



EUROPEAN UNION
THE COUNCIL

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SEMDOC

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LIMITE

MIGR 24

NOTE

from : General Secretariat of the Council
to : Migration (Admission) Working Group
Subject : **Monitoring the implementation of instruments already adopted concerning admission of third-country nationals**
- Summary report of the Member States' replies to the questionnaire launched in 1998

On 22 December 1995 the Council adopted a decision on monitoring the implementation of instruments already adopted concerning admission of third-country nationals¹ in order to "reveal the practical effect of the Council's work in this matter and provide useful lessons for its future work".

In application of Article 3 of this decision, a request for an update to the information previously supplied (10669/1/96 ASIM 140 REV 1 and 6203/97 ASIM 35 + ADD 1) was sent by the General Secretariat of the Council (telex No. 1637 of 7 April 1998) to the Member States. This relates to the following instruments:

- I Resolution on the harmonisation of national policies on family reunification (adopted by the Ministers with responsibility for immigration at their Copenhagen meeting on 1 June 1993, SN 2828/1/93 WGI 1497 REV1),
- II Council resolution of 20 June 1994 on limitations on admission of third-country nationals to the territory of the Member States for employment (OJ No. C 274, 19.9.1996, p. 3),
- III Council resolution of 30 November 1994 relating to the limitations on the admission of third-country nationals to the territory of the Member States for the purpose of pursuing activities as self-employed persons (OJ No. C 274, 19.9.1996, p. 7).

¹ OJ No C 11, 16.1.1996, p.1.

- IV Council resolution of 30 November 1994 on the admission of third-country nationals to the territory of the Member States for study purposes (OJ No. C 274, 19.9.1996, p. 10), and
- V Council resolution of 4 March 1996 on the status of third-country nationals residing on a long-term basis in the territory of the Member States (OJ No. C 80, 18.3.1996, p. 2).

In conformity with Article 3 of the Council decision, the General Secretariat of the Council:

- translated the information notes transmitted by Member States on the basis of the request for information; a compilation of those information notes is contained in 10803/98 ASIM 191 MIGR 11,
- prepared a summary report based on the information notes, which is attached in annex to this document¹.

¹ It is pointed out that, despite repeated reminders addressed to them, the French, Irish, Italian and Luxembourg delegations have not yet replied. The General Secretariat has waited a reasonable time before bringing this summary report. Due to this delay, some of the information received may no longer be up-to-date. Wherever possible, minor adjustments have been made to this information (e.g. as regards entry into force of legislation).

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I

RESOLUTION ON THE HARMONISATION OF NATIONAL POLICIES ON FAMILY REUNIFICATION

(adopted by the Ministers with responsibility for immigration at their Copenhagen meeting on 1 June 1993, SN 2828/1/93 WGI 1497 REV 1)

1. Have you adopted provisions in any of the areas covered by the instrument, which are not already reflected in the latest Secretariat documents (10669/1/96 ASIM 140 REV 1)? If so, please state what those measures are and give a brief résumé of their objectives and substance.

1.1 Four Member States (B, DK, E and UK) have not recently adopted any provisions under the resolution on the harmonisation of national policies on family reunification, as their legislation was already in line with the resolution. Luxembourg has not adopted any provisions under this resolution since it was adopted.

1.2 Seven Member States (D, GR, NL, A, P, FIN and S) have recently adopted provisions in this area.

1.3 In Germany the 29 October 1997 amendment to the Alien's Law ¹ allows a foreign spouse, in cases of extreme hardship, to be granted a residence permit irrespective of the length of time the marriage has subsisted in the Federal Republic of Germany. However, this new arrangement does not result from the provisions of the Resolution.

1.4 In Greece, Presidential Decree No 5/9-11-98 follows the resolution on many points, as published in the Greek Official Gazette A-15/21-1-98, entitled "Conditions and procedures for entry and settlement for family members of foreign nationals". The adoption of this Presidential Decree was provided for in the Law on foreign nationals, Law No. 1975/91.

1.5 The Netherlands' policy with regard to family reunification has changed in a number of areas, although these changes were not necessarily made so as to implement the resolution. The changes are as follows:

(a) The final deadline for family reunification, introduced in September 1993, is no longer applied;

(b) At the start of 1996 the income requirement for family reunification was adjusted and clarified²;

¹ Germany: Entry into force – 1 November 1997.

² The Netherlands: for example, rules have been established on how income from work contracts of less than one year should be handled. Furthermore, a list is now published in the *Vreemdelingencirculaire* (Alien's Circular) with income factors which can be used to calculate whether a person has adequate means of support.

(c) In response to national caselaw¹, in 1996 more detailed policy rules were introduced regarding the test in Article 8 ECHR (respect for private and family life). It has been enacted in the national regulations that where there is an objective obstacle to exercising family life in the country of origin, it must be decided on a case by case basis whether admission is justified;

(d) Since 1 January 1998, non-marriage relationships registered in the Netherlands Civil Status Register have been legally assimilated to marriages. For family reunification policy, this means that the same admission conditions apply to registered partnerships as to marriage relationships, with the proviso that a relationship can be registered only after the partner(s) is/are admitted to the Netherlands and are in possession of a residence permit.

Furthermore, there has been an amendment to the Alien's Law relating to the requirement for a provisional residence permit². The new requirement came into force on 1 October 1998, so that third-country nationals are obliged, before coming to the Netherlands for a stay of longer than three months, to apply to the Netherlands diplomatic representation abroad for a provisional residence permit, ASP. An ASP is a long-stay visa. An application for a residence permit for the Netherlands by a third-country national who is not in possession of a valid ASP will not be considered. This requirement applies generally, and so also to the admission of family members in the context of family reunification or formation. A number of nationalities are exempt from this obligation, while a number of categories of third-country nationals are also exempt, including the family members of recognised refugees.

