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### **OUTCOME OF PROCEEDINGS**

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of:	Working Party on Integration, Migration and Expulsion
on:	26 April 2013
No. Cion prop.:	7869/13 MIGR 27 RECH 87 EDUC 97 CODEC 669 + ADD 1, ADD 2
Subject:	Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing (Recast)

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At its meeting held on the 26th of April 2013, the Working Party on Integration, Migration and Expulsion had its first exchange of views on the above proposal and examined Articles 1 to 9.

The results of the discussions are set out in the Annex to this Note, with delegation's comments in the footnotes.

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

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

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

[RECAST]

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<sup>1</sup> **AT, NL, CZ, HU, PL, PT, LV, SI, EE, SE, BE, BG, LU, IT, SK, FI, EL, LT, RO, ES, FR:** general scrutiny reservations. **AT, CZ, HU, PL, LT:** parliamentary scrutiny reservations. **SE, IT, SK:** linguistic reservations.  
**AT** and **CZ** wondered why to put so very different groups together in one single legislative act, both preferring to keep two different directives like it is currently the case.  
**AT** also had doubts about whether Article 79 of the TFEU is a sufficient legal base or whether Article 153 should not be a better legal base. **Council's Legal Service** replied that Article 79 provides a sufficient and appropriate legal base and that this approach has been followed regarding ICT and SW Directives. **AT** and **DE** stated that Member States should retain control over their labour markets. **AT** wanted prevention of fraud, abuses and circumventions to be addressed more in detail in the proposal. **AT** also thought that time-limits proposed are unrealistic.  
**EE, SK, LU** and **CY** expressed concerns on the right to stay in the territory for 12 months after the end of research/studies for the purposes of employment searching and/or setting up a business. **BG**, more in particular, thought that this was inconsistent with the Blue Card Directive. **BE** stated that this proposal should be further inspired by existing EU rules such as the Blue Card Directive and the Single Permit Directive, as well as the ICT Directive proposal.

## CHAPTER I

### GENERAL PROVISIONS

#### *Article 1*

#### **Subject matter<sup>2</sup>**

This Directive determines:

(a) the conditions ~~for admission~~ ⇒ of entry and residence ⇐ of third-country nationals to the territory of the Member States for a period exceeding ~~three months~~ ⇒ 90 days ⇐ for the purposes of ☒ research ☒, studies, pupil exchange, ⇒ remunerated and ⇐ unremunerated training ~~or~~ , voluntary service ⇒ au pairing ⇐ ;<sup>3</sup>

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

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<sup>2</sup> **AT, NL, CZ, HU, DE, PT, LV, SI, EE, BE, FI, EL, LT, CY:** some delegations wondered whether the subsidiarity principle had been respected and some expressed general scrutiny reservations/doubts on the inclusion of the new categories, in particular au pairs. On the other hand, **LU** and **IT** agreed with the inclusion of the new groups, including au pairs. **DE** and **RO** request **CI** to provide precise information about why each group needs to be included in the proposal in order to inform their national parliaments. **DE** in particular was not convinced that categories such as "pupils", "volunteers", "unremunerated and remunerated trainees" belong in this proposal for different reasons. **DE**, even though it supports the regulation of "researchers" and "students" categories in this proposal, is of the opinion nonetheless that parallel national schemes for these two categories need to be maintained. **NL** supported **DE** on this opinion.

<sup>3</sup> **NL** did not agree with the change to "90 days", preferring the mention to "3 months" which is currently used in the Seasonal Workers Directive. **CI** explained that the term "90 days" is expected to be established upon adoption of the amended Schengen Borders Code. **FR** wondered whether the newly added wording "entry and residence" is really more appropriate than the original "admission". **IT** was in favour of broadening the coverage of the proposal also to researchers staying less than three months.

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↓ new

(b) the conditions of entry and residence of third-country national students and remunerated trainees for a period exceeding 90 days in Member States other than the Member State which first grants the third-country national an authorisation on the basis of this Directive;

(c) the conditions of entry and residence of third-country national researchers in Member States other than the Member State which first grants the third-country national an authorisation on the basis of this Directive.<sup>4</sup>

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↓ 2005/71/EC (adapted)

## ~~CHAPTER I~~

### ~~GENERAL PROVISIONS~~

#### ~~Article 1~~

##### ~~Purpose~~

~~This Directive lays down the conditions for the admission of third-country researchers to the Member States for more than three months for the purposes of carrying out a research project under hosting agreements with research organisations.~~

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<sup>4</sup> **FR, HU, EE** and **IT** were in favour of these provisions, points (b) and (c), dealing with intra-EU mobility. **UK** was, on the other hand, concerned about the risks of abuse this mobility could entail. **NL** wondered whether points (b) and (c) could not be merged since both deal with mobility.

