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OUTCOME OF PROCEEDINGS

from: "Migration" Working Party

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Subject: Commission proposal for a Convention on rules for the admission of third-country nationals

At the two meetings concerned, the Working Party continued the first reading of the Commission's proposal.

At the 23-24 April 1998 meeting, delegations received a room document by the Greek delegation, containing a proposed amendment of the text, to take account of the particular status of Mount Athos (annexed hereto).

Delegations discussed Chapters V and VII (up to Article 29).

CHAPTER V

General comments

The Danish and German delegations held the view that there was too much distance between the Commission's proposal and the Council resolution of 30 November 1994 on the admission of third-country nationals to the territory of the Member States for study purposes (hereafter: the Council resolution of 30 November 1994) (or, in DK's view, the existing instruments in the admission area in general), and urged the Commission to redraft its proposal taking into account to a larger extent such instrument(s).

CHAPTER V

In connection with the references to the Council resolution of 30 November 1994 (see also below), by contrast, the French delegation drew attention to the non-binding nature of a resolution, whereas a convention or a directive in this matter would be legally binding. The German delegation, while acknowledging that delegations should not always have the resolution in mind, considered that certain definitions in the resolution were the outcome of lengthy discussions, and should not unnecessarily be put aside.

A number of delegations (B, DK, D, L, NL, A, FIN) also voiced criticism on the absence in Chapter V (or in Article 16 in particular) of provisions similar to those in the Council resolution of 30 November 1994, requiring health cover, financial means, or any other conditions for admission. Regarding health cover, however, the Danish delegation considered that this condition should be made optional, like in the resolution, or reference should be made to the national laws of Member States. In addition to the requirements of health cover and financial means, the Austrian delegation referred to the proof of suitable accommodation.

The Commission representative replied that, unlike other chapters, the requirements of health cover and financial means had not been introduced in Chapter V, due to the positive attitude generally held vis-à-vis this category of third-country nationals. In this case, the Commission found it preferable to grant access to sickness insurance as a consequence of admission, rather than requiring such insurance as a condition for admission; it also encouraged the use of scholarships in the case of deserving applicants without sufficient means.

The Austrian delegation, furthermore, pointed out that students are excluded from its quota system applicable to admission, and in many cases this possibility was abused by immigrants seeking employment in Austria under pretence of being students. This delegation reported cases where illiterate applicants obtained valid university papers with the official involvement of the authorities. For these reasons, the delegation stressed the importance of checking the validity of such documents.

Article 15

The Portuguese delegation raised difficulties with the provision of 'admission' for study purposes, as well as the reference to 'residence' (see the following article below), considering that in Portugal a one-year renewable visa is granted for study purposes and under Portuguese constitutional law the granting of a 'residence' permit has significant consequences. It therefore suggested replacing the term 'admission' with 'entry'.

According to the majority of delegations (B, DK, D, F, I, NL, P, FIN, S, UK), the types of establishment opening the right to admission are too narrowly defined.

Firstly, the article's reference to 'higher education' results in the exclusion of students attending secondary education establishments, in particular, private or boarding schools (B, DK, P, S, UK).

Secondly, the requirement concerning a 'State or State-recognized establishment' is too stringent. In this respect, the UK delegation (which does not have a State recognition system, but refers to '*bona fide* establishments'), the German and Finnish delegations recalled that the Council resolution of 30 November 1994 uses a broader clause, including 'comparable institutions'. The Italian delegation advocated a more general clause to cover 'duly certified study courses'. The French delegation proposed a reference to 'State or private establishments'. The Danish delegation also advocated a reference to 'private establishments', considering that the resolution's language ('comparable institutions') excludes secondary education. Unlike the other delegations, the Austrian delegation raised no difficulties with this requirement, as at the moment Austria has only State establishments. The Commission representative acknowledged that the terms 'comparable institutions' could be usefully added in this definition.

The following suggestions, furthermore, were made on the specific study purposes listed in the article:

- defining more precisely the type of 'preparatory courses' mentioned in **section (a)** (B, D, NL - D suggested "Sprachkurse, Praktika und sonstige Lehrgänge"), to the exclusion of mere language courses (L, A, but GR had difficulties with this suggestion); providing additional conditions to prevent abuse (DK; in this Member State, the course must be organized by the educational establishment concerned, or there must be a close connection with the main study course); in reply to this suggestion, the Commission representative confirmed that this provision was not intended to allow admission for the purpose of attending language courses only, and he found merit in strengthening the link between the preparatory course and the high education course, although this should be done with some degree of flexibility and without making the language of this provision too restrictive;
- providing for the possibility of attending only *part* of a study course, which at the moment is not covered by **section (b)** (DK); the Commission representative stated that the proposed language ('pursue a course of study') was meant to be broader than the corresponding terms in the Council resolution of 30 November 1994 ('take up a course of study'), and covered all study courses preceding the doctoral level; he was, however, prepared to revise this phrase;
- specifying further **section (c)**, as the reference to a 'doctoral thesis' is too vague (D, FIN);
- inserting new provisions in addition to **section (d)** to take account of researchers, in order to safeguard Member States' research promotion policies (DK); introducing a distinction between students and researchers (GR); the NL delegation shared difficulties regarding section (d).

