

*European Economic and Social Committee*

**SOC/111**

**Entry and residence conditions  
of third-country nationals for  
study, vocational training or  
voluntary service**

Brussels, 26 March 2003

**OPINION**

of the European Economic and Social Committee  
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))

On 21 October 2002 the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, 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 Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 March 2003. The rapporteur was **Mr Pariza Castaños**.

At its 398th plenary session of 26 and 27 March 2003 (meeting of 26 March), the European Economic and Social Committee adopted the following opinion by 88 votes to none with five abstentions.

#### **1. Summary of the proposed directive**

1. The draft directive concerns entry and residence conditions for four distinct categories of third-country nationals. The first is students, meaning those entering for higher or professional education purposes. The second is school pupils, meaning those in secondary education and coming through exchange schemes. Thirdly are unremunerated trainees, receiving vocational training without pay. The fourth category comprises volunteers, those coming to perform solidarity-based activities as part of a voluntary programme carried out by a non-profit organisation.
2. The directive will not apply to asylum seekers or persons receiving subsidiary protection, or to persons with long-term resident status.
3. In order to allow persons of any of the four categories to enter, the directive imposes a number of requirements common to all four categories and others which are specific to each of them. The common requirements are, basically, to hold a passport and parental authorisation (where applicable), to have health-care insurance, not to be considered a threat to public policy, and to have paid the fees for processing the residence permit (where required by the Member State).
4. Students (in higher or professional education) must also prove that they have been admitted to an educational establishment, they have adequate resources to cover their costs and, where the Member State so requires, that they possess sufficient language skills and have paid the establishment's enrolment fees.
5. School pupils taking part in an exchange programme must, in addition to the general requirements, be within age limits determined by each Member State, show that they have been admitted to a secondary education establishment, show that they are taking part in an exchange programme, prove that the body running the exchange scheme assumes liability for them and, lastly, that they will be hosted by a family during their stay.
6. In addition to the general requirements, unremunerated trainees must be covered by a training contract with an enterprise or training establishment, must have sufficient resources to meet their subsistence costs and, if the Member State so requires, have adequate knowledge of the language.
7. In addition to the general requirements, volunteers must be within age limits determined by each Member State, hold a contract with the organisation running the voluntary programme specifying the volunteer's tasks and the resources provided to cover subsistence costs, be covered by liability insurance

for their activities and receive an introduction to the host State's language, history and political and social structures.

8. Mobility within the European Union is envisaged only for students. Students holding a residence permit for one Member State may apply for one in another Member State in order to follow part of the studies already commenced, or to follow another course complementing the one completed.
9. The draft directive states that each Member State is to determine the subsistence resources which students and unpaid trainees must have.
10. Health-care insurance is required for all four categories of person: in the case of students, the draft directive states that insurance which may be provided by the establishment in which they are enrolled is sufficient.
11. Any Member State may limit exchange schemes to pupils from countries which reciprocate by admitting nationals from that Member State.
12. The residence permits issued are different in each case. Student permits are to be for one year and renewable provided the initial conditions of issue continue, although renewal is subject to demonstrating progress in the studies undertaken. Permits for exchange pupils are for a non-renewable one year period, as are those for unremunerated trainees and volunteers. Only permits for trainees may be renewed on an exceptional basis.
13. Member States which have issued permits may withdraw them if the holder no longer meets the initial conditions, or on grounds of public policy.
14. The draft directive regulates entitlement to paid work, whether employed or self-employed, specifying that this must take place outside study time and allowing Member States to set maximum working hours within a range of 10 to 20 hours a week. It also provides that Member States may withhold this right during the first year of residence and withdraw it if students fail to make sufficient progress in their studies.
15. Procedural guarantees are provided regarding submission of permit and renewal applications. Grounds must be given in any decision to refuse, refuse to renew, or withdraw a permit, and such decisions may be challenged in the courts.
16. The draft directive also provides for a fast-track procedure for issuing student and pupil exchange permits. This may be done by formal agreement between the appropriate Member State authority and the educational establishment or organisation operating the exchange scheme.