*Article 2*

**Scope<sup>5</sup>**

1. This Directive applies to third-country nationals who apply to be admitted to the territory of a Member State for the purpose of ☒ research ☒, studies, ☒ pupil exchange, ☒ ⇒ remunerated or ⇐ ☒ unremunerated training, voluntary service ☒ ⇒ or au pairing ⇐ .

2. This Directive shall not apply to ☒ third-country nationals ☒ :<sup>6</sup>

(a) ~~third-country nationals~~ residing in a Member State as asylum-seekers, or under subsidiary forms of protection, or under temporary protection schemes;

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

(c) ~~third-country nationals~~ who are family members of Union citizens who have exercised their right to free movement within the Union;

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<sup>5</sup> **AT, LV, CZ, PL, HU, IT:** explicit scrutiny reservations on the new categories. **AT** and **CZ** in particular stated that the addition of the new categories in this proposal does not provide any added value in preventing the possibility of abuses. **AT** and **CZ** preferred to maintain strict rules at national level to prevent the possibility of abuses. **CZ** pointed out that at the very least these new categories should not be made mandatory. **HU** further elaborated that these new categories do not belong in the migration field, unlike the other groups. **HU** agreed with **AT** and **CZ** that even if there is exploitation within these groups, this proposal does not provide enough means to prevent such abuses. Indeed, including au pairs in the proposal could even has the effect of increasing the levels of abuse.

<sup>6</sup> **FR** proposed the introduction of an additional exclusion point concerning those falling within regulated professions as defined in Directive 2005/36 on the recognition of professional qualifications. **CI** explained that this directive only applies to nationals of the Member States and that therefore it was no necessary to introduce this new exclusion point.

(d) ~~third-country nationals~~ who enjoy long-term resident status in a Member State in accordance with Council Directive 2003/109/EC and exercise their right to reside in another Member State in order to study or receive vocational training;<sup>7</sup>

(e) ~~third-country nationals~~ considered under the national legislation of the Member State concerned as ~~workers or~~ self-employed persons.<sup>8</sup>

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↓ new

(f) who, together with their family members, and irrespective of their nationality, enjoy rights of free movement equivalent to those of citizens of the Union under agreements either between the Union and the Member States or between the Union and third countries.<sup>9</sup>

(g) trainees who come to the Union in the context of an intra-corporate transfer under [Directive 2013/xx/EU on intra-corporate transfers].<sup>10</sup>

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<sup>7</sup> **LV** proposed to delete this point since it is ambiguous and could be interpreted as excluding long-term residence status only for those exercising the right to study or vocational training. **LV** considered that this issue is better covered in another legal act (Long-Term Residence Directive).

<sup>8</sup> **DE** expressed doubts about the deletion of the word "workers" since this could be used for allowing third-country nationals, whose otherwise should have been excluded according to point (g) of this article (concerning ICT trainees), to enter the Member States' territory as workers. This deletion creates a grey area between the categories of workers and trainees. **CION** explained that the deletion of that word from the exclusion clause is to allow third-country nationals in this category the same rights as provided under the Single Permit Directive.

<sup>9</sup> **IT** requested **CION** further clarification concerning this point and about whether Euro-Mediterranean Agreements are covered.

<sup>10</sup> **DE** considered the boundaries between trainees in this proposal and "graduate trainees" in the ICT Directive proposal unclear, in particular after the deletion of the word "workers" in point (e). **CION** replied that the scheme set up in the ICT Directive proposal is a separate scheme which contains objective criteria for the determination of who is to be considered as "graduate trainee" under the ICT Directive proposal. On the other hand, **PL** did not see an overlap between both this proposal and the ICT Directive proposal and therefore proposed the deletion of this point.

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↓ 2004/114/EC (adapted)

*Article 3*

**Definitions**<sup>11</sup>

For the purposes of this Directive:

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

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↓ 2005/71/EC (adapted)

~~Article 2~~

~~Definitions~~

~~For the purposes of this Directive:~~

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

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<sup>11</sup> SE commented that a definition of “family member” is not included in this article and that such definition should also be added. This could be done through a reference to the Family Reunification Directive.

