

RELEX - 008

Brussels, 29 April 2003

OPINION

of the Committee of the Regions

of 9 April 2003

on the

Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of studies, vocational training or voluntary service

(COM(2002) 548 final – 2002/0242 CNS)

The Committee of the Regions,

HAVING REGARD TO the proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of studies, vocational training or voluntary service (COM (2002) 548 final – 2002/0242 CNS);

HAVING REGARD TO the decision of the Council of 21 October 2002 to consult the Committee on this matter, under the first paragraph of Article 265 of the Treaty establishing the European Community;

HAVING REGARD TO the decision of its Bureau of 12 March 2002 to instruct the Commission for External Relations to draw up an opinion on this subject;

HAVING REGARD TO its opinion on immigration policy (*Communication from the Commission on a common policy on illegal immigration* (COM(2001) 672 final)) and asylum policy (*Proposal for a Council Directive on minimum standards for the qualifications and status of third-country nationals and stateless persons as refugees or as persons who otherwise need international protection* (COM(2001) 510 final - 2001/0207 (CNS)) adopted on 16 May 2002 (CdR 93/2002 fin) ¹;

HAVING REGARD TO its opinion on the *Green Paper on a Community return policy on illegal immigrants* (COM(2002) 175 final) adopted on 20 November 2002 (CdR 242/2002 fin);

HAVING REGARD TO its opinion on the *Amended proposal for a Council Directive on the right*

to family reunification (COM(2002) 225 final – 1999/0258 CNS) adopted on 20 November 2002 (CdR 243/2002 fin)²;

HAVING REGARD TO its draft opinion (CdR 2/2003 rev. 1) adopted on 17 February 2003 by the Commission for External Relations (rapporteur: **Mr Gustav Skuthälla**, Leader of Närpes Town Council (FIN, ELDR));

WHEREAS establishing common and fair rules on the entry and residence of third-country nationals for the purposes of studies, vocational training or voluntary service will bring benefits to migrants as well as to their country of origin and host country. The aim is to promote the entry and mobility of third-country nationals in the territory of the European Community for the purposes of study;

WHEREAS the objective must be to establish a uniform, fair and open system such that the applicant and the Member State know beforehand how the application will be assessed under normal circumstances;

WHEREAS this proposal for a directive usefully complements the proposals on immigration for the purpose of employment and the right of family reunification, and together they form a set of common rules and a single legal framework;

WHEREAS the Commission must draw the attention of the Council and the Member States to the fact that, if the proposed directive's objective of fair and uniform treatment is to be achieved, the concepts used in the proposal will have to be interpreted broadly and in a way which favours the applicant;

WHEREAS since the proposed directives allow Member States to make exceptions, this should be interpreted to mean that, as a rule, exceptions must be made in favour of third-country nationals. The purpose of the exceptions is not to encourage Member States to make conditions more restrictive than they are in the directives;

WHEREAS the basic principle of uniform treatment of third-country students within Member States must be respected, even though the conditions for admission set by Member States differ from each other. Checks on entry conditions carried out in one Member State must be valid in all Member States;

WHEREAS close attention needs to be paid to the attitudes of local and regional administrations and educational establishments towards the joint directives and their interpretation,

adopted the following opinion at its 49th plenary session of 9 and 10 April 2003 (meeting of 9 April):

The Committee of the Region's views

1. General comments

"Our task is to unite peoples, not states" (**Jean Monnet**)

1.1 The Committee of the Regions would reiterate that the EU is a peace process, born out of the

world conflagration which was extinguished nearly 60 years ago and which threatened to destroy the very soul of Europe. Nor can the historic importance which the ending of the division of the European continent has had in this process be overstated. The foundations for a peaceful Europe in the future have been decisively strengthened;

1.2 However, the pursuit of peace, freedom and security must not be confined to Europe alone. Article 11 of the Treaty on European Union requires the Union:

- to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter; and
- promote international cooperation;

1.3 The Committee of Regions would also point out that Europeans have, for centuries, travelled outside their own countries and outside Europe. Third-country nationals have never studied in educational establishments in the European Community to the extent that they do now. The Committee of the Regions would stress the importance of supporting students who come to Europe from third countries;

1.4 The Commission's proposed directive can certainly be criticised on the grounds that it leaves too much discretion to Member States. The Committee of the Regions would emphasise the need for Member States to commit themselves to the objectives of the directive so that students from third countries can be guaranteed fair and equal treatment.