The German delegation, furthermore, raised difficulties with respect to the verb 'pursue' in sections (b) and (d), which, at least in the German version, does not seem to cover the fresh start of study courses. It suggested using the term "aufnehmen" in the German version.

In connection with the above-mentioned problems relating to the chapter's scope, the Swedish delegation queried whether the article's definition was meant to be exhaustive, or whether other categories for which no provision was made could nonetheless be admitted.

In reply to this query, the Commission representative clarified that the purpose of Chapter V is to deal with the admission conditions of specific categories of students, as defined in this article. In this respect, Article 21 further provides that there are categories which are excluded from the scope of Chapter V, in particular secondary education students. As a result, students falling under these categories can be admitted on the basis of national law.

Further to this clarification, the Luxembourg delegation welcomed the idea of leaving the admission of secondary education students to the competence of the Member States. The Belgian delegation suggested that the possibility of admitting students on the basis of national law by derogation to the convention should be further broadened, and Article 21 should be modified to that effect. Furthermore, the Finnish delegation considered that Article 21 should be placed at the beginning of the chapter and not at the end, and that the scope of the chapter should be further specified in Article 15.

Also in reaction to the Commission's statement on the scope of the chapter, questions were raised regarding its applicability to adult education (FIN), vocational training (NL), and 'folk high schools' (DK, which proposed including a reference to such schools in Article 21, see below).

Article 16

General remarks on paragraphs 1 and 2

Two delegations (E, P) objected to the term 'residence' being used in the title and first two paragraphs of the article (which the Spanish delegation wished to replace with 'stay'), since under their national law the persons in question are granted a visa (regarding Portugal, see the comments under Article 15 above; Spain grants a student visa and the years spent under this visa cannot be used towards a residence authorization).

In addition, some delegations generally considered that the two paragraphs were not very clear (B, DK, GR), especially without the help of the Explanatory Memorandum (B), and that for the purpose of clarity they should be combined (I) or linked more clearly (DK).

Paragraph 1

Some delegations (D, GR, I) had difficulties with the provision in the **first sentence**, limiting the residence period to the duration of the study course, due to the fact that there are courses for which there is no set duration (D), or that as a rule students do not complete the course within the set duration (I), or that under particular circumstances, such as university strikes, the duration of the residence period may be increased by half (i.e. up to six years for a four-year study course) (GR). Therefore, reference should be made to the possibility of prolongation of the residence period (D, I), the reference to the duration of the course study should be deleted (I) and a reference to the average duration of the course could be introduced (D).

The **second sentence** caused difficulties to a number of delegations (DK, D, S, UK), as the residence authorization in these Member States does not always have the same duration as enrolment, and called for more flexibility on this point. The UK delegation proposed to leave Member States the ability to restrict the duration of the residence authorization, by using the terms 'if circumstances so require'.

The Commission representative took note of the difficulties posed by the reference to enrolment, and undertook to find an alternative criterion in order to prevent residence authorizations from covering automatically the whole duration of the study course.

Paragraph 2

Regarding the **first sentence**, the Danish delegation was not clear on the link between the annual renewal of the residence authorization and the duration set in the previous paragraph. According to the German, Italian and Austrian delegations, limiting the renewal to one year was too inflexible and not consistent with their national practice (the German delegation proposed a two-year time period, the Italian and Austrian delegations deemed that Member States should have the possibility of multi-annual renewals). Furthermore, the Italian delegation raised a linguistic problem ('*proroga*' should be replaced by '*rinnovo*').

The condition set in the **second sentence**, to the effect that the third-country national should have taken any tests required, posed problems to some delegations. The Italian delegation considered that the condition is too inflexible, and wondered what would happen if a student does not take all the tests prescribed for a given year, a common situation in the Italian university system. The Netherlands delegation stressed that in the Netherlands enrolment is sufficient for obtaining a residence authorization, and that the authorities do not enter into such questions, which belong to the educational establishment's competence. The French delegation was not clear on the meaning of this requirement. Furthermore, the Presidency noted that this condition was expressed in dissimilar ways in the various language versions ('taken any tests' in English; ('*satisfait aux formes de contrôles*' in French).

