

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

(2003/C 45 E/02)

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(Submitted by the Commission on 7 October 2002)

EXPLANATORY MEMORANDUM

1. Context

1.1. In accordance with the objectives set by the Scoreboard to review progress in the creation of an area of freedom, security and justice in the European Union ⁽¹⁾, the European Commission is presenting a proposal for a directive on the conditions of entry and residence of third-country nationals for the purpose of studies, vocational training or voluntary service. This proposal completes the set of initiatives already presented on immigration for the purposes of employment ⁽²⁾ and family reunification ⁽³⁾ to harmonise national legislation on conditions of entry and residence of third-country nationals with a view to establishing a full legal framework governing admission on the basis of the purpose of the stay. It has been decided that there will not be a proposal governing the admission of third-country nationals for other purposes not provided for in the other proposals for directives, to constitute the parallel to Directive 90/364/EEC of 28 June 1990 on the right of residence ⁽⁴⁾ of Community nationals not enjoying the right under other provisions of Community law. The fact is that the admission of the relatively low number of people falling in this category can be dealt with adequately by the Member States' domestic law at the current stage of approximation of immigration legislation. If the need for common rules is felt in the future, the Commission will be able to exercise its right of initiative and amplify the legislation. The Commission has now presented all the immigration policy proposals needed for the implementation of Article 63(3)(a) and (4) of the Treaty establishing the European Community, as amended by the Amsterdam Treaty. The mandate given by point 20 of the conclusions of the Tampere European Council on 15 and 16 October 1999 ('The European Council acknowledges the need for approximation of national legislations on the conditions for admission and residence of third country nationals [and] requests to this end rapid decisions by the Council, on the basis of proposals by the Commission') has thus been carried out on the Commission's side.

1.2. The specific feature of migration for the purpose of studies, vocational training or voluntary service is that it is by definition temporary and that it does not depend on the labour market situation in the host country. It constitutes a form of mutual enrichment for the migrants who benefit directly from it, both for their country of origin and for the host country, while helping to improve mutual familiarity between cultures. The admission of third-country nationals for training purposes has therefore traditionally been looked on favourably, particularly as regards students in higher education, as can be seen in the Resolution on the admission of third-country nationals to the territory of the Member States for study purposes ⁽⁵⁾ adopted by the Council on 30 November 1994 in the justice and home affairs cooperation established by the Maastricht Treaty. Certain Member States apply policies that are more and more attractive to students from third countries.

⁽¹⁾ Six-monthly updating, first half of 2002, COM(2002) 261, p. 23.

⁽²⁾ Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities (COM(2001) 386).

⁽³⁾ Proposal for a Council Directive on the right to family reunification (COM(1999) 638) and amended proposals (COM(2000) 624 and COM(2002) 225).

⁽⁴⁾ OJ L 180, 13.7.1990, p. 26.

⁽⁵⁾ OJ C 274, 19.9.1996, p. 10.

