

SEMDOC

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NOTE

from : the Presidency

to : the Migration Working Party (Admission)

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Subject: **Draft Council Resolution on the admission of third-country nationals to the territory of the Member States of the European Union for study purposes**

This draft resolution has been discussed by the Migration Working Party on several occasions. The text annexed to this note reflects the present state of discussions and will be examined by the Migration Working Party at its meeting on 4th November 1994.

Draft Council Resolution
on the admission of third-country nationals to the territory of the
Member States of the European Union for study purposes

A. GENERAL CONSIDERATIONS

1. The Council recalls that, in the report adopted by the Maastricht European Council (December 1991) from the Ministers responsible for immigration and asylum policy, priority was given to the harmonization of rules for the admission of students from third countries. In the 1994 programme of work on Justice and Home Affairs, which the Council approved at its meeting on 29 and 30 November 1993 in Brussels, the completion of work on the admission of students was also given priority status.
2. The Council confirms that the international exchange of students and academics is desirable; it acknowledges that the education of students and the exchange of academics have positive implications for relations between the Member States and the States of origin.
3. The Council agrees that, at the end of their studies, students must in principle return to their countries of origin so that the knowledge and skills they have acquired are made available to those countries.
4. The Council considers it is important to ensure that the admission of third-country nationals to study in the Member States for a limited period, in principle does not turn into permanent immigration. Similarly, the Council considers it is necessary to devise suitable systems to prevent those who are mainly seeking employment from receiving authorization to stay on as students.

Observations

Denmark : Study reservation on the whole of the text.

5. The Council agrees not to regulate via this Resolution the issue of third-country nationals lawfully resident on a permanent basis in the territory of a Member State, but who have no right of admission and residence in another Member State.

This does not detract from the rights which these third country nationals already obtained in existing, or will obtain in future bilateral agreements between the Member States regarding the cooperation between institutions of higher education.

6. The Council agrees that Member States' national policies on the admission of third-country nationals for study purposes must be governed by the principles set out below, which may not be relaxed by Member States in their national legislation.

The Council agrees that these principles have to be taken into account whenever any change is proposed to national legislation on the subject.

The Member States should seek to ensure that by 1 January [1996] national law is in conformity with these principles. The principles are not legally binding on the Member States and do not afford a ground for legal action by the individual.

7. The Member States should facilitate the admission and residence of students from third countries within the framework of special programmes, the financing of which is secured at national or Community level.
8. Application of the said principles does not prevent application of national rules on public policy, public health or safety.

Observations

B. PERSONS EXEMPT FROM THE SCOPE OF THIS RESOLUTION

The principles of harmonization will not apply to:

- individuals who enjoy the right of freedom of movement under Community law, i.e. nationals of the Member States, nationals of the EFTA States which are parties to the Agreement on the European Economic Area and members of their families;
- third-country nationals who have been admitted for the purposes of family reunification to take up residence with nationals of a Member State or third country who reside in the Member State in question.

Observations

C. PRINCIPLES BY WHICH THE POLICIES OF THE MEMBER STATES WILL BE GUIDED

1. General criteria

Within the meaning of these principles, a student is a national of a third country admitted by a State or State recognized higher education institution or a comparable institution (.....) in a Member State of the European Union in order to :

- take up a course of study;
- study for a doctorate or;
- pursue academic activity following a course of higher education within the framework of further study or training, and the earning of income is not the principal aim.

It should also be noted that for the purposes of this resolution school pupils and apprentices are not included.

A person who participates in a course serving the purpose of preparing university studies (eg providing language training) shall be deemed to be a student.

2. Requirements for admission

A national of a third country who requests admission as a student will have to prove to the competent authorities of the Member State that he :

- fulfils all the requirements applicable to foreigners as regards entry and stay in the territory of the Member State;
- has a firm offer of admission to a State or State-recognized higher education institution or a comparable institution appropriate to his studies for a course of study as a main activity and if so required by national legislation that this offer concurs with requirements made by the competent immigration authorities.

Observations

Re point 1

Luxembourg and Spanish reservation : these delegations consider that higher education should be given a broader definition.

The Presidency suggests adding the following text at the end of C. 1 :

"These principles do not apply to nationals of third countries if the duration of their stay cannot be limited by the Member States because of legal or de facto reasons vis-à-vis the aim for which they originally came."

Re point 2

Greek reservation on C. 2.

Member States may also request proof of continuity between previous studies and studies to be undertaken in the host country;

- has the financial means required to support the cost of his studies, subsistence and return to his country of origin for himself so that during his stay the student does not need to claim social assistance in the host Member State and the earning of an income is not the principal aim;
- if required by national legislation, has health cover for all risks in the host Member State.

A Member State may permit persons who are interested in taking up studies in the respective State to enter by means of a special visa. It may be permitted that the person concerned does not have to leave the country in order to obtain an extension of the residence permit.

Nationals of third countries who entered the Member States with the aim of working there in an employed or self employed capacity shall on the basis of this resolution not be admitted in principle to engage in study as a main activity.

3. Authorization to reside

The duration of residence is limited to the length of the course.

The length of the course is dictated by the duration of studies in the chosen subject. At the end of the course of study, or if the student abandons his studies, authorization to reside expires. Any change in subject will involve a change in the reason for residence which as a rule argues against a fresh authorization or an extension of the existing one if it does not take place within the initial phase of the studies (.....).

Observations

Netherlands : scrutiny reservation on the last phrase of the third indent.

Spain : scrutiny reservation on the final paragraph of C. 2.

Proof of authorization to reside will take the form of an entry in the student's passport or a particular personal identity card.

If the period of study is longer than one year, the authorization can initially be limited to a 1-year period; in that case it can be renewed on a yearly basis. Renewal will depend on the student's ability to prove that he fulfils the requirements for its original issue and that he has passed any tests or examinations set by the institution in which he is studying.

At the end of his course of study, or if the student interrupts his studies, a national of a third country will in principle have to leave the territory of the Member State; if he wishes to return to that country he will have to re-apply for authorization to re-enter.

4. Employment authorization

In principle a national of a third country who is studying in the territory of a Member State may not engage in gainful employment, either in a self-employed or employed capacity. Member States may allow short-term or subsidiary jobs. Such jobs must not affect the continuation of his studies; neither must they, in principle, represent an income vital for the subsistence of the student.

5. Family reunification

National provisions will apply as regards admissibility of family reunification and the taking-up of employment or study by the spouse.

Once the alien to whom a residence permit was issued for the purposes of family reunification has ended his studies, the spouse and children are also required to leave the Member State.

Observations