Also with respect to the second sentence, the German delegation considered that taking tests might not be sufficient, and proposed requiring also that the student should have regularly attended the course.

The Commission representative pointed out that there must be a link between the student's performance and the renewal of the residence authorization, and that the Commission had chosen the broad terms 'forms of control' (at least in the French version), which encompass a wider range of factors than a mere reference to 'exams'.

Paragraph 3

The Portuguese delegation was not clear on the relationship between this paragraph and paragraph 1.

Most delegations (B, DK, D, E, F, I, A, S, UK), while mindful of the concerns underlying this paragraph, objected to its inflexibility, and advocated provisions whereby, as is the rule in national practices, students may change study courses without going back to their countries of origin, provided that they do not so to abuse their student status. In particular, stress could be placed on the exams taken in the first study course, especially in the case of study courses that share certain subject matters (E, I), and the change could be permitted only during 'an initial stage' of the study course (D; with the exception of GR, most Member States allow changes also after the first year; D, in particular, allows changes within 18 months). The Belgian and French delegations, furthermore, proposed deleting the first sentence of the paragraph.

The Commission representative clarified that, according to the proposal, the study course may be changed after one year, but in that case the student must leave the territory of the Member States to submit a new application, and the outcome is subject to the authorities' discretionary power; this mechanism is intended to create a filter to possible abuse of the system. In view of delegations' reactions, the representative was prepared to amend the proposed time limit, and was open to Germany's suggestion to introduce the words 'during an initial stage'.

Paragraph 4

It was agreed to postpone consideration of this paragraph.

Article 17

The Italian delegation observed that this article was in conflict with the provisions of the new Italian law on immigration, which allow persons admitted for study purposes to change their status and obtain a residence permit for employment purposes within the established quotas, and the employment concerned is not limited to seasonal work. The Austrian delegation recalled that also its rules on employment were based on a quota system.

Some delegations (E, A, S) generally regarded the terms 'short-term work' (E, A, S) and 'interfere' (NL, A) in the second sentence as unclear and ambiguous, and raised problems with regard to the specific restrictions to working, contained in this sentence. According to the various national systems, students are allowed to work under specific conditions, not necessarily in the case of seasonal work as the proposal provides (DK, D, F, NL).

Among the existing conditions are the following:

- if employment is part of the course (DK, A);
- during their holidays (A), between May and September (without a work permit, S), or between June and August, and the rest of the year only part time (NL);
- for a short time (DK), no longer than six (E) or three months (E);
- part time (DK), i.e. 10 hours/week (NL), and in this case only if the work does not provide the necessary resources (E).

On the opposite end of the spectrum, the Portuguese delegation indicated that in Portugal students cannot engage in any employment activity. The Greek delegation was also hesitant on any derogation to such principle, as expressed in the first sentence.

Some delegations (E, F, NL) referred to the notion of supplementary work, or work which is not the main activity of the student, or the main reason for his/her stay. Also the German delegation called for a more flexible language and further suggested that the Commission should define these conditions in implementing rules.

The Commission representative took note of the various suggestions.

Article 18*Paragraph 1*

This provision was acceptable to the Belgian, Danish and French delegations (B, F, UK), in particular, do not have different categories of admission for study purposes), but was at variance with the Greek system.

Furthermore, the Danish and Netherlands delegations were not clear on the reference to the 'categories of study', in particular considering that the list in Article 15 covers only higher education (DK), and it is not clear whether this list is exhaustive (NL). The United Kingdom delegation further raised the question of compatibility with Article 16(3). The Commission representative said that he would consider improving the wording of this paragraph.

Paragraph 2

Some delegations (B, F, I, A, S, UK) considered that it was unduly restrictive not to allow students to change status, in particular not to grant them admission for family reunification purposes (B, F, NL, S), or for employment purposes (I, NL, F, the latter with reference to end-of-study training or to employment in specific sectors of the economy such as informatics), or generally in the case of legal residence (A); the addition of the phrase 'in principle' could make the provision more flexible (B). By contrast, the Greek and Danish delegations agreed with the present drafting, which was in line with their legislation.

The Commission representative took note of the remarks. He also invited delegations to consider Articles 15(d) and 25, which might have a bearing on some of the problems raised.