1.6 In Austria, the 1997 Alien's Act, which entered into force on 1 January 1998, implemented the main points of the resolution³. An application must be made for family reunification in every case, even where - as for instance in the case of relatives of Austrian and EEA citizens - a legal claim to a residence permit exists. Furthermore every family member must receive a quota place. As such, there are three categories of applicants:

- Applications for family reunification can be received from third-country nationals who have been established uninterruptedly in the Federal Republic of Austria for a period of five years and have a regular income from an authorised activity, provided they cohabit and have had their main residence in the Federal Republic for two years. Applications are valid only for spouses and underage children⁴. A successful application leads to the grant of a residence permit without limit in time;
- After two years of marriage and communal living in Austria, and provided they are still married, spouses of Austrian citizens receive an unlimited residence permit as do any underage children of the Austrian citizen living in the same household;

¹ The Netherlands: judgement dated 15 May 1995 of the Co-ordinating Chamber of the Court of The Hague, as stated in ASIM 140 REV 1, p. 9.

² The Netherlands: as anticipated in ASIM 140 REV 1, p. 6.

³ Austria: for a more detailed examination of the Austrian law on family reunion, see the Austrian response to telex No. 683 of 16 February 1998 as set out in 7594/98 ASIM 99 + ADD 1.

⁴ Austria: the 1997 Alien's Law increased the age for applications from underage children from 14 years old to the age of majority, and family reunification only applies to one spouse in a polygamous marriage as a family is deemed to comprise of a single spouse.

- Relatives of EEA citizens (i.e. spouses, relatives in the descending line up to the age of 21 and older if responsibility for their maintenance continues, and relatives in the ascending line of the spouse where there is responsibility for their maintenance) are granted an initial residence permit for five years.

The right to work is not in principle granted to family members until after 4 years, unless before that date the family member has been granted an employment authorisation, work permit or an exemption. Therefore, the resident third-country national must be able to provide accommodation as well as sufficient insurance cover (sickness and social insurance).

In the context of family reunification, Article 8 of the ECHR is afforded constitutional status in Austria and is considered to be the most important Convention Austria has ratified.

1.7 In Portugal, Law No. 8/98 was adopted by the Assembly of the Republic on 13 February 1998. The legislation takes account of the principles adopted by the EU with regard to family reunification by widening its subjective base to include under-age siblings of the resident and to accord equality of treatment between foreign national and Community citizen family members¹;

1.8 In Finland the resolution has been annexed to the directive issued by the Ministry of the Interior on 9 May 1997 concerning residence permits and work permits². Under this directive, the resolution will be taken as a guide in overall considerations on the granting of permits.

1.9 The Swedish legislation was in line with the resolution, apart from some differences with regard to the right to a residence permit on grounds of family reunion. Legislative amendments came into force on 1 January 1997 so the relevant family members now consist of:

- spouse or cohabitee;
- unmarried children under the age of 18; and
- other close relatives who, in the country of origin, formed part of the same household, and where there is a dependency which makes it difficult for the relatives to live apart.

The age limit for "children" has been lowered from 20 to 18, and the opportunity for relatives other than the spouse/cohabitee and children to reunited in Sweden has been limited to cases where the applicant and the person(s) living in Sweden previously formed part of the same household in the country of origin. In exceptional cases other relatives may also be eligible.

2. Did you have problems in adopting these measures? If so, please state what type of problems and how you resolved them.

2.1 No Member State reported any difficulties in adopting the relevant provisions.

¹ Portugal: Article 2 of Law No. 8/98.

² Finland: Directive No. 5/011/97.

2.2 Austria made a general statement to the effect that it is in keeping with the Austrian legal tradition for widely differing interest groups (even those with completely opposing aims) to be involved in the legislative process, which means that "problems in adopting measures" - to the extent that they do not arise in everyday enforcement situations - had already been eliminated by way of a compromise prior to the entry into force of the 1997 Alien's Act.

3. **Do you envisage adopting measures in the areas in question in the near future? If so, what kind of measure, in which areas and with what proposed timescale?**

3.1 Six Member States (B, GR, A, P, S and UK) either expressly stated that they had no intention to adopt any measures under this resolution in the near future, or did not mention any proposed measures.

3.2 Five Member States (DK, D, E, L and FIN) either intend to adopt provisions in this area in the near future, or have already proposed changes to their legislation in this area.

3.3 Denmark stated that the Minister for the Interior submitted two Bills on 16 April 1998: Bill L 59 amending the Alien's Act, the Criminal Code and the Marriage Act and Bill L 60 on the integration of aliens in Denmark (Integration Act). The Government's intention was to have the Bills adopted before the end of June 1998 with entry into force either the day after publication in the Danish Gazette, or by 1 January 1999. However, the possibility could not be excluded that the Bills would not be adopted during the intended session of the Danish Parliament, or that some of the provisions would be amended or deleted when the Bills were examined by the Parliament.

In relation to family reunion, the Bills propose a number of changes both of a general nature and of a more specific nature:

A) General rules regarding the right to marry and recognition of marriage as a basis for eligibility for a residence permit.

(I) Right to marry - Bill L 59 proposes that a new provision should be inserted in Section 11a(1) of the Marriage Act to the effect that aliens do not have the right to marry in Denmark if they are not lawfully resident there. The aim is to prevent the asylum rules being circumvented through marriages of convenience between an asylum applicant and a person lawfully resident in Denmark.

According to the proposed Section 11a(2), the Government Office responsible for administering marriage legislation will, if there are particular reasons such as the length of the alien's stay in Denmark, be able to grant a permit despite the fact that the alien is not lawfully resident in the country. According to the Government's comments on the Bill, a condition for issuing the permit is that there should be a demonstrable connection between the asylum applicant and the person living in Denmark.