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↓ 2005/71/EC

(b) ~~(d)~~ 'researcher' means a third-country national holding an appropriate higher education qualification, which gives access to doctoral programmes, who is selected by a research organisation for carrying out a research project for which the above qualification is normally required;<sup>12</sup>

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↓ 2004/114/EC

(c) ~~(b)~~ 'student' means a third-country national accepted by an establishment of higher education and admitted to the territory of a Member State to pursue as his/her main activity a full-time course of study leading to a higher education qualification recognised by the Member State, including diplomas, certificates or doctoral degrees in an establishment of higher education, which may cover a preparatory course prior to such education according to its national legislation;<sup>13</sup>

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<sup>12</sup> **LT** put this point in relation with Recital 9 and wondered why **CION** had deleted in such recital the reference to "teaching in a higher education establishment in accordance with national legislation or administrative practice, in the context of a research project" in the context of facilitating the admission of third-country nationals via an admission procedure which no longer requires a work permit in addition to a residence permit or a long-stay visa. **CION** explained that the deletion was only done for the purpose of simplification, since this proposal, in its Article 22, allows explicitly researchers to teach. **CION** further explained that colleagues from DG Research and Innovation supported this simplification. **CION** is nonetheless open to discuss this deletion.

<sup>13</sup> **NL** and **BE** expressed concerns about the reference in this point to "full-time course". This reference might indicate that the students should study during the whole day which would be in contradiction with the provision in Article 23(3) of this proposal that stipulates a minimum of 20 hours per week that students are entitled to, in order to carry out economic activities. **CION** explained that that reference does not mean that courses have to encompass the whole day, for example a half-a-day course could be considered a full-time course. Therefore, it is not in contradiction with the provision on allowing a minimum of 20 hours per week for economic activities. **IT** stated a reservation about the definition in this point and in particular about "conditions for acceptance by an establishment". **IT** had doubts about whether their university registration system could fall within the definition in this point since this registration system does not have a formal acceptance. **IT** asked **CION** whether this system may fall under this definition. This would not be a problem according to **CION**.



~~(d)~~ ~~(e)~~ 'school pupil' means a third-country national admitted to the territory of a Member State to follow a recognised programme of secondary education in the context of an exchange scheme operated by an organisation recognised for that purpose by the Member State in accordance with its national legislation or administrative practice;<sup>14</sup>

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↓ 2004/114/EC (adapted)

~~(e)~~ ~~(d)~~ 'unremunerated trainee' means a third-country national who has been admitted to the territory of a Member State for a training period without remuneration in accordance with ~~its~~ the national legislation ~~of~~ of the Member State concerned ~~and~~;

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<sup>14</sup> **DE** did not implement pupils provisions under the current Students Directive and therefore **DE** do not have a recognition procedure regarding this group. **DE** asked whether this definition means that Member States should set up a special procedure for recognition of programmes and organisations. **CION** confirmed that such procedure would be required but, according to practice, recognition may be done in relatively light procedures. This definition was designed to prevent abuses. **HU** also stated that they do not have either a recognition system as provided for in the definition. **HU** inquired whether they would be able to preserve their existing practice, under which they admit pupils without the requirement of following a recognised programme. **CION** answered that they are open to study this further and eventually to show flexibility towards **HU** practice.

(f) 'remunerated trainee' means a third-country national who has been admitted to the territory of a Member State for a training period in return for which he/she receives remuneration in accordance with the national legislation of the Member State concerned;<sup>15</sup>

(g) 'volunteer' means a third-country national admitted to the territory of a Member State to participate in a recognised voluntary service scheme;<sup>16</sup>

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<sup>15</sup> **PL, AT and DE** entered a reservation concerning this text since it makes it difficult to distinguish between remunerated trainees and employees. **AT** in addition raised the issue of differences between the EN and DE linguistic versions of this provision providing further confusion. Furthermore, **DE** stated that this ambiguous distinction between remunerated trainees and employees might give rise to abuses. **DE** also noted that, in contrast with Article 3(g) of the ICT Directive proposal, the definition of remunerated trainee in this point does not require higher education qualifications or does not refer to career development purposes. This might thus give rise to a risk of attracting low-skilled third-country nationals. **DE** stated that it is difficult to decide where to draw a line and that therefore the matter requires further legal study. **CION** stated that even if in this definition there is no mention to higher education qualifications and career development, it does not mean that it excludes this kind of trainees since in another part of this proposal, concerning admission criteria, qualifications for remunerated trainees are checked. **LV** mentioned its system concerning education programmes and wondered whether trainees taking part in these programmes should be considered as remunerated or unremunerated. **BE and CZ** mentioned that they have scrutiny reservations concerning this definition.