Article 19*Paragraph 1*

Most delegations (DK, D, GR, F, NL, A, FIN) entered reservations on this narrow definition, which is centred on the notion of 'workers', and does not cover practical training ('*stage en entreprise*') carried out after a study course (also raised under Article 18(2) above) or in the context of an academic course, where the trainees are not paid employees with a work permit (though training after a study course may frequently be followed by the granting of a work permit, e.g. in Germany). This training might be mentioned either in another chapter (namely, Chapter III) or in this article by way of derogation (D); it was also proposed to delete Article 19 altogether, to extend the scope of Article 15(d) to cover training as part of a study course, and to add a reference to other practical training ('*stage en entreprise*') under Article 22 (B).

By contrast, the UK delegation found the definition too broad and suggested it be tightened up: in particular, the link with the workers' professional qualifications should be made more precise ('in order to improve etc.'). The Portuguese delegation proposed drafting changes along the same lines ('wish' to be replaced by 'objective').

On the scope of this article, the Commission representative explained that the rationale was to prevent easy transfers from one category of admission to another, but concurred that a clarification might be helpful and deemed that this definition and the definition in Article 15 should be redrafted in conjunction; the redrafted definition of Article 19 could be moved to Chapter III.

Furthermore, the Danish and Italian delegations objected to the rule that the person's subsequent occupation should be pursued in a third country.

The Italian delegation raised linguistic problems ('training' to be translated as '*formazione*').

Paragraphs 2 and 3 in general

Owing to the uncertainties concerning the definition of 'trainees' in the previous paragraph, delegations had difficulties in commenting on these paragraphs, and presented their observations on a provisional basis. It was further recalled that the question of the appropriate place for the provisions on trainees concerned the article as a whole (D).

Paragraph 2

Regarding the existing requirements, the following remarks were made:

- on **section (a)**: the link between participation in a training programme and availability of financing resources should be reflected in this provision (D); it is not clear whether 'host establishment' means a school or a company (FIN; on this point, the Commission representative replied that both possibilities could be envisaged); the idea of an 'agreement' is too restrictive (P); 'remuneration' is too strict and should be replaced by 'support', which would encompass also payment in nature (e.g. food and lodging) (P); linguistic problems were raised regarding the Italian version ('training agreement' to be translated as '*contratto di formazione*', I);
- on **section (b)**: when dealing with the requirement of social security cover, reference should be made to national law (DK, which had proposed this also in the context of Chapter V, supported by FIN, S); in any case, it should be clarified whether the cover concerns only the 'risks' relating to the training itself or other risks as well (FIN; on this point the Commission representative replied that the cover should encompass all risks); in the case of training taken up in the context of a training agreement and including a period in an undertaking, the social security cover should be provided for in the training agreement (E); linguistic problems were raised regarding the Italian version ('social security' to be translated as '*sicurezza sociale*', I).

Additional requirements proposed include: respect of the normal salary conditions for access to the labour market (A, which had proposed this also with respect to Chapter III); an age limit for trainees, which could be, as is the case in DK, between 18 and 30 (DK); proof of earlier professional qualifications (UK).

Paragraph 3

Some delegations (B, FIN, S, UK) observed that the proposal's limitations were too strict. The example was made of a law graduate training to be a lawyer, who would then be prevented from entering the legal profession (B). With reference to previous statements on this point (see Articles 18(2) and 19(1) above), it was also proposed to exempt from this provision students who have just completed their education (DK).

On the specific terms of the paragraph, it was suggested that the initial time limit for authorizing residence should be 18 months (B, FIN, S, DK), or three years (UK), though one delegation favoured the one-year time limit (NL); furthermore, extension should be granted for six-month periods, instead of one year (DK), or should not be granted at all (NL), and in any case it was not clear how it should be established whether or not the condition for extension is met (i.e. more time is needed to obtain the qualification) (S); finally, the provision preventing the taking up of employment should also be made more flexible (DK, UK), for example by replacing the phrase 'in no circumstances' by 'only exceptionally' (UK).

Article 20*First paragraph*

Queries were made on the meaning of this article, with specific reference to the loose term 'facilitate' (GR, NL, Presidency). The Commission representative explained that this article aimed to allow the participation of third-country nationals in Community-funded programmes that are opened to such nationals, considering that in order to participate these persons have to be actually admitted to the territory of Member States; 'facilitate' is a flexible word, which encourages Member States to allow implementation of the programmes, while safeguarding other interests they might have; this word has already been used in the context of free movement of family members of EC nationals (see specifically Article 10(3) of Council Regulation (EEC) No. 1612/68 of 15 October 1968, OJ L 257, 19.10.1968, p. 2).

The French delegation observed that this clause should cover national cooperation programmes, as well as Community-funded programmes.

Second paragraph

It was agreed to postpone consideration of this paragraph.

Article 21

The Finnish delegation reiterated that Article 21 should be placed at the beginning of the chapter and that it should be incorporated into Article 15 (see above).