(II) Marriages of convenience - it is proposed that a provision be introduced in section 9(8) of the Alien's Act whereby residence permits may not be issued on the basis of marriage or cohabitation, if there are specific reasons for assuming that the chief aim of the marriage or cohabitation is to obtain a residence permit. According to the Government's comments on the Bill, there will have to be a definite basis for any assumption by the alien's authorities that a marriage of convenience is involved.

(III) Arranged marriages - it is proposed that a new provision be inserted in Section 9(9) of the Alien's Act, to the effect that a residence permit may not be issued on the basis of marriage, if one of the spouses is less than twenty-five years old, where the marriage is the result of an agreement between persons other than the spouses. It should be noted that a residence permit in particular cases, e.g. involving under-age children, may be issued pursuant to the general rule in Section 9(2)(iv) of the Alien's Act.

B) Provisions relating to the existing requirements for granting of residence permits to spouses and cohabitants

(I) Where the resident involved as the main party is not a refugee or Danish national, the Bills propose two changes:

(I) i - under the present Section 9(1)(ii)(d), it is a requirement for the issue of a residence permit that the resident involved (main party) should have lawfully resided in Denmark for at least five years. Bill L 59 proposes amending this provision so that in future the resident involved should have had an unlimited residence permit for at least three years. This will mean in practice that it will not be possible to issue a residence permit pursuant to this provision until the main party has lawfully resided in Denmark for six years, although pursuant to section 9(2)(i) or (iv) in individual cases it will still be possible to issue residence permits despite the fact that the resident involved has not lived in Denmark for three years.

(I) ii - under the present rule in Section 9(4) of the Alien's Act, the issue of a residence permit to a person who cohabits may be made conditional upon the person resident in Denmark taking on themselves the maintenance of the cohabitee. Under the proposed amendment to Section 9(4), the maintenance requirement will continue to apply. At present it is also possible to require the person who has taken on the maintenance of the applicant to show that they are able to do so. It is proposed that this provision be amended so that proof of the ability to maintain the applicant will in future be required unless there are specific reasons for not doing so.

According to the Government's comments on the Bill, there would be specific grounds for waiving the requirement to prove ability to maintain the applicant if, for example, the resident involved was temporarily unemployed but has a clear written promise of further employment. It is further proposed that a new Section 19(1)(iv) should be incorporated, stipulating that in future a residence permit may be withdrawn if the resident involved at some stage is no longer able to show that they can maintain the spouse/partner.

(II) Where the resident involved as the main party is a refugee or Danish national, the Bills propose one change:

The current law on family reunification pursuant to Section 9(1)(ii)(a) to (c) is not affected by Bill L 59, although the Bill proposes that the option of requiring proof of maintenance from this category of persons should be withdrawn. Such a proposal should be seen in the context of the rules referred to above relating to marriages of convenience etc.

C) Children

The present option of family reunification with under-age children pursuant to Section 9(1)(iii) is not affected by Bill L 59. However, it will no longer be possible to require the applicant to prove that they are able to maintain the child, although where the parents are not Danish nationals or refugees, it will still be possible in particular cases to require proof of the ability to provide maintenance.

According to the Government's comments on the Bills, this would be possible only if there had been no contact between the parents resident in Denmark and the child for a long period before the application. Should proof be required, the child's residence permit could be withdrawn if the parents subsequently ceased to be able to show such proof.

D) Family reunification with parents

(I) Where the resident involved as the main party is not a refugee or Danish national, the Bill proposes one change:

Under the present Section 9(1)(v) of the Alien's Act, a residence permit is issued to parents aged over 60, normally on the condition that the person concerned has no children in the country of origin. Bill L 59 proposes that Section 9(1)(v) be deleted. If this is adopted, it will still be possible in exceptional cases to issue a residence permit pursuant to Section 9(2)(i) or (iv) of the Alien's Act.

(II) Where the resident involved as the main party is a refugee or Danish national, the Bill proposes one change:

The main option of family reunification with parents aged over 60 under Section 9(1)(iv) of the Alien's Act is not affected. However, it is proposed that the present option of requiring the main party to assume the responsibility for maintenance of the applicant should be made compulsory. Moreover, the main party will in principle be required to prove the ability to provide the maintenance.

E) Amendments to the procedure for examining applications for family reunification

The current rule in section 9(7) of the Alien's Act, which states that a residence permit for the purpose of family reunification must be obtained before entry into Denmark, is not affected.

It is proposed that a second paragraph be inserted in Section 9(7) stating that an application submitted in Denmark by persons who are not lawfully resident there cannot have suspensive effect unless there are special reasons. The main aim of the proposed wording of the provision is to prevent persons who have applied for asylum from being allowed to stay lawfully in Denmark for procedural reasons after their applications have been finally rejected. The proposal must be seen in the context of the steps described in A(II) above; thus a marriage of convenience undergone abroad will in future not bestow the right to stay in Denmark for procedural reasons after an application for asylum has been rejected.

The Government's comments on the proposed provision show that the approach will in practice be more liberal in the case of applications by children to join parents resident in Denmark than for applications to join a spouse/partner.

Finally, it is proposed that a third paragraph be inserted in Section 9(7) stipulating that persons entitled to reside in Denmark would be able to have their applications for family reunification examined during their stay in the country unless there were particular reasons for not doing so.

3.4 In Germany it is the intention to issue general administrative rules on the Alien's Law, requiring the approval of the *Bundesrat* (Federal Council) as soon as an agreement has been reached within the Federal Government and with the Federal Länder. These will be detailed rules for implementation of the Alien's Law containing guidelines for the aliens authorities. Family reunification will be among the matters dealt with.

3.5 Spain intends to adopt a ministerial decree which will elaborate on the existing rules in Spanish legislation on family reunification. This ministerial decree will not involve a change of regulation, rather its purpose is to spell out the procedure to be followed for family reunification.

3.6 Luxembourg is intending to enact provisions in the field of family reunification, but at present it is not possible to indicate further details as to the content or the proposed timescale.