<sup>16</sup> **BE** expressed a reservation on this definition since they do not have this definition in Belgian legislation. **NL** also expressed a reservation on this definition and insisted on making a reference to national law for such definition.

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↓ 2004/114/EC (adapted)

~~(h)~~ 'voluntary service scheme' means a programme of activities of practical solidarity, based on a  scheme recognised by the Member  State or  the Union  ~~a Community scheme~~, pursuing objectives of general interest;<sup>17</sup>

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↓ new

(i) 'au pair' means a third-country national who is temporarily received by a family in the territory of a Member State in exchange for light housework and taking care of children in order to improve his/her linguistic skills and his/her knowledge of the host country;<sup>18</sup>

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<sup>17</sup> NL found this provision too broad and likely to give rise to abuse, given that volunteers may be used to fill permanent posts. NL proposed to add a wording at the end of the definition as follows:

"~~(h)~~ 'voluntary service scheme' means a programme of activities of practical solidarity, based on a  scheme recognised by the Member  State or  the Union  ~~a Community scheme~~, pursuing objectives of general interest **in which the activities are unpaid and there is no pursuit of profit**".

This way the definition would clearly state that the scheme would only apply to unpaid volunteers. DE on the other hand expressed that it do not see the added value of regulating volunteers at EU level and wondered whether the subsidiarity principle was taken into account here.

<sup>18</sup> AT, CZ, DE and NL stated particular reservations against the inclusion of this category in the proposal. AT presented as well a scrutiny reservation on the definition. In particular AT suggested to reverse the order of the elements in the current definition in order to emphasise first the "linguistic skills and knowledge of the host country" elements in the resulting definition before referring to the duties ("light housework and taking care of children"). CZ asked CION whether the possibility of remuneration for au pairs would not create a risk of confusion with employees. CION answered that what au pairs receive, according to Article 14 of this proposal, that is to say, "pocket money", could not be considered as remuneration as it is understood for employees. DE made reference to the subsidiarity principle and asked CION to explain why there is a need to include this category in the proposal and how this definition and other provisions within the proposal, like for example the signing of an agreement between the au pair and the host family, may precisely help in the fight against abuse. CION answered that au pairs category fosters cultural exchanges and since this cultural exchanges are considered important for the EU it is necessary to have rules at EU level. CION also explained that including this category in the proposal amounts to consider that au pairs have enforceable rights and this fact, even if does not end single-handedly with abuse, would help fighting against it. NL pointed out that there is only "anecdotal" evidence of abuse concerning au pairs and wondered if this "anecdotal" evidence is enough to warrant to include this category in the proposal. Furthermore, NL suggested to take into account its

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↓ 2005/71/EC

(j) ~~(b)~~ 'research' means creative work undertaken on a systematic basis in order to increase the stock of knowledge, including knowledge of man, culture and society, and the use of this stock of knowledge to devise new applications;<sup>19</sup>

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

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↓ 2004/114/EC (adapted)

(l) ~~(e)~~  'educational  establishment' means a public or private establishment recognised by the host Member State and/or whose courses of study are recognised in accordance with its national legislation or administrative practice  on the basis of transparent criteria  for the purposes set out in this Directive;

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↓ new

(m) 'remuneration' means the payment, whatever form it takes, received in consideration for the services performed and being considered under national legislation or established practice as a constituent element of an employment relationship;<sup>20</sup>

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national practice, according to which au pairs may enter the country only through approved organisations.

<sup>19</sup> **AT** put forward a reservation on the DE version of the definition which does not correlate with the EN version.

<sup>20</sup> **BE** and **AT**: scrutiny reservation.

(n) 'employment' means the exercise of activities covering whatever form of labour or work regulated under national law or established practice for and under the direction and supervision of an employer;<sup>21</sup>

(o) 'first Member State' means the Member State which first grants a third-country national an authorisation on the basis of this Directive;

(p) 'second Member State' means any Member State other than the first Member State;

(q) 'Union programmes including mobility measures' means Union funded programmes promoting inward mobility of third country nationals to the Union;<sup>22</sup>

(r) 'authorisation' means a residence permit issued by the authorities of a Member State allowing a third-country national to stay legally on its territory, in accordance with Article 1(2)(a) of Regulation (EC) No 1030/2002 or a long-stay visa;

(s) 'long-stay visa' means an authorisation issued by a Member State as provided for in Article 18 of the Schengen Convention or issued in accordance with the national law of Member States that do not fully implement the Schengen acquis.

↓ 2004/114/EC

~~(g) 'residence permit' means any authorisation issued by the authorities of a Member State allowing a third-country national to stay legally in its territory, in accordance with Article 1(2)(a) of Regulation (EC) No 1030/2002.~~

<sup>21</sup> **BE** and **AT**: scrutiny reservation.