In response to a query concerning the link between this provision and the rules on family reunification, as mentioned on page 17 of the Explanatory Memorandum (FIN, S), the Commission representative explained that the intention to cater under those rules for most of the situations covered by this article was due to the age of the persons concerned.

Regarding the categories listed in the article, the following remarks were made:

- **section (a):** the Netherlands delegation voiced doubts concerning the exclusion of secondary education. The Commission representative replied that the Commission hesitated to propose rules on admission for the purpose of secondary education, which might be regarded as too far-reaching, but was open to consider their inclusion in its proposal, if delegations so wished;
- **section (b):** the Austrian delegation felt that apprentices should be covered by Chapter III, as apprenticeship is a particular form of employment for those who have completed their education.

The Danish delegation repeated that it wished to include a reference to 'folk high schools' in an additional section of the article.

CHAPTER VII

Delegations had at their disposal two documents describing Member States' legislation and practice on family reunification (7594/98 ASIM 99 and 8491/98 ASIM 128; see also 7594/98 ASIM 99 ADD 1 and 8491/98 ASIM 128 ADD 1, as well as 8928/97 ASIM 124).

The debate focused mainly on the changes introduced with respect to the Resolution on the harmonization 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) (hereafter: the Resolution of 1 June 1993).

Article 24

Basis and scope of the article

In reply to a query from the Austrian delegation, the Commission representative stressed that, unlike the other cases of admission in the proposal, family reunification should be regarded as a 'right', stemming in particular from the European Convention on Human Rights. This view was shared by the Portuguese delegation, since in Portugal family reunification is considered a right. Other delegations (D, A), as well as the Presidency, however, objected to this interpretation; the Austrian delegation, in particular, found this to be incompatible with its annual quota system. Likewise, the Greek and Finnish delegations were opposed to setting out an automatic right to family reunification, as is done in this proposal. In this connection, the German delegation proposed setting up a flexible system, whereby a right may be recognized under specific conditions, failing which Member States would have discretionary power to grant family reunification, according to other legal criteria.

In reply to a query from the German delegation, as to who is the holder of the right to family reunification, the Commission representative referred to Article 28, stating that the application must be submitted by the person already on the territory, in order to be reunited by his/her family members, and this is mainly due to practical reasons, since it is easier for the resident third-country national to provide evidence of the conditions required in Articles 24 and 28. He added that the beginning of the article could be redrafted to clarify this point.

Some delegations (DK, E, NL, P, S) were not clear as to which categories were covered by this provision, specifically whether students and *de facto* refugees were also within its scope. According to the Greek, Spanish and Portuguese delegations in particular, students should be dealt with in a different context and not on an equal footing with residents. The Commission representative replied that, with the exception of the categories of persons under Article 2(1), second sub-paragraph, sections (a) to (c), all third-country nationals fall within the scope of this provision, including refugees and students. On the other hand, EC nationals are not covered by these rules, except in the specific case described in Article 25.

Two delegations (NL, UK) noted that the article seemed to cover situations that were different from family reunification proper, which concerns specifically families that have been split (in the UK this usually occurs in the case of refugees, whereas here it would be more accurate to speak of 'admission of family members' instead of 'family reunification'). The Commission representative replied that this article would apply regardless of the circumstance that the family is formed before or after the person's settlement in the Member State.

Minimum residence requirements

A great deal of comments focused on the provision of minimum periods of lawful residence in paragraphs 1 and 2. Most delegations (DK, D, GR, I, A, P, FIN, S, UK) thought that this compulsory provision was too stringent and in many cases not in line with their legislation, and asked for more flexible rules, particularly to cope with the divergences existing in Member States' legislation. In particular, the Belgian delegation advocated a solution based on the Swedish practice (see para. 1.5 in 8491/98 ASIM 128), requiring a minimum period of lawful residence only in exceptional cases and for specific categories of persons. It was also observed that *de facto* waiting periods (e.g. the time needed to provide evidence of employment) make it unnecessary to require waiting periods formally (NL).

Details on national legislations may be found in the above-mentioned documents. The difficulties stemming from national rules that were mentioned at the meeting are summarized below.

Regarding the so-called **waiting period**:

- no minimum residence is required (IRL, FIN, P; in the latter the absence of such a provision stems from the Constitution);
- a minimum residence is required (5 years in GR, 1 year under the new French law);
- a minimum residence may be provided depending on the situation (in DK, where it may be as long as 5 years).

Regarding **future residence**:

- a minimum validity of residence permit is required (E, 1 year);
- the requirement would not be feasible, since third-country nationals are often granted one-year permits (DK).