3.7 On 8 May 1998, the Finnish government submitted a proposal to the Parliament for a law to amend the Alien's Law. It is proposed that the rules relating to the granting of a residence permit on grounds of family ties will be changed in two main respects¹:

- Livelihood of family members - under the proposed law, the family members of Finnish nationals or nationals of other Nordic countries are granted residence permits, unless reasons of public order, security or other important reasons prevent the issue of the permit. It is not therefore a condition for the issue of a permit in such cases that a family member's livelihood in Finland should be secure. Nor under the proposed law is it a condition for the issue of a permit to the family members of foreign nationals living in Finland who have received a residence permit on the grounds of Finnish birth under Section 18a of the Alien's Law that their livelihood is secure. In other cases a secure livelihood is a condition for the grant of a residence permit;

- Lodging an application for a residence permit pleading family ties - under the Alien's Act as it stands, a residence permit on grounds of family ties may be applied for in the cases referred to in the resolution only by a family member without a residence permit. Under the proposed law, a residence permit application may also be lodged on behalf of an applicant without a residence permit by a member of his or her family already legally resident in Finland. Under the new proposal, the Alien's Office would rule on all applications pleading family ties, whether or not the application is made abroad or in Finland.

¹ Finland: as the resolution is not clear as to whether it applies to persons who have received a residence permit on grounds of secondary protection (de facto refugees, humanitarian reasons), the proposed changes will apply only to third-country nationals resident in Finland with a temporary or permanent residence permit issued by virtue of their permanent character of their stay, or to members of their families. Family members who have received residence permits on grounds of secondary protection have therefore been excluded.

4. How did you apply in practice the instrument, apart from the adoption of internal provisions?

4.1 Six Member States (D, E, NL, A, S and UK) stated that they had not had to change the way they applied their national legislation as their law was already consistent with the resolution. In particular, for Spain the resolution is applied by the provincial units responsible for management; in Austria the 1997 Alien's Act transposed the resolution into a legally binding act. In Sweden, the existence of the resolution was taken into account in preparing the legislative amendments necessary. No particular measures were taken, apart from drawing the attention of the enforcing authorities to the existence of the resolution.

4.2. In Luxembourg, although no legislative provisions have been adopted, the Minister for Justice has drafted an internal note on family reunification, which contains some of the provisions of the resolution.

II

COUNCIL RESOLUTION OF 20 JUNE 1994 ON LIMITATIONS ON ADMISSION OF THIRD-COUNTRY NATIONALS TO THE TERRITORY OF THE MEMBER STATES FOR EMPLOYMENT

(OJ No. C 274, 19.9.1996, p. 3)

1. **Have you adopted provisions in any of the areas covered by the instrument, which are not already reflected in the latest Secretariat documents (10669/1/96 ASIM 140 REV 1)? If so, please state what those measures are and give a brief résumé of their objectives and substance.**

1.1 Six Member States (B, DK, GR, NL, S and UK) have not recently adopted any provisions under the Council resolution on limitations on admission of third-country nationals to the territory of the Member States for employment, as their legislation was already in line with the resolution.

1.2 Luxembourg has not adopted any legislative provisions in the area covered by this Council resolution.

1.3 Five Member States (D, E, A, P and FIN) have recently adopted provisions in this area.

1.4 In Germany the main national rules governing the admission of third-country nationals to the labour market were incorporated into the Social Security Code with effect from 1 January 1998¹. No changes were made to the content of the existing legislation, but various regulations previously contained in ordinances have now been incorporated in the law itself. The regulations concerned (Regulation on the Residence Permit, and Regulation on Exceptions to the Ban on Recruitment) will consequently need to be modified.

1.5 In Spain a Ministerial Decree of 25 February 1998 fixed the requirements and laid down the procedure for the granting of work permits to third-country nationals, by means of applying certain cases of preference. The decree regulates, *inter alia*, the work permits which can be obtained by key personnel of foreign firms investing in Spain, changes to the scope of work permits and the compatibility of different kinds of work permits.

This instrument does not alter the regulation which already existed, but rather it sets out details of the procedure to be followed to obtain the necessary permits and the authorisation.

1.6 The new Austrian Alien's Law of 1997, which entered into force on 1 January 1998, transposed all of the main points of this resolution into Austria's domestic law.

1.7 In Portugal, Law No 8/98, which was adopted on 13 February 1998, accepted the principles set out in the resolution, without prejudice to special arrangements laid down in international Treaties or Conventions to which Portugal is or may become a party.

¹ Germany: Section 284 ff. of Book III of the Social Security Code.

1.8 In Finland the resolution was annexed to the directive issued by the Ministry of the Interior on 9 May 1997 concerning residence permits and work permits (5/011/97). Under this directive, the resolution will be taken as a guide in overall considerations in the granting of permits. The resolution was also annexed to the directive issued by the Alien's Office on 24 March 1998 (3/010/98), which concerns the procedure to be followed in the handling of applications for permits, in decisions and in matters relating to deportation.

2. Did you have problems in adopting these measures? If so, please state what type of problems and how you resolved them.

2.1 No Member State reported any difficulties in adopting the relevant provisions.

2.2 Austria made a general statement on this point as set out in Chapter I, par. 2.2 above.

3. Do you envisage adopting measures in the areas in question in the near future? If so, what kind of measure, in which areas and with what proposed timescale?

3.1 In addition to the national regulations that consequently need to be modified, in Germany there is the intention to issue general administrative rules on the Alien's Law, requiring the approval of the *Bundesrat*, as soon as agreement has been reached within the Federal Government and with the Federal Länder. These will be detailed rules for implementation of the Alien's Law containing guidelines for the aliens authorities. Paid employment will be one of the subjects dealt with.

