1 or 2 of this Article has been reached. ☹

➤ The competent authorities of the second Member State shall inform without delay the competent authorities of the first Member State and the higher education institution in the first Member State about their objection to the mobility. ☹

➤ 6. In case the authorisation is renewed by the competent authorities of the first Member State within the maximum duration provided for by Article 16(3a), the renewed authorisation shall continue to authorise its holder to carry out part of his/her studies in the second Member State notified, subject to the maximum duration stated in paragraph 1 or 2 of this Article. ☹

➤ 7. Students may apply for an extension of mobility beyond the initial period as referred to in paragraph 1 or 2 in the same second Member State in accordance with paragraphs 8 to 11. ☹

➤ 8. In case the validity of the authorisation issued by the competent authorities of the first Member State covers the entire period of the intended extension, the higher education institution in the second Member State shall notify the competent authorities of the first and the second Member State of the intention of the student to extend his/her stay. The notification shall include the transmission of evidence of the extension of the period of studies in the higher education institution in that second Member State and proof of validity of the authorisation issued by the first Member State. ☹

➤ The competent authorities of the second Member State may also require the transmission of the following documents and information: ☹

➤ (i) a valid travel document, as provided for in point (a) of Article 6(1); ☹

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

➤ (iii) evidence that during his/her stay the third-country national has sufficient resources to cover his/her subsistence. ☹

➤ 9. In case the validity of the authorisation issued by the first Member State does not cover the entire period of the intended extension, the student or the higher education institution shall submit an application for an authorisation in the competent authorities of the second Member State covering the extension of mobility. ☹

➤ (a) The applicant shall present at the latest 60 days before the intended extension to the second Member State the following documents: ☹

➤ (i) evidence of the extension of the period of studies in the higher education institution in that second Member State; ☹

- (ii) a valid travel document, as provided for in point (a) of Article 6 (1);
- (iii) evidence that the third-country national has sickness insurance for all the risks normally covered for nationals of the Member State concerned;
- (iv) evidence that during his/her stay the third-country national has sufficient resources to cover his/her subsistence.

➤ (b) The competent authorities of the second Member State shall take a decision on the application for the extension of mobility and notify the applicant in writing as soon as possible but not later than 60 days after the second Member State has received the application and the documents foreseen in point (a).

➤ (c) The student shall not be required to leave the territory of the second Member State in order to submit the application and shall not be subject to a visa requirement.

➤ 10. The competent authorities of the second Member State may reject an application for the extension of mobility where:

➤ (a) the requirements set out in paragraph 9(a) of this Article are not complied with;

➤ (b) the documents presented have been fraudulently acquired, or falsified, or tampered with.

➤ 11. Where the competent authorities of the second Member State take a positive decision on the application for the extension of mobility as referred to in paragraph 9, the student shall be issued an authorisation in accordance with Article 15.

➤ 12. 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.

➤ [...] ◀

➤ *Mobility of researchers' family members* ◀

➤ **1. In case the researcher is accompanied by his/her family members in the framework of a short-term mobility, a notification procedure shall include the transmission of the following documents and information regarding the family members concerned:** ◀

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

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

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

➤ **(d) evidence that the researcher has sufficient resources to cover the subsistence of his/her family members;** ◀

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

➤ **Member States may require the applicant to present the documents listed in points a, b, c, d and e of paragraph 1 in an official language of the Member State concerned.** ◀

➤ **2. When Member States apply the above paragraph 1, the provisions of paragraphs 4, 5 and 6 of Article 26A shall apply accordingly.** ◀

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

⇒ (a) a valid authorisation issued by the first Member State ☹

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

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

⇒ (d) evidence that the researcher has sufficient resources to cover the subsistence of his / her family members; ☹

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

⇒ Member States may require the applicant to present the documents listed in points a, b, c, d and e of paragraph 3 in an official language of the Member State concerned. ☹

⇒ 4. When Member States apply the above paragraph 3, paragraphs 2(b), 2(c), 3, 4 and 5 of Article 26B shall apply accordingly. ☹

Article 26E

Safeguards [...] and sanctions

[...]

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:

(a) a copy of the hosting agreement or the contract specifying the details of the mobility of the researcher or a copy of the letter from the research organisation in accordance with Article 26A (3b)

or

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

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

- ⇒ **2. Where the competent authorities of the first Member State withdraws the authorisation, it shall inform the authorities of the second Member State immediately.** ☹
- ⇒ **3. The host entity of the second Member State 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.** ☹
- ⇒ **3bis. 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.** ☹
- ⇒ **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 no longer fulfils the conditions for mobility the first Member State shall, upon request of the second Member State, allow re-entry of the researcher or student without formalities and without delay and, where applicable, of his or her family members. This shall also apply if the authorisation issued by the first Member State has expired or has been withdrawn during the period of mobility within the second Member State.** ☹
- ⇒ **5. In cases where the researcher or his/her family members or the student crosses the external border of a Member State applying the Schengen acquis in full, that Member State shall consult the Schengen information system. That Member State shall refuse entry or object to the mobility of persons for whom an alert for the purposes of refusing entry and stay has been issued in the Schengen information system.** ☹