Regarding the **waiting period for students**:

- no minimum residence is required (D, E, P; in the latter two, a minimum residence requirement would not be feasible, insofar as students are not granted a right of residence (see general remarks on Article 16 above; see also their remarks on the scope of this article, above);
- no specific provision exists (GR);
- *ad hoc* consideration is given to students' situation (DK).

In response to the above observations, the Commission representative emphasized that all these requirements were indications of the person's stability, aiming to exclude family reunification in the event of short-term stays, and that in any case according to Article 28 an application may be submitted earlier.

Article 25

In reply to a query, the Commission representative clarified that this provision referred to the specific category of persons who do not exercise the right to freedom of movement, a gap that had been identified in the March 1997 report of the High-Level Group on the free movement of persons, established by the Commission in 1996. The proposal aimed at extending the provisions in Council Regulation No. 1612/68 to this category of people.

Delegations generally recognized that difficulties exist in this area, as in many Member States national law imposes conditions, stricter than those applicable under Council Regulation No. 1612/98, in the case of third-country national family members of their own nationals, who do not exercise their right to free movement.

Against this background, some delegations favoured the Commission's approach, and noted that also at national level the gap between family members of nationals and other EC citizens was gradually being reduced (L, P), or that identical rights were already granted to the two categories of family members (B).

By contrast, others were reserved on this approach: although they also strived to reduce this gap, they voiced concern that this might widen the differences vis-à-vis family members of third-country nationals (NL), or might increase considerably the number of third-country nationals admitted to Member States (DK, FIN); they also observed that this provision would entail severe changes to national law which would require further reflection (S), stressed that this was a purely internal situation (E), and commented that the revision of Regulation No. 1612/68 which was under way had to be taken into account (S) (see COM(98)394).

Furthermore, the issue was raised as to whether the proposed extension could be brought about by way of reference to a regulation (DK, A); in this connection, an extension of Community competence gave rise to objections (UK). On this point, the Commission representative expressed the view that a reference to the relevant provisions of the regulation was preferable to their actual inclusion in the convention, both for reasons of efficiency and in order to cater for possible future revisions of the regulation (such as the current revision procedure mentioned above); he recalled that, also in the context of the discussion of the convention on external frontiers, the conclusion had been reached that a reference to a first-pillar instrument could be an appropriate option. The Presidency commented that the issue was whether the proposed provision aimed at an extension of Regulation No. 1612/68, which might be regarded as a first-pillar matter, or merely made provision for the rights of third-country nationals. The Commission representative replied that the Commission had ruled out the possibility of carrying out the proposed extension of Regulation No. 1612/68 in the framework of the first pillar, on the ground that this extension could be done only in the third pillar.

Article 26

Article 26(1) and (2)

The French, Italian and Greek delegations did not identify particular problems with respect to their legislation.

In general, some delegations believed that the purpose of the admission should be specified (as was done in the Resolution of 1 June 1993, which conditions admission on the 'purpose of living together') (B, NL, UK), as well as the requirement of *de facto* separation (E). The Commission representative could consider a provision specifying that the children admitted must live with the resident.

On section (a), further requirements were proposed concerning the spouse:

- A minimum age of the spouses should be required, in order to prevent forced marriages (18 years, B, NL).
- Polygamous spouses should be expressly excluded (F, NL). The Commission representative recalled the reference to 'the fundamental principles of the law of the Member State', which results in the exclusion of polygamous spouses, as is explained on page 19 of the Explanatory Memorandum.
- For some delegations, marriage should be a condition for admission and unmarried couples should be left outside the scope of the text (D, E); for other delegations (DK, NL, FIN, S), unmarried couples (hetero- or homosexual) should be within its scope under specified conditions (e.g. minimum duration of cohabitation, domicile, minimum age, DK). The Commission representative referred again to the national law of the Member State concerned, and clarified that the possibility of reunification depends whether unmarried and same-sex couples are treated by this Member State as if they were married, whilst cohabitation without a formal recognition is not within the scope of this article.
- In this connection, the issue was raised as to whether this list is exhaustive (S), and it was observed that more clarity should be introduced on the above points (NL), in particular on the meaning of the term 'spouse' (FIN); the Commission representative replied that the list of categories is in fact exhaustive, and that another category of relatives is dealt with in paragraph 3.

On section (b):

- It should be required that the child be dependent on the resident (E).
- Admission of 'adopted children' was regarded as an area of possible abuse and this category caused concern to some delegations (GR, NL, FIN, UK; according to the latter, the definition of 'adopted children' should be expanded along the lines of the Resolution of 1 June 1993).
- It should be specified that the children must be legitimate or the paternity established (F). The Commission representative pointed out that neither this nor the following section targeted natural children.