3.2 The Netherlands does not envisage any important policy changes in the near future which would depart from the resolution. However, it is possible that amendments will be made to the implementing legislation of the Law on the Employment of Aliens. Furthermore, the Law on the Employment of Aliens (which was discussed extensively in the last report) was expected to be evaluated in the second half of 1998.

3.3 No other Member State intends to adopt any measures in this area in the near future.

4. How did you apply in practice the instrument, apart from the adoption of internal provisions?

4.1 In the majority of Member States (D, GR¹, E, NL, A², S and UK³) the instrument is implemented by the relevant national authorities, and there has been no need for a change in practice.

4.2 Although Luxembourg has not adopted any measures in this area, the resolution is complied with in practice.

¹ Greece: the instrument is mainly implemented by Law No 1975/91 on foreign nationals.

² Austria: the instrument is implemented by the 1997 Alien's Law, which transposed the resolution into a legally binding act.

³ United Kingdom: the instrument is implemented by the Immigration Rules and policies which are fully compliant with the terms of the resolution.

III

COUNCIL RESOLUTION OF 30 NOVEMBER 1994 RELATING TO THE LIMITATIONS ON THE ADMISSION OF THIRD-COUNTRY NATIONALS TO THE TERRITORY OF THE MEMBER STATES FOR THE PURPOSE OF PURSUING ACTIVITIES AS SELF-EMPLOYED PERSONS

(OJ No. C 274, 19.9.1996, p. 7)

1. Have you adopted provisions in any of the areas covered by the instrument, which are not already reflected in the latest Secretariat documents (10669/1/96 ASIM 140 REV 1)? If so, please state what those measures are and give a brief résumé of their objectives and substance.

1.1 The majority of Member States (B, DK, D, GR, NL, S and UK) have not recently adopted any provisions under this Council resolution, as their legislation was already in line with the resolution.

1.2 Luxembourg has not adopted any legislative provisions in the area covered by this Council resolution.

1.3 Four Member States (E, A, P and FIN) have recently adopted measures in this area.

1.4 In Spain a Ministerial Decree of 25 February 1998 fixed the requirements and laid down the procedure for the granting of work permits to third-country nationals, by means of applying certain cases of preference. The decree regulates, *inter alia*, the compatibility of different kinds of work permits, including permits for workers who want to work simultaneously in an employed and self-employed capacity.

This instrument does not alter the regulation which already existed, but rather it sets out details of the procedure to be followed to obtain the necessary permits and the authorisation.

1.5 The new Austrian Alien's Law of 1997, which entered into force on 1 January 1998, transposed all of the main points of this resolution into Austria's domestic law.

1.6 In Portugal, Law No 8/98, which was adopted on 13 February 1998, accepted the principles set out in the resolution, without prejudice to special arrangements laid down in international Treaties or Conventions to which Portugal is or may become a party.

1.7 In Finland the resolution was annexed to the directive issued by the Ministry of the Interior on 9 May 1997 concerning residence permits and work permits (5/011/97). Under this directive, the resolution will be taken as a guide in overall considerations in the granting of permits. The resolution was also annexed to the directive issued by the Alien's Office on 24 March 1998 (3/010/98), which concerns the procedure to be followed in the handling of applications for permits, in decisions and in matters relating to deportation.

2. Did you have problems in adopting these measures? If so, please state what type of problems and how you resolved them.

2.1 No Member State reported any difficulties in adopting the relevant provisions.

2.2 Austria made a general statement on this point as set out in Chapter I, par. 2.2 above.

3. Do you envisage adopting measures in the areas in question in the near future? If so, what kind of measure, in which areas and with what proposed timescale?—

3.1 In addition to the national regulations that consequently need to be modified, in Germany there is the intention to issue general administrative rules on the Alien's Law, requiring the approval of the *Bundesrat*, as soon as agreement has been reached within the Federal Government and with the Federal Länder. These will be detailed rules for implementation of the Alien's Law containing guidelines for the aliens authorities. Self-employed persons will be one of the subjects dealt with.

3.2 Luxembourg intends to enact provisions in this area, but is not in a position to indicate further details as to the content or timetabling of the new provisions.

3.3 The Netherlands does not envisage any policy changes which are not in accord with the resolution. However, the Ministry of Economic Affairs, the department which gives advice on the admission of aliens who wish to establish themselves as self-employed persons in the Netherlands, was expected to update in 1998, and in some areas clarify, the policy guidelines that have applied since 1992.

3.4 No other Member State intends to adopt any measures in this area in the near future.

4. How did you apply in practice the instrument, apart from the adoption of internal provisions?

4.1 In the majority of Member States (D, GR¹, E, NL, A², S and UK³) the instrument is implemented by the relevant national authorities, and there has been no need for a change in practice.

4.2 Although Luxembourg has not adopted any measures in this area, the Minister for Justice has drafted an internal note on the admission of self-employed persons, which contains some of the provisions of the resolution. The other provisions are also complied with in administrative practice.

4.3 Austria pointed out that, under Austrian law, the decision on whether an activity is to be described as "self-employed" is the responsibility of the Federal Minister for Labour, Health and Social Affairs.

¹ Greece: the instrument is mainly implemented by Law No 1975/91 on foreign nationals.

² Austria: the instrument is implemented by the 1997 Alien's Law, which transposed the resolution into a legally binding act.

³ United Kingdom: the instrument is implemented by the Immigration Rules and policies which are fully compliant with the terms of the resolution.

IV

COUNCIL RESOLUTION OF 30 NOVEMBER 1994 ON THE ADMISSION OF THIRD-COUNTRY NATIONALS TO THE TERRITORY OF THE MEMBER STATES FOR STUDY PURPOSES

(OJ No. C 274, 19.9.1996, p. 10)

1. **Have you adopted provisions in any of the areas covered by the instrument, which are not already reflected in the latest Secretariat documents (10669/1/96 ASIM 140 REV 1)? If so, please state what those measures are and give a brief résumé of their objectives and substance.**

1.1 Six Member States (B, DK, D, NL, S and UK) have not recently adopted any provisions under the Council resolution on the admission of third-country nationals to the territory of the Member States for study purposes, as their legislation was already in line with the resolution.

