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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT pursuant to Article 294(6) of the Treaty on the Functioning of the European Union concerning the Position of the Council on the adoption of a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing

Delegations will find attached the Commission document COM(2016) 184 final.

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Brussels, 5.4.2016
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**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

Position of the Council on the adoption of a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing

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1. BACKGROUND

Date of transmission of the proposal to the European Parliament and to the Council (document COM(2013) 151 final – 2013/0081 COD))	26.03.2013
Date of the opinion of the European Economic and Social Committee:	18.09.2013
Date of the position of the European Parliament, first reading:	25.02.2014
Date of transmission of the amended proposal:	n/a
Foreseen date of adoption of the position of the Council:	10.03.2016

2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION

The proposal was a recast merging the existing students (2004/114/EC) and researchers (2005/71/EC) Directives. It aimed at remedying the weaknesses identified in these instruments, thereby rendering the EU more attractive as a destination for the groups concerned. The proposal enlarged the scope of EU rules, as previously the admission rules had been mandatory for students and researchers only, and optional for school pupils, unremunerated trainees and volunteers. The proposal covered all categories through mandatory rules (including the newly added categories of remunerated trainees and au pairs). The proposal made improvements in particular regarding admission procedures, equal treatment rights, students' rights to access the labour market during studies, intra-EU mobility as well as procedural guarantees. It also created the possibility for graduates and researchers, after finalisation of research or studies, to seek a job or to set up a business.

3. COMMENTS ON THE POSITION OF THE COUNCIL

Political agreement was reached between co-legislators at the trilogue meeting of 17 November 2015, and was endorsed by COREPER on 25 November 2015, and by the LIBE Committee on 30 November 2015.

The main differences between the Common Position and the original Commission proposal are set out below.

Scope (Article 2)

The Common position limits the scope of the mandatory rules to researchers, students, trainees and volunteers covered by the European Voluntary Service. Rules for school pupils, volunteers not covered by the European Voluntary Service and au pairs are optional.

Regarding trainees, the Common position abolishes the distinction between remunerated and unremunerated trainees.

General admission conditions (Article 7)

The Common position gives Member States the possibility to require the applicant to provide the address where he or she will be residing on its territory. It makes it obligatory for Member States to examine applications also when the third-country national concerned is already residing in that Member State.

Approval of research organisations (Article 9); Approval of higher education institutions, education establishments, organisations responsible for a voluntary service scheme or entities hosting trainees (Article 15)

The Common position makes the approval procedure for research organisations optional, and introduces an optional approval procedure for higher education institutions, education establishments, organisations responsible for a voluntary service scheme or entities hosting trainees. In case a Member State introduces such procedures, applications are facilitated.

Specific conditions for trainees (Article 13)

The Common position introduces the limitation that applicants must have obtained a higher education degree within the two years preceding the date of application or be pursuing a course of study that leads to a higher education degree. It also allows Member States to require the traineeship to be in the same field and at the same qualification level as the higher education degree obtained or the course of study being pursued.

Duration of authorisations (Article 18)

The Common position provides for a duration of authorisations for students and researchers covered by programmes of a minimum of two years (instead of one year for those not covered by programmes). The Commission proposal did not foresee a longer duration of authorisations for students and researchers covered by programmes, except in the context of intra-EU mobility.

Grounds for rejection (Article 20)

The Common position to a great extent aligns the grounds for rejection to those of the Intra Corporate Transferee Directive (hereinafter "ICT Directive")[1]. At the same time the position adds a ground which allows Member States to reject an application where the Member State has evidence or serious and objective grounds to establish that the third-country national would reside for purposes other than those for which he or she applies to be admitted (Article 20(2)(f)). Both the Commission and the European Parliament had reservations on the latter provision, which was eventually accepted and accompanied by the following declaration of the two Institutions:

> *The European Parliament and the Commission understand point (f) of Article 20(2) of this Directive as allowing Member States to reject an application only on a case-by-case basis and taking into account the specific circumstances of the third-country national and the principle of proportionality and on the basis of evidence or serious and objective reasons. The Commission will ensure that Member States implement this provision in line with this interpretation when transposing the Directive, and will inform the Parliament and the Council thereof, in the framework of its obligations under Article 39.*
>
> *The European Parliament and the Commission consider that the inclusion of this provision in this Directive should not constitute a precedent for future legal migration instruments.*

Grounds for withdrawal or non-renewal of an authorisation (Article 21)

Similarly to the grounds for rejection, the Common position to a great extent aligns the grounds for withdrawal or non-renewal to those of the ICT Directive.

Equal treatment (Article 22)

While the Common position provides Member States with the possibility to make the granting of family benefits to researchers dependent on a minimum length of stay (once more in line with the ICT Directive), overall it still reflects the objective of the Commission proposal to make more transparent which equal treatment rights, based on the Single Permit Directive[2], the various categories covered by the recast are entitled to.

Economic activities by students (Article 24)

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1 Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, 27.5.2014, OJ L 157, p. 1

2 Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, 23.12.2011, OJ L 343, p. 1

The Common position increases the minimum number of hours that students have access to the labour market to 15 hours per week (up from 10 hours per week in Directive 2004/114/EC, however lower than the 20 hours per week the Commission had proposed). The Common position does not alter the proposed deletion, in the Commission proposal, of the provision of Directive 2004/114/EC that allowed Member States to deny access to the labour market for the first year of stay.

Job-searching/setting-up of a business for students who finished studies and researchers who finalised research (Article 25)

The Common position limits the period for job-seeking/setting-up of a business to 9 months. It also gives Member States the possibility to require that the employment a third-country national is seeking or the business he or she is in the process of setting up corresponds to the level of research or of studies completed. Regarding students, the Common position gives Member States the possibility to apply these provisions only to those having achieved a minimum level of academic degree (which must not be higher than level 7 of the European Qualifications Framework, i.e. Masters level).

Intra-EU mobility (Articles 27 – 32)

The Common position includes intra-EU mobility provisions only for students and researchers as opposed to the Commission proposal which had foreseen such provisions also for remunerated trainees. The Common position introduces the "notification" procedure (as in the ICT Directive), a simplified procedure whereby students and researchers can move to a second Member State on the basis of the authorisation of the first Member State.

For researchers, this procedure applies in the case of short-term mobility (up to 180 days; Article 28). For mobility going beyond this period (Article 29), Member State can apply either the notification procedure, or alternatively an application procedure.

Researchers' family members are entitled to move with the researcher on the basis of the same rules (Article 30).

The Common position limits students' intra-EU mobility to students covered by a programme that comprises mobility measures, but at the same time extends the duration of stay in the second Member State to up to 360 days (Article 31).

Procedural guarantees (Article 34)

The Common position foresees a maximum period of 90 days for Member States to decide on applications, except when the admission procedure is related to an approved host entity. In this case, the deadline is 60 days.

4. CONCLUSION

Despite the changes that the Common position has introduced, the text of the Common position still meets the Commission's original objective to make the EU more attractive for the categories concerned, and to make the legal framework governing their entry and residence more clear and transparent. Overall, the substance of the Council's position is broadly in line with the Commission's proposal and can therefore be supported.