- 1.3. The number of students benefiting from international exchanges is now greater than ever, and demand for international education and student mobility is growing constantly. One of the objectives of European Community action on education and international relations is to promote the Member States together as a world centre of excellence for education and to share knowledge better around the world as a means of helping to disseminate the values of human rights, democracy and the rule of law. In their Joint Declaration at Bologna on 19 June 1999, the Education Ministers of 29 European States declared that 'The vitality and efficiency of any civilisation can be measured by the appeal that its culture has for other countries. We need to ensure that the European higher education system acquires a world-wide degree of attraction equal to our extraordinary cultural and scientific traditions'. As certain experiences have shown, welcoming large numbers of third-country nationals into Europe's educational establishments, especially at master's and doctorate levels, can have a beneficial effect on the quality and dynamism of Europe's own training systems. Establishments will have an incentive to develop more and more high-quality courses meeting the demand for internationalisation in education and for greater student mobility. This proposal for a directive has been designed to ensure that the harmonisation of national legislation in the Member States governing the conditions of entry and residence of third-country nationals for the purpose of studies contributes to the attainment of these objectives by promoting their admission. It thus makes an indirect contribution to the objective of developing quality education set by Article 149 of the EC Treaty and, along with the proposal for establishing the Erasmus World programme ⁽¹⁾, fits into the strategy of stepping up cooperation with third countries in higher education proposed by the Commission in its communication of 18 July 2001 ⁽²⁾.
- 1.4. Many Member States more and more often provide certain third-country nationals with the opportunity to remain after their training as workers, at least for a limited period, so as to remedy shortages of skilled manpower. Changes from student to worker status are envisaged for third-country nationals in the proposal for a directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities ⁽³⁾, Article 5 of which allows residence permit applications to be lodged 'directly in the territory of the Member State concerned, if the applicant is already resident or legally present there'. But the wish to promote the admission of third-country nationals for the purpose of studies requires the Union and the Member States to take flanking measures to avoid amplifying the South-North brain drain, which has already acquired unprecedented proportions. These measures form part of the partnership with countries of origin called for by the conclusions of the Tampere European Council among other measures needed for the establishment of a comprehensive policy on migration and should deal by way of priority with action on the commitment given by the Community and the Member States in the third subparagraph of Article 13(4) of the Cotonou Agreement of 23 June 2000 that they would see that in vocational training schemes in the Member States national and regional cooperation programmes would be oriented towards vocational integration of ACP nationals in their country of origin.
- 1.5. The wish to promote the admission of third-country nationals for the purpose of studies or vocational training must be accompanied by a constant concern to safeguard public policy and public security. On this point the proposal contains provisions that are broad enough to leave the Member States with the room for manoeuvre they need to refuse admission or terminate the stay of a third-country national who constitutes a threat to public policy and public security (Articles 5 and 15(2)). The fact that the various types of residence permit covered by the proposal have a general maximum period of validity of one year, except in special cases, or must be renewed every year will make it easier for Member States to exercise strict control.

⁽¹⁾ Proposal for a European Parliament and Council Decision establishing a programme for the enhancement of quality in higher education and the promotion of intercultural understanding through cooperation with third countries (COM(2002) 401).

⁽²⁾ COM(2001) 385.

⁽³⁾ COM(2001) 386.

2. Background and compatibility of the proposal with other Commission initiatives

- 2.1. The objective pursued by this proposal for a directive has already been covered, in whole or in part, by a number of European instruments or initiatives. Apart from the 1994 Council Resolution on the admission of third-country nationals for study purposes (see point 1.2, *supra*), the 1997 Commission proposal for a Council Act establishing the Convention on rules for the admission of third-country nationals in the Member States⁽¹⁾ contained provisions relating to admission for study and vocational training purposes and other purposes, but no action was taken on it because of the entry into force of the Amsterdam Treaty.

- 2.2. The Commission asked the International Centre for Migration Policy Development (ICMPD) for a comparative law study by way of input for the preparatory work on this proposal for a directive. The findings were published by the Official Publications Office of the European Communities in 2001 as 'Admission of third country nationals to an EU Member State for the purposes of study or vocational training and admission of persons not gainfully employed'. The Commission also engaged in wide-ranging consultations on the basis of an internal discussion paper. Apart from bilateral consultations with delegations of officials from administrative bodies in the Member States, the opinions of many representative organisations in the fields of education, vocational training, voluntary service and migration and of the social partners were sought both in Europe and in its Member States. The results helped make it possible to enrich and improve the proposal substantially on many points.