2. Specific comments

The Committee of the Regions

2.1 **welcomes** the Commission's proposal for a directive on the conditions for entry and residence of third-country nationals for the purposes of studies, vocational training or voluntary service. This completes the Commission's contribution to the preparation of legislative proposals relating to immigration policy, as provided for in the conclusions of the Tampere European Council of 15 and 16 October 1999 and in accordance with Article 63(3)(a) and (4) of the Treaty establishing the European Community;

2.2 **points out** that, when considering legislative proposals on immigration policy, the aim should be to achieve a high level of harmonisation and that this objective supports the approximation of the rights and obligations of third-country nationals lawfully resident in the EU, who also fall within the scope of the proposed directive, to those of EU citizens;

2.3 **takes** a positive view of the admission of third-country nationals for the purpose of training and education. The proposal promotes the entry of students from third countries and will make Europe more attractive in the competition for international students;

2.4 **considers** recognition of the European Union in third countries as a centre of excellence for vocational training and other education to be an important objective. The Committee of the Regions recalls that the European Union has several objectives and development programmes in the area of training and education. The Committee proposes that the objective of promoting the whole of Europe among third-country nationals as a centre of excellence for training and education should also be taken into account in the priorities of the EU's education, vocational training and youth programmes after 2006;

2.5 **shares** the Commission's view that admitting students from third countries to European educational establishments can have a beneficial effect on the quality and dynamism of training programmes in Europe and provide establishments with an incentive to develop high-quality international courses;

2.6 **considers** it important that the directive does not interfere in conditions for admission to educational establishments or the way in which students are admitted to educational establishments or training schemes;

2.7 **stresses** that admission requirements, and thus also language requirements, must be set by the educational establishment concerned. The possibility for a Member State to create restrictions at national level through language requirements adds nothing new to the directive; on the contrary, there is a danger that such restrictions could conflict with the educational establishment's own requirements, which must retain their primacy;

2.8 **notes** that close interaction will be required at national level between educational establishments, local and regional authorities and the authorities issuing residence permits in order to clarify the conditions for entry in a comprehensive manner;

2.9 **calls for** the introduction of statistical methods for the collection of data on students from third countries and for the transfer of such data between different players at national level and between Member States;

2.10 **endorses** the broad and flexible definition of vocational training given in the Commission's proposal;

2.11 **emphasises** that the concept "course of study", which is defined as several consecutive full-time courses, means different things in different Member States. Apart from basic training, studies pursued in an educational establishment may include, for example, further training programmes which although they do not lead to a qualification, do lead to an attestation of competence, which is of considerable importance from the point of view of future employment. Moreover, studies may be part of a larger whole in which third-country nationals return to their home to complete a qualification. The Committee takes the view that the term "course" should therefore be interpreted flexibly. In addition, strict interpretation of the word "full-time" could lead to unfair situations. "Full-time" should be taken to mean that studies are the main reason for entry;

2.12 **points out** that the directive makes no mention of the serious housing shortage, especially in metropolitan areas, or high housing costs, which are major obstacles to study by third-country nationals in Member States. These issues are also discussed in the CoR's opinion on the directive on the right to family reunification. The genuine concern to ensure that third-country nationals have access to European know-how requires that special attention be paid to the student housing situation;

2.13 **stresses** that, as the level of government which is closest to the citizen, local and regional authorities have a key role to play in organising housing, health-care and social services for third-country nationals. The Committee feels that the directive's impact on local and regional authorities' capacity to organise such services should be clarified;

2.14 **thinks** that it is important to make entry for the purpose of voluntary service easier. The Commission's proposal would for example facilitate entry and residence for people participating in international voluntary service schemes;

2.15 **supports** promotion of student mobility between Member States, on condition that there is adequate harmonisation of entry conditions. The Committee of the Regions draws attention to the

fact that Article 6 allows Member States a large degree of discretion as regards issuing residence permits whereas, under Article 7, a third-country national who has been issued a residence permit in accordance with the provisions of the directive and met certain conditions set by the Member State concerned has the unrestricted right to reside in another Member State in order to follow part of a study programme already begun or an additional course of study;

2.16 **considers** it important that Article 18 of the proposed directive gives students an unlimited right to work. However, the Committee does not see any reason why the right to work can be denied to third-country nationals during the first year of their studies. This restriction puts them at a disadvantage in relation to other students. Students from third countries must have the same right to work as other students;

2.17 **considers** it important that time limits for processing applications are specified in Articles 7 and 20. However, the Committee of the Regions believes that the time limits are intended to provide more predictability for the applicant and that they must not be of such length as to create an element of uncertainty, not only for the applicant but also for the institutions involved;

2.18 **finds** the wording of Article 6(3) unclear. According to the Commission proposal, Member States would determine the course providers and the types of course for which a third-country national meeting the conditions of paragraph 1(b) may obtain a "student" residence permit in order to learn a language. The proposal does not make it clear what is meant here by language studies or whether learning a language refers to the Member State's own language(s) or any language whatsoever.