<sup>22</sup> Upon request by **BE**, **CION** clarified that bilateral or multilateral programmes not funded by the EU are not covered by this definition, but also stated that it is open to consider this matter.

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↓ 2005/71/EC (adapted)

~~(c) 'residence permit' means any authorisation bearing the term 'researcher' issued by the authorities of a Member State allowing a third country national to stay legally on its territory, in accordance with Article 1(2)(a) of Regulation (EC) No 1030/2002.~~

~~Article 3~~

~~Scope~~

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

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

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

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

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

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

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↓ 2005/71/EC (adapted)

~~Article 4~~

~~More favourable provisions~~

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

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

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

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

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↓ 2004/114/EC (adapted)

⇒ new

#### *Article 4*

#### **More favourable provisions**

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

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

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

2. This Directive shall be without prejudice to the right of Member States to adopt or maintain provisions that are more favourable to the persons to whom it applies ⇒ with respect to Articles 21, 22, 23, 24, 25 and 29, especially in the context of Mobility Partnerships ⇐ .<sup>23</sup>

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<sup>23</sup> **AT** and **EL** stated that, as far as Mobility Partnerships are concerned, and due to their political nature, their mention belongs in a recital rather than in an article. **DE** stated that currently they apply more favourable admission criteria. **DE** asked **CION** whether there would be possible to continue admitting researchers and students under easier conditions as **DE** does currently. **DE** mentioned that for example, as far as hosting agreements stipulated in Article 9 of the proposal are concerned, a lot of institutes in **DE** are not ready to sign them and **DE** would still like to be able to admit researchers without having to sign hosting agreements. **NL** also insisted, like **DE**, in having the possibility of applying more favourable admission criteria in order to better attract researchers and students. **NL** also mentioned that Article 4(2) should not be limited to the articles mentioned in this proposal. **NL** would also like other articles to be included in order to broaden the possibility of applying more favourable provisions. **CION** answered that they do not like the possibility for Member States to apply parallel schemes. **CION** is of the opinion that admission conditions should be harmonised in the EU, but does not oppose that Member States be able to apply more favourable rights. **CION** also stated that it is open to accept more flexibility concerning admission conditions, but once agreed on a certain level for admission conditions, **CION** does not want fragmentation and is in favour of a single scheme.



## CHAPTER II

### ~~CONDITIONS OF~~ ADMISSION

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↓ 2004/114/EC

#### *Article 5*

#### **Principle**<sup>24</sup>

1. The admission of a third-country national under this Directive shall be subject to the verification of documentary evidence showing that he/she meets the general conditions laid down in Article 6 and the specific conditions in whichever of Articles 7 to ~~11~~ 14 applies to the relevant category.<sup>25</sup>

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<sup>24</sup> **AT**: scrutiny reservation on this article. **AT** stated that there are employment law aspects dealt with in this article. It cannot therefore agree with this article as presently stands. **HU** pointed out that this article should be entitled “Principles”, that is to say, in plural.

<sup>25</sup> **NL** suggested to refer to admission “**on the basis** of this Directive”. **HU** requested clarification as to whether the requirement of “documentary evidence” would preclude Member States from requiring other types of controls such as tests, interviews, control of the knowledge of the language of the host country, etc. **HU** would like **CION** to clarify how “documentary evidence” should be interpreted in this article. **CION** answered that Article 10 of this proposal complements this article since it stipulates the types of evidence that have to be provided. **CION** went on stating that there is no purpose to limit the interpretation to just documents and that language tests and interviews could also fall within the wording “documentary evidence”. **CION** is open to further discuss this.

2. Once all the general and specific conditions for admission are fulfilled, applicants shall be entitled to a long-stay visa and/or residence permit. If a Member State issues residence permits only on its territory and not elsewhere and all the admission conditions laid down in this Directive are fulfilled, the Member State concerned shall issue the third country national the requisite visa.<sup>26</sup>