3. Objectives and overview of the proposal

- 3.1. The proposal distinguishes four categories of third-country nationals: students, school pupils, unremunerated trainees and people doing voluntary service (volunteers). Admission for study purposes mainly concerns higher education, as it is well known that this is where international mobility is most common and admission for the purpose of vocational training concerns the acquisition of occupational skills in a public- or private-sector enterprise or vocational training establishment. Provisions have been made in the proposal for a directive to promote secondary school pupil exchanges between the European Union and non-member countries to stimulate the discovery of European culture by young people from non-member countries, especially as they might subsequently be tempted to return to their host Member State to pursue their studies in higher education. The proposal also contains provisions for volunteers, who sometimes have difficulty obtaining a residence permit since, as they are not workers (being unremunerated), nor students (not being enrolled in an educational establishment), they are sometimes regarded as not belonging to any specific category of migrants.

- 3.2. Apart from the general conditions for admission, the proposal lays down the specific conditions for admission of each of the four categories. They have been drafted as objectively as possible to promote admission on the grounds set out at points 1.2 and 1.3 while preserving the Member States' room for discretion. The main criterion for admission of third-country nationals for purposes of study, vocational training or voluntary service must be, apart from an assurance that they have adequate resources to cover their needs during their stay, admission to an educational establishment, participation in a pupil exchange scheme programme, a vocational training contract or participation in a voluntary service scheme, as the case may be. As regards the resources criterion, it is proposed that for students and trainees the Member States should publish the minimum monthly financial resources required. The resources of school pupils and volunteers are a matter for their host family or voluntary service organisation, which must meet their needs.

⁽¹⁾ OJ C 337, 7.11.1997, p. 9.

- 3.3. Mobility of students between Member States must be facilitated so that the European Union can reflect the reality of the growing internationalisation of education. Two situations need to be distinguished: first, the situation of third-country nationals admitted to the European Union for the purpose of studies, in respect of whom Article 7 of this proposal acknowledges, once they have been admitted a first time to a Member State, the right to reside in another Member State to pursue part of the course they have started or to take a further course, provided they meet specific conditions; and second, the situation of third-country nationals who already reside in the European Union for whom this proposal contains no provisions, since Article 16(1) of the proposal for a directive on the status of third-country nationals who are long-term residents allows them, once they have acquired long-term resident status (i.e. after five years' uninterrupted lawful residence), the right to reside in another Member State for study or vocational training purposes. The proposal also contains a provision to facilitate the admission of third-country nationals participating in Community programmes to encourage mobility towards or within the European Union (Article 5(2)).
- 3.4. To reflect the cost of training and the fact that more and more people have to work to help pay for it, the proposal gives students generally and unremunerated trainees limited access to the employment market up to a maximum number of weekly hours to be set by each Member State at between 10 and 20 hours, while allowing the Member States to insist that those concerned make a declaration of their working activity so that compliance with this limit can be monitored.
- 3.5. The proposal also contains procedural provisions. In particular, it allows applicants other than holders of short-stay visas to apply for their residence permit locally. Apart from the maximum time allowed for issuing residence permits and visas, which, assuming the application is fully in order, is 90 days, the proposal provides a basis for the good practices of certain Member States which expedite the procedures for admitting students and school pupils and provides for their generalisation across the European Union by means of agreements to be concluded between the Member States' immigration authorities and educational establishments or exchange organisations. To promote in third countries education and vocational training possibilities available in Europe, Member States are asked to make efforts at transparency so as to ensure that third-country nationals can have access in their countries of origin to information about education and vocational training establishments and programmes open to them in the Member States and the conditions and procedures for admission to the territory.

4. Choice of legal basis

- 4.1. The legal basis for the proposal has been selected on the basis of its purpose, which is to lay down the conditions and procedures for entry and residence by third-country nationals in the territory of the Member States for the purpose of studies, vocational training or voluntary service. It does not concern the conditions for admission to education establishments or vocational training schemes, which remain the responsibility of the Member States and possibly of the relevant establishments, authorities or firms themselves. This directive will not require the Member States to open up their education or vocational training schemes to third-country nationals where they are currently excluded, nor to establish one or other kind of vocational training scheme to which it applies which they do not already have (such as on-the-job training in firms). Article 63(3)(a) and (4) of the EC Treaty, as amended by the Amsterdam Treaty, which entered into force on 1 May 1999, provides that the Council is to adopt measures relating to immigration policy in the following areas: '(a) conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion', and this has been taken as the legal basis.