1.2 Four Member States (GR, E, P and FIN) recently adopted measures in this area.

1.3 In Greece there has been a supplementary provision that has been added to the legislation already in force. The new Joint Ministerial Decision¹ lays down the conditions of residence for foreign nationals studying at Greek tertiary education establishments, and also regulates the studies of foreign students and pupils in public or private vocational training institutes.

1.4 In Spain the Ministerial Decree of 25 February 1998 regulates, *inter alia*, the work permits which foreign students can obtain in Spain. Under this regulation, foreign students can obtain a work permit in Spain whenever the remuneration is not a necessary resource for their subsistence, when there is a contract in writing, and the work is no more than half-time during term-time or, if full-time, it is during the holidays.

The decree does not alter the regulation which already existed, but rather it sets out details of the procedure to be followed to obtain the necessary permits and the authorisation.

1.5 In Portugal Law No 8/98 includes a review of the visa rules which comprise, among other categories, the student visa. This is generally issued to third-country nationals claiming entry and stay in Portugal to follow a study programme, conduct scientific research to obtain an academic degree and to attend training courses.

1.6 In Finland the resolution was annexed to the directive issued by the Ministry of the Interior on 9 May 1997 concerning residence permits and work permits (5/011/97). Under this directive, the resolution will be taken as a guide in overall considerations in the granting of permits. The resolution was also annexed to the directive issued by the Alien's Office on 24 March 1998 (3/010/98), which concerns the procedure to be followed in the handling of applications for permits, in decisions and in matters relating to deportation.

¹ Greece: 4803/13/4-μn/11-11-96 Greek Official Gazette B 1058/22-11-96.

2. Did you have problems in adopting these measures? If so, please state what type of problems and how you resolved them.

2.1 No Member State reported any difficulties in adopting the relevant provisions.

2.2 Austria made a general statement on this point as set out in Chapter I, par. 2.2 above.

3. Do you envisage adopting measures in the areas in question in the near future? If so, what kind of measure, in which areas and with what proposed timescale?

3.1 In addition to the national regulations that consequently need to be modified, in Germany there is the intention to issue general administrative rules on the Alien's Law, requiring the approval of the *Bundesrat*, as soon as agreement has been reached within the Federal Government and with the Federal Länder. These will be detailed rules for implementation of the Alien's Law containing guidelines for the aliens authorities. Self-employed persons will be one of the subjects dealt with.

3.2 Luxembourg intends to enact provisions in this area, but is not in a position to indicate further details as to the content or timetabling of the new provisions.

3.3 No other Member State intends to adopt any measures in this area in the near future.

4. How did you apply in practice the instrument, apart from the adoption of internal provisions?

4.1 In the majority of Member States (D, GR¹, E, NL, A², S and UK³) the instrument is implemented by the relevant national authorities, and there has been no need for a change in practice.

4.2 Although Luxembourg has not adopted any measures in this area, the Minister for Justice has drafted an internal note on students, which contains some of the provisions of the resolution. The other provisions are also complied with in administrative practice.

¹ Greece: the instrument is mainly implemented by Law No 1975/91 on foreign nationals.

² Austria: the instrument is implemented by the 1997 Alien's Law, which transposed the resolution into a legally binding act.

³ United Kingdom: the instrument is implemented by the Immigration Rules and policies which are fully compliant with the terms of the resolution.

COUNCIL RESOLUTION OF 4 MARCH 1996 ON THE STATUS OF THIRD-COUNTRY NATIONALS RESIDING ON A LONG-TERM BASIS IN THE TERRITORY OF THE MEMBER STATES

(OJ No. C 80, 18.3.1996, p. 2)

1. **Have you adopted provisions in any of the areas covered by the instrument, which are not already reflected in the latest Secretariat documents (6203/97 ASIM 35 + ADD 1)? If so, please state what those measures are and give a brief résumé of their objectives and substance.**

1.1 Six Member States (B, D, GR, E, NL and UK) have not recently adopted any provisions under the Council resolution on the status of third-country nationals residing on a long-term basis in the territory of the Member States, as their legislation was already in line with the resolution.

1.2 Luxembourg has not adopted any measures in this area since the last questionnaire.

1.3 Three Member States (P, FIN and S) have recently adopted measures in this area.

1.4 In Portugal Law No 8/98 includes a review of the residence permit arrangements. A temporary residence permit, valid for two years and renewable for identical periods, and the permanent residence permit, of unlimited validity, will be granted to foreigners who meet the conditions required by law.

1.5 In Finland the resolution has been annexed to the directive issued by the Ministry of the Interior on 9 May 1997 concerning residence permits and work permits (5/011/97). Under the directive, the resolution will be taken as a guide in overall considerations on the granting of permits.

1.6 In Sweden since the last questionnaire, there have been several changes made to the law in relation to withdrawal on the grounds of inaccurate information or the withholding of information (administrative expulsion). The Alien's Act has been amended to stipulate that visas, residence permits and work permits *may* be withdrawn if a foreign national has knowingly given inaccurate information that was of significance for obtaining the permit, or deliberately withheld such information, this applies regardless of whether the inaccurate information concerns identity or some other factor.

The law now also explicitly states, among other things, that: in assessing whether to withdraw the residence permit of a foreign national who has taken up residence in Sweden, account must be taken of the foreign national's links with Swedish society and whether there are other humanitarian grounds for not withdrawing the permit. Particular account shall be taken of the foreign national's general circumstances and family situation and how long they have been in Sweden. If, at the time when withdrawal is being considered, the foreign national has been living in Sweden for more than four years under cover of a residence permit, a decision to withdraw shall be taken only if there are special reasons for so doing.