<sup>26</sup> **DE** opposed this paragraph since it considered it grants third-country nationals a right of admission via the automatic issuance of visas. **DE** claimed that this is contrary to German law since **DE** requests, for example, to check the willingness of the third-country national to return to their countries. These types of criteria are not found in the present proposal. **FR** shared the same concerns as **DE**. **FR** introduced a scrutiny reservation on the automatic granting of long-stay visa. **CZ** also shared concerns with **DE** and **FR**. **CZ** stated that this article is not compatible with its legislation on the granting of visas. This article would not allow Member States to have national parallel schemes. **CZ** opposed this since it has a previous system that works well and do not want this to change. **CZ** also asked **CI** for clarification on the second sentence of Article 5(2) since it is not clear whether the “admission conditions” wording refers to the granting of a permit. **IT** also presented a reservation on this second sentence, supporting **CZ** on the claim that it is not clear enough. **UK** stated that Member States should be able to even check additional requirements, such as the genuine purpose of entry, in order to prevent abuse. **CI** answered that all conditions need to be clearly specified in the proposal in order to be compatible with the rule of law. **HU** and **PL** found this provision redundant in the light of the grounds for refusal stipulated in Article 18 of this proposal. **FR** also gave a scrutiny reservation as far as grounds for refusal are concerned. **CI** answered that Article 5(2) is not superfluous since it confirms that Member States should not arbitrarily refuse entry if all admission criteria are fulfilled, therefore grounds for refusal not being relevant anymore. Member States will remain responsible nonetheless for the assessment of whether a person can be admitted. **EL** presented a reservation on Article 5(2) since it thinks that a reference to the volumes of admission is necessary in the proposal, given that third-country nationals are given the possibility to work in the territory of the Member States. **CI** did not consider this necessary, since the provision on 12-month stay after the end of research/study gives a right to “job-seeking” rather than “access” to the labour market. Member States would therefore retain full control of access to their labour market. **NL**, like **DE** and **CZ**, wanted that parallel national systems could remain in place. **NL** pointed out that the compromise proposed by Council in the ICT Directive proposal and the relevant provisions of the Blue Card Directive provide better guarantees than the text in the present proposal. **NL** suggested the following addition:  
“This Directive shall be without prejudice to the right of Member States to issue residence permits other than those regulated by this Directive for any purpose referred to in Article 2 for third-country nationals who fall outside the scope of this Directive or who do not meet the criteria set out in this Directive”.

**CI** opposed this approach. **CI** supported its position on recent studies, including the 2011 Study on Visa Policy as a Migration Management Tool, which illustrate that a number of Member States admit students and researchers solely on the basis of long-stay visas.

*Article 6*

**General conditions**<sup>27</sup>

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

- (a) present a valid travel document as determined by national legislation; Member States may require the period of validity of the travel document to cover at least the duration of the planned stay;<sup>28</sup>

**CION** stated that it accepts these practices from the Member States, and put forward that it only codifies in the present proposal such practices already present in the Member States as regards the issuing of long-stay visas. This leads to a harmonisation that would allow third-country national to benefit from the same level of rights throughout the EU. **NL** proposal could lead to discrimination based on the type of authorisation issued.

<sup>27</sup> **DE**, **CY** and **AT** considered that the proposal should at least impose the admission conditions set out in the ICT Directive proposal which are a more comprehensive set of admission requirements than in this proposal. This does not make sense since in fact the ICT Directive proposal deals with high-skill workers which can be considered as a lower-risk third-country nationals than the groups dealt with in this proposal. **CION** replied to this that the objective was to respect as much as possible the source text, that is to say, the Directives currently in force. **CION** went on stating that the main purpose of this proposal is not labour-related and this is the reason why **CION** is not mirroring the conditions established in the ICT Directive proposal which context is clearly labour-related. **DE** replied that when the Directives currently in force were adopted the circumstances were different than the circumstances that are currently relevant and that this cannot simply be disregarded. **DE** added that there are additional groups, and that existing groups are becoming mandatory, and that therefore the context has changed. It is therefore justified that conditions for accession and refusal had to be dealt with again. **CZ** requested as an additional condition to provide evidence of an accommodation contract. **NL**, in line with **CZ** proposal, suggested as well to require evidence of having an address on the territory of the Member State concerned. **NL** would however accept this address requirement as to be an optional provision.

<sup>28</sup> **NL** made the following suggestion in order for the proposal to be in line with the approach of the Blue Card Directive:

“(a) present a valid travel document as determined by national legislation **and, if required, an application for a visa**; Member States may require the period of validity of the travel document to cover at least the duration of the planned stay;”

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↓ 2004/114/EC (adapted)

(b) if he/she is a minor under the national legislation of the host Member State, present a parental authorisation  or equivalent  for the planned stay;

(c) have sickness insurance ~~in respect of~~  for  all risks normally covered for ~~its own~~ nationals ~~in~~  of  the Member State concerned;<sup>29</sup>

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↓ 2004/114/EC

(d) not be regarded as a threat to public policy, public security or public health;

(e) provide proof, if the Member State so requests, that he/she has paid the fee for processing the application on the basis of Article ~~2031~~.<sup>30</sup>

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↓ new

(f) provide the evidence requested by the Member State that during his/her stay he/she will have sufficient resources to cover his/her subsistence, training and return travel costs, without prejudice to an individual examination of each case.<sup>31</sup>

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<sup>29</sup> CZ and CY advocated for also inserting “repatriation costs” as a criterion for admission.