On section (c):

- Sole parental authority should not be a criterion, admission should be possible also where the parents have joint authority (DK, D, FIN). To cope with this case, reference should be made to the child being *de facto* dependent on the parent (D). The Commission representative concurred that excluding the case of joint authority of divorced parents could pose difficulties, but pointed out that this exclusion aimed to prevent circumvention by the resident parent of the decision concerning the right of custody by the non-resident parent; he expressed willingness to consider other options as well.
- The notion of *de facto* responsibility was questioned from the legal standpoint (FIN).

On paragraph 2:

- Most Member States set the age limit at the age of legal majority, i.e. 18 years (as specified by E, NL). One Member State, however, has a higher limit (Portugal: 21 under the new law, unless the child is disabled and may be admitted even beyond this age), and two Member States have a lower age limit, in view of the difficulties that children experience with access to the labour market depending on the age when they arrive (Germany: 16 and only exceptionally 18; Austria: 14, in the case of children who entered Austria before 1 January 1998). The Commission representative, though aware of these differences, emphasized that the purpose of the proposal is to harmonize national rules; reflecting in the convention the various age limits applied by Member States would result in a setback from the solution agreed in the Resolution of 1 June 1993 (stipulating an age limit between 16 and 18).
- In connection with the age limit, some delegations indicated that the child should also be required to be dependent on the resident and his or her spouse (E, P; under the new law of the latter, a dependent child may be admitted even if he/she is married).

Article 26(3)

The French delegation provisionally favoured the provision.

A number of delegations regarded the expression 'favourable consideration' as too far-reaching (B, D, IRL, FIN), and expressed preference for the language of the Resolution of 1 June 1993, requiring 'compelling reasons for the presence of the person' (D, NL, UK). In addition, some delegations were not clear on the meaning of this expression and, in particular, whether the relevant appreciation should be 'favourable' on a case-by-case basis or by way of a legislative provision, and invited the Commission to clarify this point in the text (B, D, A, UK). The Commission representative pointed out that the provision placed an obligation to examine the application, but did not prejudice its outcome.

Other delegations remarked that the conditions for admission of other relatives were too restrictive (DK, A). According to the Commission representative, the purpose of this paragraph was precisely to resolve situations where the strict application of paragraph 1 might create unbearable results from the human point of view.

It was further observed that two language versions (Italian and Swedish) did not require the relative to be dependent. In fact, this requirement exists in both Italian and Swedish law: the former allows admission of relatives up to the third degree, if they are dependent and unfit for work; the latter allows admission if the relatives are dependent and used to be part of the same household. In reaction to these remarks, the Commission representative considered that it might be appropriate to introduce specific provisions concerning dependent relatives in the ascending line.

Article 27

A number of delegations (B, DK, D, GR, FIN, S) deemed that this provision should concern all categories of admission, and should come earlier in the text (S), possibly at the beginning (D, FIN) or in a separate chapter on general provisions (B). The relevant general provisions could cover also non-fraud situations where the conditions required for admission are no longer met (e.g. divorce cases, or the person is no longer working), and the residence permit can be withdrawn as a consequence (DK).

The Commission representative saw merit in the proposal to move paragraph 1, which in his view could be moved to Chapter II 'General Rules', but considered that paragraph 2 should be kept in the present chapter.

Regarding definitions, it was suggested that they take into account the definition in the Council Resolution of 4 December 1997 on measures to be adopted in the combating of marriages of convenience (OJ No. C 382 of 16.12.1997) (DK); the Commission representative concurred that paragraph 2 should be revisited in the light of that resolution. Furthermore, it was also suggested that the reference to 'adopted child' be deleted from paragraph 2, in order to avoid misunderstanding (GR), and that the term 'fraud' ('*Betrug*' in German) be replaced by a more appropriate word, since (at least in German) this term refers to a criminal offence (A).

On procedure, some delegations (D, A, FIN, S) regarded the provisions as too absolute.⁽¹⁾ It was suggested that the consequences of fraud be left to Member States' determination, especially in view of the differences existing between national legislations (D): in some Member States in particular, the authorities have discretionary power to decide on the matter (FIN, S); in Austria, the residence permits can no longer be withdrawn after 8 years or 4-5 years in the case of bogus marriages; in addition, fraud may be difficult to prove and the relevant procedures are lengthy and uncertain (B, A). The Commission representative agreed that the article should set the principle at policy level that admission may not be obtained through fraud, rather than laying down rules on procedure.