This provision replaces the two previous provisions described in 6203/97 ASIM 35. Those two provisions have been merged and there is no longer a special (binding) provision for cases where a foreign national has provided inaccurate information on their identity.

2. Did you have problems in adopting these measures? If so, please state what type of problems and how you resolved them.

2.1 No Member State reported any difficulties in adopting the relevant provisions.

2.2 Austria made a general statement on this point as set out in Chapter I, par. 2.2 above.

3. Do you envisage adopting measures in the areas in question in the near future? If so, what kind of measure, in which areas and with what proposed timescale?

3.1 The vast majority of Member States did not mention any intention to adopt measures in this area in the near future.

3.2 In Denmark, although the two proposed Bills mentioned in Chapter I, par. 3.3 above do not contain any provisions affecting the legal status of third-country nationals residing on a long term basis in Denmark (they have an unlimited residence permit), Bill L 59 has raised a number of problems as set out below.

A) Obtaining an unlimited residence permit

Bills L 59 and L 60 do not contain any provisions altering the categories of person eligible for a residence permit for the purpose of either temporary or permanent residence, therefore residence permits for the purpose of permanent residence will continue to be issued to refugees and persons having a legal claim to family reunification and to persons holding a residence permit pursuant to Section 9(2)(i) and in certain cases Section 9(2)(iii), (iv), (v) and (vi) of the Alien's Act.

(I) Length of period for which the alien must have stayed in Denmark and other conditions for the issue of unlimited residence permits to third-country nationals - in relation to the general conditions for entitlement to an unlimited residence permit, Bill L 59 includes a proposed amendment to Section 11 of the Alien's Act, which will affect the point in time when an alien becomes entitled to an unlimited residence permit. These will in principle continue to be issued to persons who have stayed in Denmark for three years for the purpose of permanent residence.

However, under the proposed Section 11(5), there would be a legal entitlement to an unlimited residence permit after three years only if the alien has followed an induction programme (to be offered to all aliens under L 60) or other similar course. The alien must also not have committed any particularly serious offences nor have any outstanding debts to the public authorities exceeding DKR 50 000. Under proposed Section 11 (4) and (6) some of these conditions may be waived.

According to the proposed Section 11(4) it would, even if the conditions in Section 11(3) were not fulfilled, be possible to issue an unlimited residence permit on application if there were substantial and compelling arguments for doing so. This provision makes it possible to issue unlimited residence permits to aliens who have been staying unlawfully in Denmark for more than three years. It would, for example, mean that aliens who have had residence permits only for the purpose of temporary residence could be issued with unlimited residence permits if there were cogent reasons for doing so.

An alien who had been refused an unlimited residence permit because they did not fulfil the abovementioned conditions would be issued with a temporary residence permit and could, when that expired, apply again for an unlimited residence permit.

Since unlimited residence permits are not issued if the abovementioned conditions are not fulfilled, it is proposed that the time-limit in the present Section 11(2) of the Alien's Act whereby a residence permit issued for the purpose of permanent residence cannot be extended beyond five years should be deleted.

Finally, Bill L 59 contains a proposed amendment to Section 10(2) of the Alien's Act. In future, it will be possible in special cases to issue a residence permit to a person prohibited from entering Denmark, even if that person is not a refugee. It is further proposed that persons who are prohibited from entering Denmark can be denied asylum if there are particular reasons for doing so.

B) Right to work

It is proposed that the rules on the right to work be amended so that aliens staying lawfully in Denmark will as a rule be entitled to work without a special work permit.

It is proposed that the wording of Section 14 of the Alien's Act be amended so that refugees and persons who arrive as part of family reunification pursuant to Section 9(1) of the Alien's Act (legally entitled persons) are not required to have a work permit. Moreover, persons who are issued with residence permits pursuant to Section 9(2) of the Alien's Act will also not be required to have a work permit. This does not apply however to persons who come to Denmark with a view to temporary employment pursuant to Section 9(2)(iii) and will not as a rule apply to persons who have been given a residence permit for exceptional reasons pursuant to Section 9(2)(iv).

C) Loss of entitlement to residence on a long-term basis

On the loss of entitlement to residence on a long-term basis, the Bills propose two changes:

(i) Revocation - in addition to the rules on maintenance for family reunification, as set out in Chapter I, par. 3.3 (I)ii above, L59 contains a proposal for a new provision in section 19(5) of the Alien's Act so that, in decisions on cases concerning the possible revocation of a temporary residence permit because the persons concerned are no longer cohabiting or married, particular consideration should be given to whether this is the case because the alien has been exposed to violence or similar treatment in the course of cohabitation in Denmark.

(ii) Expulsion - it is proposed in Bill L 59 that there should be a considerable tightening up of the present expulsion rules. The basis premise will still be that there should be graded limits on the extent to which expulsion rules can be applied to aliens who have established closer ties with Denmark as a result of staying in the country on a long-term basis, as set out in the proposed amendments to Sections 22-25b of the Alien's Act. However, it is proposed that there should be a general reduction in the length of sentences which can lead to expulsion.

It is further proposed in Section 22(v) and (vi) of the Alien's Act, that the graded limits on expulsion should not be observed in the case of crimes such as trafficking in human beings and various offences under the Criminal Code, e.g. arson, homicide, serious violence etc.

D) Bill L 60 - Integration Bill

The Integration Bill L 60 deals with rights and obligations during the first three years in which aliens lawfully stay in Denmark. The Bill does not therefore contain any provisions governing the rights of persons with unlimited residence permits. Although many of the persons covered by the Bill will subsequently be able to obtain unlimited residence permits.

It is proposed that refugees be assigned accommodation in a Commune where they are basically expected to remain if they receive benefits under the Act, as set out below. Account will be taken of the refugee's wishes when assigning them to a Commune.