<sup>30</sup> NL proposed that long-stay visas should also fall within the scope of this article. SI requested to add an option for Member States to require passports to be valid for at least 3 months following the end of the stay of the third-country national.

<sup>31</sup> FR and CY stated that the concept of “sufficient resources” needs to be clarified. Both FR and CY proposed to include in this proposal, like it is the case in Article 7(1)(b) of the Students Directive currently in force, the requirement for Member States of making public the “minimum monthly resources” required for the third-country nationals to cover their subsistence needs. CION clarified that this issue is covered further down in other provisions of this proposal but it could be reinserted in Article 6(f) if Member States had a strong position on this.

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↓ 2004/114/EC (adapted)

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

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↓ 2005/71/EC (adapted)

### ~~CHAPTER III~~

#### ~~ADMISSION OF RESEARCHERS~~

##### ~~Article 7~~

###### ~~Conditions for admission~~

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

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

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

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

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

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

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

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

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↓ new

#### Article 7

#### Specific conditions for researchers<sup>32</sup>

1. In addition to the general conditions laid down in Article 6, a third-country national who applies to be admitted for the purpose of carrying out research shall:

- (a) present a hosting agreement signed with a research organisation in accordance with Article 9(1) and Article 9(2);
- (b) where appropriate, present a statement of financial responsibility issued by the research organisation in accordance with Article 9(3).<sup>33</sup>

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<sup>32</sup> **UK** and **DE** found the conditions imposed on researchers overly restrictive. Moreover, **UK** was of the opinion that the proposal does not strike a good balance between the need for flexible arrangements, by imposing complex requirements on highly-skilled researchers, and the protection of the labour market of the Member States against abuse.

<sup>33</sup> **FR** considered that this Article 7(1)(b) overlaps with Article 6(f) on sufficient resources and therefore it is redundant. **CION** considered it necessary as Article 7(1)(b) links to Article 8(3) and 9(3) where Member States may require an undertaking by the host organisation to reimburse the costs of return and others.

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

3. Once the checks referred to in paragraphs 1 and 2 have been positively concluded, researchers shall be admitted to the territory of the Member State to carry out the hosting agreement.<sup>34</sup>

4. Applications from third-country nationals wishing to pursue research in the Union shall be considered and examined when the third-country national concerned is residing outside the territory of the Member State to which he/she wishes to be admitted.

5. Member States may accept, in accordance with their national legislation, an application submitted when the third-country national concerned is already in their territory.

6. Member States shall determine whether applications for authorisations are to be made by the researcher or by the research organisation concerned.<sup>35</sup>

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<sup>34</sup> Reservation from **AT** concerning this paragraph. **AT** is not sure what the intentions of this paragraph are and would like to have a explanation from **CION**. **CZ** agreed with **AT** about paragraph 3 being unclear and expressed concerns that it could be interpreted in a different way than originally designed. **CION** agreed that an alternative wording could be considered.

<sup>35</sup> **AT** suggested the following formulation:  
“6. Member States shall determine whether applications for authorisations are to be made by the researcher and/or by the research organisation concerned.”

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↓ 2005/71/EC (adapted)

## ~~CHAPTER II~~

### ~~RESEARCH ORGANISATIONS~~

*Article ~~58~~*

#### Approval ☒ of research organisations ☒

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↓ 2005/71/EC

1. Any research organisation wishing to host a researcher under the admission procedure laid down in this Directive shall first be approved for that purpose by the Member State concerned.
2. The approval of the research organisations shall be in accordance with procedures set out in the national law or administrative practice of the Member States. Applications for approval by both public and private organisations shall be made in accordance with those procedures and be based on their statutory tasks or corporate purposes as appropriate and on proof that they conduct research.  
The approval granted to a research organisation shall be for a minimum period of five years. In exceptional cases, Member States may grant approval for a shorter period.
3. Member States may require, in accordance with national legislation, a written undertaking of the research organisation that in cases where a researcher remains illegally in the territory of the Member State concerned, the said organisation is responsible for reimbursing the costs related to his/her stay and return incurred by public funds. The financial responsibility of the research organisation shall end at the latest six months after the termination of the hosting agreement.