## **2. General comments**

1. With this proposal for a directive, the European Commission is continuing to fulfil the mandate given by the Tampere European Council, which declared a common immigration policy for the EU to be a political objective. The aim of the directive is to ensure proper legal management of migration flows, opening

legal channels for the entry of persons for study, training and voluntary purposes. The EESC welcomes the Commission's intention to legislate on legal channels of immigration. In all its opinions, the Committee has criticised the Council regarding the general thrust of its decisions, and the lack of a clear undertaking for immigration to be channelled through legal and transparent arrangements. In its opinion on illegal immigration<sup>1</sup>, the EESC called for work to be speeded up on common EU legislation providing for legal immigration, guaranteeing fair treatment for immigrants, and promoting integration-oriented policies and social attitudes.

2. The EU's foreign policy increasingly embraces cooperation and association programmes with the developing countries. Training young people from these countries in the EU involves investment in human resources which the Member States should foster under these cooperation programmes. The Erasmus World programme, which promotes quality higher education and cooperation with third countries, should be used to develop closer links and lay the foundations for better cooperation between the EU and students' countries of origin<sup>2</sup>. There is also a need to encourage recognition of academic and professional qualifications<sup>3</sup> in order to facilitate student mobility.
3. The EESC generally supports the content of the proposed directive. It opens the door to suitable common EU legislation for managing migration flows of students, trainees and volunteers.
4. The EESC sees the mobility granted to students, to complete their studies in Member States other than those granting the original permit, as a positive step forward. Free movement for students will allow them to enhance their education, and will bring them closer to enjoying equal rights with European students.
5. The EESC also warmly welcomes the right to work up to a maximum of 20 hours a week, and during holiday periods, which the draft directive grants to students. Students need basic economic resources in order to continue with their studies; a limited amount of work experience will also be beneficial to their education and familiarise them with European host societies.
6. The proposed approach regarding procedural guarantees is also appropriate, notwithstanding the comments made below.
7. The first aspect of the proposal to which the EESC would wish to contribute with its views is a tangential one: the opportunity for students to stay in the host country after completing their studies. It is no secret that several Member States have gone so far as to amend their immigration laws to facilitate this, and that there is a growing interest in retaining them as workers given the lack of skilled manpower in some sectors. The phenomenon may expand considerably, generating a dangerous brain drain away from developing countries.
8. The draft directive refers to this issue in the explanatory memorandum<sup>4</sup>, pointing out that the brain drain must not be amplified, but arguing that this is not the business of the directive under discussion but rather of the directive on

the entry of migrants for employment purposes<sup>5</sup>. The EESC would emphasise a basic idea: training in Europe for third-country young people should constitute a factor for development of those countries, not a problem<sup>6</sup>.

9. This is a complex issue, where the right to employment of an individual who has completed their studies must be reconciled with the concern of the country of origin not to lose its most qualified citizens. Member States should, in cooperation with the countries of origin, take steps to help students (once their studies are completed) find employment in their countries of origin, by means of cooperation and association programmes.
10. The Committee also proposes that the European Commission introduce a system for assessing how many persons, whose studies were funded from their countries of origin, are now working in the EU. This should provide a picture of the human capital which thus flows from the less developed countries towards the EU. On the basis of this estimate, the EU Member States should respond by helping these countries in their development efforts, more specifically by contributing to the funding of their educational systems.

### 3. Specific comments

#### 1. Entry and residence conditions

1. Articles 6(1)(b) and 9(b) stipulate that the Member States will define the resources students and unremunerated trainees respectively must have. In the Committee's view, it should be added that these resources must be determined bearing in mind that they are entitled to work part-time and during holidays (subject to the limits indicated in Article 18).
2. The draft directive explains that students who are insured by virtue of being enrolled with an establishment are considered to hold the required health-care insurance (Article 6(b)). The EESC believes the same should apply to exchange pupils, unremunerated trainees and volunteers; in all cases, the host establishment or company can assume liability for their health-care insurance.
3. Knowledge of the course language, which Member States may require of students (Article 6(1)(c)), should be assessed according to flexible criteria. For example, language-learning could proceed in parallel with studies, subject to an adequate initial level.
4. The proposal states that trainees must have sufficient resources to cover their subsistence expenses (Article 9(b)), in the same way as for students. The EESC feels that it should be added that such resources may, in the case of trainees, be provided by the company or training centre concerned. This would enable people from less developed countries to enter for training periods financed by development cooperation funds provided by bodies, companies and training centres. Such an arrangement must not involve payment for work. The resources should be directed to the organisation or institution running the cooperation programme.