Article 27

⇒ [...] ☹

Article 28

⇒ [...] ☹

~~CHAPTER V~~

~~PROCEDURE AND TRANSPARENCY~~

~~Article 14~~

~~Applications for admission~~

- ~~1. Member States shall determine whether applications for residence permits are to be made by the researcher or by the research organisation concerned.~~
- ~~2. The application shall be considered and examined when the third-country national concerned is residing outside the territory of the Member States to which he/she wishes to be admitted.~~
- ~~3. Member States may accept, in accordance with their national legislation, an application submitted when the third-country national concerned is already in their territory.~~
- ~~4. The Member State concerned shall grant the third-country national who has submitted an application and who meets the conditions of Articles 6 and 7 every facility to obtain the requisite visas.~~

Article 15

Procedural safeguards

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

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

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

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

CHAPTER ~~V~~ VII

PROCEDURE AND TRANSPARENCY

Article ~~18~~ 29

Procedural guarantees and transparency

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

↓ new

↻ Council

1. The competent authorities of the Member State ↻ [...] ↻ concerned ↻ shall ↻ [...] ↻ adopt a decision ↻ on the ↻ [...] ↻ application for an authorisation ↻ or a renewal of it ↻ and ↻ [...] ↻ notify the applicant ↻, 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 ↻ [...] ↻.²³⁶

²³⁶ **ES, HU:** a shorter deadline. **HU:** 21 days in its national legislation. **CION:** 90 days is too long; it would like to maintain the time limits shorter as originally proposed since they are more in line with the needs of the categories concerned.

1a. By way of derogation from paragraph 1, in case the [...] the admission procedure is related to a research organisation, an approved host entity or an approved higher education institution, as referred to in Articles 6a, 8 and 10a, the time for taking a decision on the complete application shall be at most 60 days²³⁷.

↓ 2004/114/EC (adapted)

⇒ new

⇒ Council

2. [...] Where the information or documentation supplied in support of the application is [...] incomplete²³⁸, ~~processing of the application may be suspended and~~ the competent authorities shall [...] notify²³⁹ 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 ⇐²⁴⁰.

²³⁷ **HU:** the period is too long. **HU:** 21-day period for researchers, and a 15-day period for students in its legislation. **CIION:** since some MS have shorter deadlines, the figure in this text could even be reduced to 30 days. **DE:** prefers not to specify a time limit and leave MS to decide. **FR:** reservation on the fast-track procedure. **ES:** the fast-track procedure for researchers should be set out in a similar way to the ICT Directive including: (a) *exempting the applicant from presenting some of the evidence referred to in Article (...); and/or b) a fast-track admission allowing the authorisations to be issued within a shorter time; and/or (c) facilitated and/or accelerated procedures in relation to the issuance of the requisite visas.*

²³⁸ **AT** prefers to use another term such as "inappropriate" instead of "incomplete". It prefers the previous wording of paragraph 2.

²³⁹ **IT** prefers "request".

²⁴⁰ **AT:** against the wording of this paragraph and suggests it should be in line with the other Directives in this field.

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

~~Article 19~~

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

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

↓ new

⇒ Council

Article 30

Transparency and access to information²⁴¹

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. ⇒ [...] ⇒**

↓ 2004/114/EC

⇒ new

⇒ Council

Article ~~20~~ 31

Fees

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

²⁴¹ **PL:** difficult to make available the information requested by this article due to the heterogeneity of the groups targeted by this proposal.

~~CHAPTER VI~~

~~FINAL PROVISIONS~~

~~Article 16~~

~~Reports~~

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

~~Article 17~~

~~Transposition~~

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

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

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

~~Article 18~~

~~Transitional provision~~

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

~~Article 19~~

~~Common Travel Area~~

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

~~Article 20~~

~~Entry into force~~

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

Article 21

Addressees

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

↓ 2004/114/EC

CHAPTER ~~VI~~ VIII

FINAL PROVISIONS

↓ new

↻ Council

Article 32

↻ [...] ↻ **Cooperation on information** ↻

1. Member States shall appoint contact points which shall ↻ cooperate effectively and ↻ be responsible for receiving and transmitting the information needed to implement Articles ↻ [...] ↻ ↻ 26A to 26F ↻ . ↻ Member States shall give preference to exchange of information via electronic means. ↻
2. ↻ Each ↻ Member States shall ↻ [...] ↻ ↻ inform the other Member States, via the national contact points referred to in paragraph 1, on the procedures applied to admission and mobility referred to in Articles 6a, 9, 26A to 26F. ↻

Article 33

Statistics²⁴²

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.