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

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↓ 2005/71/EC (adapted)

5. The competent authorities in each Member State shall publish and update ~~regularly~~ lists of the research organisations approved for the purposes of this Directive ~~⊗~~ whenever a change is made to those lists ~~⊗~~.<sup>36</sup>

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↓ 2005/71/EC

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

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

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<sup>36</sup> **AT**: scrutiny reservation. **AT** had doubts about the added obligation of updating the lists of research organisations every time “a change is made to those lists”. According to **AT** this would impose an excessive administrative burden upon Member States. Therefore **AT** prefers the current text without the addition.

*Article ~~69~~*

**Hosting agreement**<sup>37</sup>

1. A research organisation wishing to host a researcher shall sign a hosting agreement with the latter ~~whereby the researcher undertakes to complete the research project and the organisation undertakes to host the researcher for that purpose without prejudice to Article~~  provided that the conditions laid down in Articles 6 and  7  are met .

<sup>38</sup>

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<sup>37</sup> **DE**, **NL** and **EL** found the list of criteria excessive. **DE** stated that research organisations in its territory do not use hosting agreements and this article could bring some problems for them. **NL** argued, in the same line than **DE**, that the complex admission procedure would have negative effects for the admission of researchers. **EL** also emphasised that the text needs much more flexibility and put forward examples in which so many details complicate things unduly, such as in the case of Brazilian researchers. **CION** replied that the changes introduced in this article do not intend to complicate things. Such changes are based on current practice in Member States and on comments from stakeholders. **CION** is nonetheless open to reduce the amount of details in this article.

<sup>38</sup> **NL** stated that it would like the reference to Articles 6 and 7 in this paragraph to be deleted since it seems to impose on the research organisation an obligation to monitor whether the conditions laid down in those articles are respected. **NL** was of the opinion that this is not something for the research organisations to do.

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↓ new

The hosting agreement shall contain at least the following elements :

(a) the title and purpose of the research project;

(b) an undertaking by the researcher to complete the research project;<sup>39</sup>

(c) confirmation by the organisation that it undertakes to host the researcher so that he or she can complete the research project;<sup>40</sup>

(d) the start and end date of the research project;

(e) information on the legal relationship between the research organisation and the researcher;<sup>41</sup>

(f) information on the working conditions of the researcher.<sup>42</sup>

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↓ 2005/71/EC

2. Research organisations may sign hosting agreements only if the following conditions are met:

(a) the research project has been accepted by the relevant authorities in the organisation, after examination of:

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

(ii) the researcher's qualifications in the light of the research objectives, as evidenced by a certified copy of his/her qualification in accordance with Article 2(~~(d)~~(b));<sup>43</sup>

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<sup>39</sup> NL wished this sub-paragraph to be deleted since it overlaps with other provisions.

<sup>40</sup> NL wished this sub-paragraph to be deleted as well since it overlaps with other provisions.

<sup>41</sup> NL was of the opinion that this description is vague in the NL version of the text.

<sup>42</sup> NL also thought that this description is vague in the NL version of the text. Therefore, NL requested further clarification on sub-paragraphs (e) and (f).

<sup>43</sup> SE requested clarification on the reference to Article 2(b) here. CION admitted that the good reference might be actually Article 3(b) and stated that it would see this issue more in detail and get back with an explanation.

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↓ 2005/71/EC (adapted)

~~(b) during his/her stay the researcher has sufficient monthly resources to meet his/her expenses and return travel costs in accordance with the minimum amount published for the purpose by the Member State, without having recourse to the Member State's social assistance system;~~

~~(c) during his/her stay the researcher has sickness insurance for all the risks normally covered for nationals of the Member State concerned;~~

~~(d) the hosting agreement specifies the legal relationship and working conditions of the researchers.~~

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↓ 2005/71/EC

3. Once the hosting agreement is signed, the research organisation may be required, in accordance with national legislation, to provide the researcher with an individual statement that for costs within the meaning of Article ~~58~~(3) financial responsibility has been assumed.<sup>44</sup>

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

5. Research organisations shall promptly inform the authority designated for the purpose by the Member States of any occurrence likely to prevent implementation of the hosting agreement.<sup>45</sup>

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<sup>44</sup> **AT** submitted a scrutiny reservation. It put forward that the reference to Article 8(3) in this paragraph is not sufficient. **AT** considered that "financial means" and "health insurance" should also be included in this paragraph. It would like to submit a new wording.

<sup>45</sup> **DE** had doubts about the information requirement stipulated in this paragraph. It considered it to impose an extra administrative burden on Member States.