Article 28

Article 28(1)

Reference was made to the Commission's earlier clarification, in reply to the German delegation, to the effect that the application must be submitted by the person already on the territory (see Article 24, Basis and scope, above). The German delegation, however, still believed that this provision and Article 24 needed to be harmonized, in order to clarify this point further.

⁽¹⁾ It was noted that by error in the text published in the English OJ, the verb 'may' and 'shall' are interchanged.

The approach outlined by the Commission on this issue was shared by some delegations (E, GR, F, P, in the latter the family member only applies for an entry visa), but not by others (B, DK, A, S, UK), which pointed out that, under their national law, applications are submitted by the family members abroad (in some of these Member States this was linked to the absence of conditions regarding accommodation and means of support). A third different position was that of the Netherlands delegation, which observed that this issue does not need to be addressed in the text.

Problems were also raised regarding the requirement of accommodation and means of support. A first group of delegations (B, GR, S) had serious difficulties on this point, insofar as these Member States do not require any conditions regarding accommodation and means of support. A second group of delegations remarked that these conditions should be made optional (DK), and that they should be left to national law, particularly because of the difficulties experienced in applying them at the national level (FIN). Other delegations (E, I, NL, P, UK), by contrast, did not have any particular difficulties in this respect.

As for the actual formulation of these conditions, the Austrian delegation advised that the interpretation of the notion of 'suitable accommodation' had caused considerable difficulties in the national systems, and considered that the notion should be specified. Some delegations (DK, D) shared doubts on this difficult notion. In France these requirements are formulated, respectively, as 'normal accommodation for a comparable family living in France' and 'sufficient and stable means of income'. In Italy, the accommodation has to meet standards set by regional laws and the means of support are linked to a minimum amount specified by law. In Greece, the salary must equal that of unskilled workers. The Commission representative commented that further details on these conditions should be included in the implementing measures.

Some delegations felt that the following additional conditions should be taken into account:

- sickness cover (E, IRL), which may be required, in particular, where the means of support are insufficient (D, A); however, the French delegation was against requiring this condition at this stage, since in France a residence permit is necessary for affiliation to social security schemes, and sickness cover can be required only upon issue of the residence permit;
- employment (GR; in case of unemployment, three months are allowed to find a new job, or the person has to leave the country).

In reply to the query from the Irish delegation as to whether any additional condition could be maintained under the present drafting, the Commission representative commented that the list of conditions in Article 28 is exhaustive.

Most delegations (D, E, F, IRL, I, NL, P, S, UK) had difficulties with the 6-month rule (in France, it was added, it is the reverse: an application may be submitted 6 months before entry). The German delegation was of the opinion that such matters should be dealt with in the implementing measures. The Commission representative clarified that this was an option granted to the resident in order to facilitate an early start of the procedure, but emphasized that the admission of the family member could not be decided before the expiry of the waiting period laid down in Article 24; he therefore considered that this sentence might be moved to Article 24.

Article 28(2)

It was agreed to postpone consideration of this paragraph.

Article 29

The majority of comments focused on the question of the initial duration of the residence authorization. Some delegations (B, DK) shared the principle that duration should be of the same nature as that of the resident, and considered that the residence authorization should have an unlimited duration if that is the resident's case. A number of delegations (D, E, F, A, P, S, UK), by contrast, while sharing the idea that the duration should be linked to that of the resident and should not exceed it, objected to the rule that the initial duration should be the same, particularly in the case of a resident with an indefinite authorization, without allowing a probationary period (for example, to check the validity and the continuity of the marriage). This was considered to be in conflict with the national law of a number of Member States (S: initial duration is up to 2 years, usually it is 6 months, then permanent authorization may be granted after 2 years, after it is checked that the marriage continues; P: according to the new law, initial duration of 2 years, permanent authorization may be granted after 2 years).

Also on the issue of duration, and in connection with Article 26(2), the Greek delegation stressed that the residence authorization under the family reunification rules should not go beyond the child's age of legal majority, after which a separate status would have to be acquired. The Danish delegation, by contrast, held the view that it should be possible to grant children a residence permit with a duration exceeding their age of majority.

GENERAL SECRETARIAT
OF THE COUNCIL
DG H I

Brussels, 22 April 1998

ROOM DOCUMENT N° 1

Migration Working Group meeting
of 23/24 April 1998

Note from the Greek delegation

Subject: Draft Convention on the admission of third country nationals to the Member States of the EU

Please find below a text concerning the particular status of Mount Athos which the Greek authorities would like to be inserted in the abovementioned Convention.

"As regards the Hellenic Republic, this Convention shall not affect the special status of Mount Athos, which is based exclusively on spiritual and religious considerations, as guaranteed by Article 105 of the Constitution of the Hellenic Republic and the Mount Athos Charter."