- 4.2. This proposal must therefore be adopted by the procedure of Article 67 of the EC Treaty: the Council acts unanimously on a proposal from the Commission or the initiative of a Member State after consulting the European Parliament. Since it is based on Title IV of the Treaty, Denmark will not participate in the adoption of the directive, which will not be binding on it or applicable to it by virtue of Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Union and EC Treaties. Nor will it apply to the United Kingdom or Ireland by virtue of Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, unless they decide otherwise in accordance with the procedure determined by that Protocol.

5. Subsidiarity and proportionality

- 5.1. The European Community does not have exclusive powers under Title IV (Visas, asylum, immigration and other policies related to free movement of persons) of the EC Treaty and therefore, in accordance with the subsidiarity and proportionality principles, can act only if and to the extent that the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community, and the Community action may not go beyond what is necessary to achieve the objectives of the Treaty. The proposal for a directive meets these requirements.
- 5.2. The conditions of entry and residence of third-country nationals for the purpose of studies or vocational training currently diverge widely between the Member States. The first objective of this directive, which is to establish a harmonised Community legal framework for the conditions for entry and residence of third-country nationals in the territory of the Member States for a period exceeding three months for those purposes, and for the procedures for issuing residence permits and visas allowing them to enter and reside in the Member States for those purposes, cannot be sufficiently achieved by the Member States. Moreover, the promotion of the European Union as a whole as a world centre of excellence for education and vocational training, to which this proposal contributes, can obviously be better attained at Community level than at national level.
- 5.3. The proposed instrument is a directive that lays down general principles and leaves it up to the addressee Member States to choose the most appropriate form and methods for implementing many points of it in their domestic law in the domestic context. The proposal refers to Member States' own rules and regulations and administrative practice as regards the definition of establishment of higher, professional or secondary education or vocational training and requirements for accreditation or similar and the determination of the language schools and courses for which third-country nationals can apply. Certain conditions, such as proof of payment of enrolment fees demanded by the establishment and fees for processing applications for residence permits and applicants' language skills, are not mandatory but left to the discretion of the Member States (Article 5(1)(d), Article 6(1)(c) and (d) and Article 9(c)). Account has been taken of the fact that in some countries health-care insurance is available automatically to those who enrol at an educational establishment (Article 6(2)). Lastly, the financial resources that students or unremunerated trainees may be required to have are not determined by the directive, the Member States simply being required to publish the minimum amount that they determine. Out of the same concern for flexibility, other conditions are not determined by the directive but left to the Member States' discretion (such as those relating to age limits of school pupils and volunteers). As regards fast-track procedures, the directive likewise merely sets a general framework within which the relevant authorities of the Member States and educational establishments and pupil exchange organisations may agree on procedures for issuing residence permits, in particular the shortened time-spans applicable here.

ARTICLE-BY-ARTICLE COMMENTARY*Chapter I**General provisions**Article 1*

The purpose of this proposal is to determine the conditions for entry and residence of third-country nationals in the territory of the Member States for the purposes of studies, vocational training or voluntary service and rules concerning the procedures for issuing residence permits.

Article 2

This Article defines the concepts used in the proposal where this is necessary. The definitions are directly inspired by those used in other instruments of Community law.