Under the proposed rules in Chapter 4 of the Bill, all aliens will be offered a specially tailored induction programme consisting of a course in Danish, a course on life in Denmark and a presentation of possible activities. It is normally a condition for the issue of an unlimited residence permit that the alien should have taken part in the induction programme.

Where persons covered by the Bill are not able to maintain themselves, pursuant to the proposed Chapter 5, they will be offered an initial cash payment which is lower than the support Danish nationals and persons with unlimited residence permits receive under ordinary social-security legislation. This payment may be reduced or discontinued if the alien refuses to participate in or is absent without good reason from the induction programme.

4. How did you apply in practice the instrument, apart from the adoption of internal provisions?

4.1 In the majority of Member States (D, GR¹, E, NL, A², S and UK³) the instrument is implemented by the relevant national authorities, and there has been no need for a change in practice.

¹ Greece: the instrument is mainly implemented by Law No 1975/91 on foreign nationals.

² Austria: the instrument is implemented by the 1997 Alien's Law, which transposed the resolution into a legally binding act.

³ United Kingdom: the instrument is implemented by the Immigration Rules and policies which are fully compliant with the terms of the resolution.

4.2 In Denmark, a “person residing on a long-term basis” is taken to mean an alien who has been issued with a residence permit for an unlimited period of time¹. Under Section 11(1) of the Alien’s Act, a residence permit is issued either for permanent residence or a temporary stay in Denmark, and a permit may be for a limited period of time. Where a residence permit is issued for the purpose of permanent residence, a time-limit cannot be exceeded beyond five years from the date when the alien lawfully settled in Denmark, see Section 11(2).

An alien issued with a residence permit pursuant to Section 9(1) of the Alien’s Act is always granted a permit for the purpose of a permanent stay, see Section 22(1) of the Alien’s Order. The legally entitled persons under Section 9(1) of the Alien’s Act are aliens who have previously been Danish nationals together with their spouses, cohabitees, registered partners, under-age children and parents aged over sixty, of a person resident in Denmark.

An alien issued with a residence permit pursuant to Section 9(2) of the Act, may be granted a permit either for a temporary stay or for permanent residence, see Section 22(2) of the Alien’s Order. Section 9(2) of the Act covers *inter alia* aliens closely connected with a person permanently resident in Denmark, aliens who are issued with residence permits on humanitarian grounds, aliens who are issued with residence and work permits for employment considerations and aliens who are issued with residence permits in Denmark for study purposes.

It is the practice in Denmark to issue an alien who qualifies on the basis of marriage, cohabitation or registered partnership with a residence permit for an unlimited period, if the person concerned has without any major interruption been resident in Denmark on the same legal basis for more than the last three years. This practice should be seen in the light of Section 19(2) of the Alien’s Act, which precludes the aliens authorities from revoking a residence permit if the alien has lived in Denmark for more than the last three years. parents aged over sixty of persons resident in Denmark are, however, issued with a residence permit for an unlimited period in Denmark only after residing lawfully for five years. Children whose parents have residence permits for an unlimited period can, however, be granted residence permits for an unlimited period when they reach the age of eighteen regardless of how long they have lived in Denmark.

The persons covered by Section 9(2) of the Alien’s Act may be granted a residence permit for either a temporary stay or permanent residence in Denmark. If an alien is issued with a residence permit for a temporary stay in Denmark, it follows *a contrario* from Section 11(2) of the Alien’s Act that there is no upper time-limit for the validity of the residence permit. In practice, however, a specific assessment may lead to a residence permit for an unlimited period being issued to an alien holding a temporary permit if he has been living lawfully in Denmark for more than the last seven successive years. In such an assessment, importance is attached *inter alia* to the alien’s written and spoken knowledge of Danish, his employment and his ties with Denmark.

In addition to the Danish aliens legislation and practice indicated above, any alien who has lived in Denmark for seven years will be able to obtain a residence permit for an unlimited period and therefore be recognised as residing on a long-term basis. It should, however, be noted that Danish legislation does not present an obstacle to an alien living in Denmark for more than seven years without being recognised as residing on a long-term basis, since, as indicated above, there is no upper time-limit for the validity of the residence permit concerned.

¹ Denmark: for a complete description of “person residing on a long-term basis”, see 6203/97 ASIM 35 ADD 1. The information contained here sets out the current position, not the position should the proposed Bills L 59 and L 60 be adopted.

4.3 In Luxembourg, in practice long-term residents are granted long-term authorisations in the form of five year renewable identity cards.

4.4 In Finland under current practice, in a case involving the issue of a residence permit to a member of the family of a person resident in Finland (either with a temporary or a permanent residence permit issued by virtue of the permanent character of their stay, i.e. A-status), the family member living in Finland is not required to have a specific level of income.

Correspondingly, a secure livelihood is not a requirement for the issue of a new temporary residence permit or permanent residence permit to be issued by virtue of the permanent character of their stay. Amendments to the Alien's Law have been proposed, in accordance with the Council resolution on the harmonisation of national policies on family reunification¹, regarding the incomes of those family members living in Finland and those entering the country.

¹ Adopted by the Ministers with responsibility for immigration at their Copenhagen meeting on 1 June 1993, SN 2828/1/93 WGI 1497 REV 1.



EUROPEAN UNION
THE COUNCIL

Brussels, 26 April 1999

7462/99
COR 1

LIMITE

MIGR 24

CORRIGENDUM TO THE NOTE

from : General Secretariat of the Council
to : Migration (Admission) Working Group

Subject : **Monitoring the implementation of instruments already adopted concerning admission of third-country nationals**
- Summary report of the Member States' replies to the questionnaire launched in 1998

Delegations are asked to take note of the following correction to the footnote No. 1 on page 2:

“... the French, Irish, Italian and Luxembourg delegations”

should read as follows:

“... the French, Irish and Italian delegations”