3. The Committee of the Regions' recommendations

Recommendation 1

Article 6(1)(c): Specific conditions for students

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
c) has, if the Member State so requires, sufficient knowledge of the language of the course followed by the student;	e) has, if the Member State so requires, sufficient knowledge of the language of the course followed by the student;

Reason

The possibility for Member States to lay down requirements regarding language knowledge is unnecessary. This provision could, moreover, conflict with the language requirements set by educational establishments for the admission of third-country nationals. The admission requirements of educational establishments must be regarded as sufficient and overriding. They should, of course, take into account the ability of the student to get by in the community where the establishment is located. The possibility for Member States to lay down language requirements adds nothing new to the directive, but could become an obstacle to the pursuit of studies.

Recommendation 2

Article 18, second sub-paragraph: Work by students and unremunerated trainees

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>

Member States may withhold this right for the first year of residence and may withdraw it if the student does not make sufficient progress in his studies.	Member States may withhold this right for the first year of residence and may withdraw it if the student does not make sufficient progress in his studies.
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Reason

The possibility to withhold in full the right to work for the first year of studies and the possibility to withdraw the right to work if the student does not make sufficient progress in his studies reflects an exaggerated fear that the system will be abused. Withholding the right to work from students from third countries for the first year of studies puts them at a disadvantage vis-à-vis other students. It could prove difficult to assess the progress made by student as a ground for refusing to renew his permit to work a limited number of hours a week. This a grey area where it is unclear where to draw the line.

There are also regional considerations to take into account where work takes place alongside studies. Both private and public sector employers could see students from third countries as an important pool of labour during the time they are studying. This consideration should take precedence over restrictions at national level.

Recommendation 3

Article 10: Specific conditions for volunteers

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
Member States may issue a "volunteer" residence permit to a third-country national only if, in addition to the general conditions stipulated in Article 5, he:	Member States may issue a "volunteer" residence permit to a third-country national only if, in addition to the general conditions stipulated in Article 5, he:
a) is not below the minimum age nor above the maximum age set by the Member State concerned;	a) is not below the minimum age nor above the maximum age set by the Member State concerned;

Reason

There are no objective reasons justifying a maximum age limit. Moreover, such an age limit would run counter to the political principles championed by the European Union in the field of vocational training and lifelong learning.

Recommendation 4

Article 15(2)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
2. Member States may withdraw residence permits or visas on grounds of public policy, public security or public health. Public policy	2. Member States may withdraw residence permits or visas on grounds of public policy, public security or public health. Public policy

and public security grounds shall be based exclusively on the personal conduct of the third-country national concerned. Public health shall not be invoked by Member States as a reason for revoking or not renewing a residence permit or expelling the holder solely on the ground of illness or disability suffered after the issue of the residence permit.	and public security grounds shall be based exclusively on the personal conduct of the third-country national concerned. Public health shall not be invoked by Member States as a reason for revoking or not renewing a residence permit or expelling the holder solely on the ground of illness or disability suffered after the issue of the residence permit.
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Reason

Illness or disability can under no circumstances be a criterion for withdrawing a residence permit.

Recommendation 5

Article 20(1)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
1. Without prejudice to Article 7, decisions on applications for admission or renewal shall be adopted and the applicant shall be notified not later than 90 days after the date of the application.	1. Without prejudice to Article 7, decisions on applications for admission or renewal shall be adopted and the applicant shall be notified not later than 90 60 days after the date of the application.

Reason

The 90-day time limit for administrative decisions on applications for entry or for renewals is certainly excessive and creates uncertainty for both the applicant and the institutions involved. By way of example, the 90-day time limit is generally longer than academic holidays. Thus, cases may arise where a student applying for a renewal of his residence permit may, for purely administrative reasons, be forced to leave the territory of the Member State concerned during his studies.

Brussels, 9 April 2003

The President

The Secretary-General

of the

of the

Committee of the Regions

Committee of the Regions

Sir Albert Bore

Vincenzo Falcone

¹ OJ C 278 of 14.11.2002, p. 44

² OJ C 73 of 26.3.2003, p.16

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CdR 2/2003 fin FR-FIN/MAL/JW/ss

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