- (a) 'Third-country national' means people who do not have the nationality of a Member State of the European Union and stateless persons;
- (b) 'Student' mainly means people admitted to an establishment of higher education. Since the proposal covers admission for the purpose of vocational training generally, professional education, which is a common form of vocational training and can be useful to third-country nationals when it is not available in their countries of origin, is also within the scope of the proposal, even if it is not at the higher education level. But outside professional education, admission of third-country nationals at lower education levels is not covered by the proposal, except as regards secondary school pupils travelling on exchange schemes, which should be encouraged as a means of helping young people from third countries discover the culture of the European Union and its Member States;
- (c) 'Course of study' means full-time courses and therefore excludes, for instance, evening classes, for which the Member States do not generally admit third-country nationals as students. Moreover, the course must be followed for the purposes of obtaining the qualification that is issued at the end of it, which excludes those attending as guest students (Gasthörer, auditor, etc.);
- (d) 'School pupil' means people admitted to an establishment of secondary education. The proposal covers mobility of such people only in the context of exchange schemes run by specialised organisations accredited for the purpose by the relevant Member State in accordance with Article 8(1)(c) but not individual mobility, which remains subject to the domestic law of the Member States;
- (e) 'Unremunerated trainee' means people receiving unremunerated vocational training under a training contract in accordance with Article 9(a);
- (f) 'Vocational training' means all forms of vocational training, including basic vocational training for the acquisition of vocational skills, refresher training for the enhancement of vocational skills (further training and specialisation) and vocational conversion, provided the course is a full-time one. The entities in which the training can be followed are defined in broad terms to take account of the diversity of vocational training systems in the Member States, which vary even more widely than education systems. They include public- or private-sector vocational training schemes accredited or financed by the Member States in accordance with their regulations or administrative practice, with the exception of bodies treated under point (g) as educational establishments, and public- or private-sector enterprises of whatever legal status, size or line of business, including non-profit bodies;

- (g) 'Establishment' means both public establishments and private establishments that are accredited or financed by Member States. For the definition of higher education establishments and professional and secondary education and for the rules governing accreditation (in the broad sense of recognition or even of registration with the authorities), each Member State's domestic law or administrative practice will apply, as is the usual case in Community instruments relating to education and vocational training (e.g. Parliament and Council Decision 253/2000/EC of 24 January 2000 establishing the second phase of the Community action programme in the field of education 'Socrates' ⁽¹⁾). It is proposed that professional training bodies be treated in the same way as educational establishments since they provide the pupils registered in them with the same kind of courses. These are entities (sometimes known as professional schools in some Member States) that for whatever reason (for instance, they do not depend on an Education Ministry) are not formally regarded as being educational establishments. But there is no reason for treating these establishments differently from educational establishments if they provide the same kind of courses and their relationship with people following these courses is based on enrolment in the establishment rather than a training contract as in the case of unremunerated trainees;
- (h) 'Voluntary service scheme' is defined by reference to Parliament and Council Decision 1686/98/EC of 20 July 1998 establishing the Community action programme 'European Voluntary Service for Young People' ⁽²⁾ and the Council of Europe Convention of 11 May 2000 on the Promotion of a Transnational Long-term Voluntary Service for Young People. A 'volunteer' means a person engaging in an activity of practical solidarity in relation to others and for his personal enrichment. The activity must be gainful neither for the organisation for which the person concerned is working nor for the person concerned and may not be remunerated, though benefits in kind and pocket money are not regarded as remuneration.

Article 3

1. There are certain instruments governing the conditions of entry and residence of third-country nationals for the purposes covered by the proposal. The Commission's intention in proposing this Directive is not to exclude these instruments, which will continue to apply to third-country nationals if they are more generous to them.
2. This paragraph allows Member States to maintain or introduce provisions that are more favourable to third-country nationals, provided they are compatible with the Directive. They might wish, for instance, to extend the rule against nationality discrimination to the third-country nationals to whom the Directive applies.
3. Paragraph 3 excludes certain categories of people from the scope of the Directive:
 - (a) The exclusion of asylum-seekers and persons enjoying temporary or subsidiary protection does not concern their right to education or vocational training under the relevant (proposals for) directives but the fact that they cannot use this Directive as a basis for applying for a change of status (e.g. from asylum-seeker to student), such changes being possible only under the more generous provisions of each Member State's domestic law.
 - (b) Third-country nationals who are members of the family of a Union citizen who has exercised his right to free movement in the Community are excluded from the scope of this Directive as they indirectly enjoy the right to free movement available to Community nationals.