²⁴² **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

Transposition²⁴³

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [two years²⁴⁴ 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.

²⁴³ **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.

²⁴⁴ **FI** and **SE**: prefer 3 years.

Article 36

Repeal²⁴⁵

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*.

²⁴⁵ 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 (OJ L 375, 23.12.2004, p. 12)
and of the Council

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

Part B

List of time-limits for transposition into national law [and application]

(referred to in Article 36)

Directive	Time-limit for transposition	Date of application
2004/114/EC	12.01.2007	
2005/71/EC	12.10.2007	

ANNEX II

CORRELATION TABLE

Directive 2004/114/EC	Directive 2005/71/EEC	This Directive
Article 1 (a)		Article 1 (a)
Article 1 (b)		-
-		Article 1 (b) and (c)
Article 2 introductory wording		Article 3 introductory wording
Article 2 (a)		Article 3 (a)
Article 2 (b)		Article 3 (c)
Article 2 (c)		Article 3 (d)
Article 2 (d)		Article 3 (e)
-		Article 3 (f) and (g)
Article 2 (e)		Article 3 (l)
Article 2 (f)		Article 3 (h)
Article 2 (g)		-
-		Article 3 (i)
-		Article 3 (m) to (s)

Article 3 (1)		Article 2 (1)
Article 3 (2)		Article 2 (2) (a) to (e)
-		Article 2 (2) (f) and (g)
Article 4		Article 4
Article 5		Article 5 (1)
-		Article 5 (2)
Article 6 (1)		Article 6 (a) to (e)
-		Article 6 (f)
Article 6 (2)		-
-		Article 7
Article 7 (1) introductory wording		Article 10 (1) introductory wording
Article 7 (1) (a)		Article 10 (1) (a)
Article 7 (1) (b) and (c)		-
Article 7 (1) (d)		Article 10 (1) (b)
Article 7 (2)		Article 10 (2)
-		Article 10 (3)
Article 8		-

-		Article 11
Article 9 (1) and (2)		Article 12 (1) and (2)
Article 10 introductory wording		Article 13 (1) introductory wording
Article 10 (a)		Article 13 (1) (a)
Article 10 (b) and (c)		-
-		Article 12 (1) (b)
-		Article 12 (2)
Article 11 introductory wording		Article 14 (1) introductory wording
Article 11 (a)		-
Article 11 (b)		Article 13 (1) (a)
Article 11 (c)		Article 13 (1) (b)
Article 11 (d)		Article 13 (1) (c)
Articles 12 to 15		-
-		Articles 14, 15 and 16
Article 16 (1)		Article 20 (1) introductory wording
-		Article 20 (1) (a) to (c)

Article 16 (2)		Article 20 (2)
-		Article 21
Article 17 (1) first subparagraph		Article 23 (1)
Article 17 (1) second subparagraph		Article 23 (2)
Article 17 (2)		Article 23 (3)
Article 17 (3)		-
Article 17 (4)		Article 23 (4)
-		Articles 15, 24, 25, 27
-		Article 17
Article 18 (1)		-
-		Article 29 (1)
Article 18 (2), (3) and (4)		Article 29 (2), (3) and (4)
Article 19		-
-		Article 30
Article 20		Article 31
-		Articles 32 and 33

Article 21		Article 34
Articles 22 to 25		-
-		Articles 35, 36 and 37
Article 26		Article 38
-		Annexes I and II
	Article 1	-
	Article 2 introductory wording	-
	Article 2 (a)	Article 3 (a)
	Article 2 (b)	Article 3 (i)
	Article 2 (c)	Article 3 (k)
	Article 2 (d)	Article 3 (b)
	Article 2 (e)	-
	Articles 3 and 4	-
	Article 5	Article 8
	Article 6 (1)	Article 9 (1)
	-	Article 9 (1) (a) to (f)
	Article 6 (2) (a)	Article 9 (2) (a)
	Article 6 (2) (a), (b) and (c)	-

	Article 6 (3), (4) and (5)	Article 9 (3), (4) and (5)
	Article 7	-
	Article 8	Article 16 (1)
	Article 9	-
	Article 10 (1)	Article 19 (2) (a)
	-	Article 19 (2) (b)
	Article 10 (2)	-
	Article 11 (1) and (2)	Article 22
	Article 12 introductory wording	-
	Article 12 (a)	-
	Article 12 (b)	-
	Article 12 (c)	Article 21 (1)
	Article 12 (d)	-
	Article 12 (e)	-
	-	Article 21 (2)
	Article 13 (1)	Article 26 (1)
	Article 13 (2)	Article 26 (1)

	Article 13 (3) and (5)	Article 26 (1)
	Article 13 (4)	-
	-	Article 26 (2), (3) and (4)
	Articles 14 to 21	-