## 2. **Residence permits**

1. Under Article 10 of the proposal, concerning residence permits for volunteers, the Member States are to set a minimum and a maximum age. The EESC would point out that older people are increasingly involved in carrying out voluntary work: the reference to a maximum age should therefore be removed.
2. With respect to the period for which residence permits are granted to students, a possible problem arising from matching the permit duration to the study period should be avoided. Article 11(1) stipulates that the permit is to be issued for a period of one year, except where the course of study is less than one year. The Committee would point out that in several Member States, what is considered to be a one-year course covers a period of nine months: a restrictive interpretation of this article should not lead to nine-month permits being issued not covering holiday time, as this would mean removing the opportunity to work during the holiday period, as provided in Article 18.
3. The condition that "acceptable progress" must be made in studies in order to renew students' permits must be accompanied by extensive safeguards against arbitrary action by Member States. Article 11(2)(d) should guarantee that any decision is based on the opinion of the educational establishment and, consequently, on academic grounds.

## 3. **Rights**

1. The draft directive grants students the right to work, under conditions which, as set out in the general comments above, the EESC considers appropriate.
2. The EESC urges that the directive grant unremunerated trainees the right to work part-time and during holiday periods on the same footing as students. There is no justification for the Member States being able to restrict this possibility (Article 18).
3. Measures must be introduced to prevent unpaid trainees receiving training in a company from being exploited for work purposes. No company should be allowed to use trainees illegally as unpaid labour. It is right to stipulate that they may not carry out paid work in the same enterprise where they are being trained (Article 18). Employees' trade union representatives should also be informed of the situation of these unremunerated trainees.

## 4. **Procedure**

1. The EESC warmly welcomes the scope that Article 19 gives the Member States to allow, by way of exception, other procedures for residence permit applications, and to allow regularisation where considered appropriate.

2. It is important that fast-track procedures be implemented by means of agreements. The Erasmus World programme will provide new opportunities to foster agreements of this type between EU and third country educational establishments<sup>7</sup>.

## 5. Procedural guarantees

1. The EESC considers the proposed maximum period of 90 days for administrative decisions on admission or renewal to be excessive: the time limit should be no more than 60 days.
2. The draft directive grants the right of individuals to apply to the courts for review of decisions. However, as the EESC has argued in previous opinions<sup>8</sup>, such appeals must have suspensory effect on administrative decisions, where they involve amending, withdrawing or refusing to renew a residence permit.

Brussels, 26 March 2003.

The President

The Secretary-General

of the

of the

European Economic and Social Committee

European Economic and Social Committee

**Roger Briesch**

**Patrick Venturini**

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<sup>1</sup> EESC opinion in OJ C 149 of 21.6.2002 (rapporteur: **Mr Pariza Castaños**).

<sup>2</sup> EESC opinion on Erasmus World (CESE 285/2003 of 26.2.2003) (rapporteur: **Mr Rodríguez García-Caro**).

<sup>3</sup> EESC opinion in OJ C 61 of 14.3.2003 (rapporteur: **Mr Ehnmark**).

<sup>4</sup> Point 1.4.

<sup>5</sup> EESC opinion in OJ C 80 of 3.4.2002 (rapporteur: **Mr Pariza Castaños**).

<sup>6</sup> EESC opinion on the Communication from the Commission on a Community immigration policy, OJ C 250 of 17.9.2001 (rapporteur: **Mr Pariza Castaños**; co-rapporteur: **Mr Mengozzi**).

<sup>7</sup> EESC opinion on Erasmus` s World (CESE 285/2003 of 26.2.2003) (rapporteur: **Mr Rodríguez García-Caro**).

<sup>8</sup> EESC opinion on the Proposal for a Directive on the status of third-country nationals who are long-term residents, OJ C 36 of 8.2.2002 (rapporteur: **Mr Pariza Castaños**).

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