⁽¹⁾ OJ L 28, 3.2.2000, p. 15.

⁽²⁾ OJ L 214, 31.7.1998, p. 1.

- (c) Third-country nationals enjoying long-term resident status in a Member State are excluded from the scope of this Directive since it is proposed that their right to reside in other Member States for study or vocational training purposes is covered by Article 16(1)(b) of the proposal for a Directive on the status of third-country nationals who are long-term residents.

Chapter II

Conditions for entry and residence

Article 4

The purpose of this Article is to ensure the effective application of the approximation of national legislation by this Directive by providing that the Member States may admit third-country nationals who are within its scope only if the proper residence permit has been issued in accordance with its provisions.

Article 5

1. Article 5 lays down the general conditions for admission to be met by third-country nationals under this proposal in addition to the specific conditions for whichever of the Article 6 to 11 categories they belong to:

- (a) apart from the usual documents (passport or equivalent travel document), it is provided that minors in the domestic law of the host Member State must have a parental authorisation for the planned stay;
- (b) the reason for this condition is that is a basic requirement in the same way as for most of those who enjoy free movement in Europe;
- (c) this traditional requirement of immigration law has been drafted in flexible terms, leaving it to the Member States to determine the documents that are needed so as not to impose requirements (such as presentation of a certificate of good conduct or an extract from the criminal record) in relation to third countries where they may be difficult or even impossible to meet if the documents do not exist;
- (d) for the sake of flexibility, this condition is not mandatory and only such Member States as wish to do so will have to impose it.

2. Paragraph 2 logically enough seeks to facilitate the admission of third-country nationals participating in Community programmes such as Socrates in education, Leonardo da Vinci in vocational training, Youth in voluntary service or other more specific programmes (such as Alpha or Alban for Latin America, Scholarship 2000 for China and so on). This will be all the more important as the Commission is proposing a new Community programme, 'Erasmus world', to promote the admission of third-country nationals for study purposes in the Member States by making grants⁽¹⁾. The point of facilitating the issuance of residence permits and, where required, visas is that the Member States must issue them in good time for the holder to be able to take part in the activities covered by the Community programme without delays. The effect of Article 7 of this proposal and Article 16 of the proposal for a Directive on the status of third-country nationals who are long-term residents is that this provision will concern only third-country nationals (in particular nationals of applicant countries) applying for their first admission to a Member State and to those who reside in a Member State and wish to receive training in another Member State before acquiring long-term resident status.

⁽¹⁾ Proposal for a Parliament and Council Decision establishing a programme for the enhancement of quality in higher education and the promotion of intercultural understanding through cooperation with third countries (Erasmus World 2004-2008) (Document COM(2002) 401).

Article 6

1. Article 6 determines the specific conditions for the admission of third-country nationals for study purposes.
 - (a) The first basic condition is admission to an establishment of higher or professional education within the meaning of Article 2(g) to follow a course within the meaning of Article 2(c). Admission to an establishment is the preliminary condition for issuance of a residence permit. The condition that third-country nationals must meet when their permit or visa is issued is that they must be admitted though not necessarily enrolled, as enrolment documents are often handed over when the student actually arrives. The student could then prove that he meets the condition by presenting a letter of definite admission without having to present a certificate of enrolment. The provision also allows the temporary stay of third-country nationals who have been admitted by an establishment subject to passing an entrance test or obtaining a decision on the equivalence of their foreign qualification.
 - (b) The second condition relates to the resources that students may be required to have before being allowed to enter and reside in the Member States. Students must provide proof that they have sufficient resources to cover their subsistence, study and return travel costs throughout their stay. This provision has been drafted flexibly so as to leave the Member States with room for discretion as to the manner in which students may prove that they meet this condition. No minimum amount is proposed in the directive, this being left for a decision by each Member State on the basis of the resources that people studying normally have to have there. This amount will constitute a point of reference for examining each candidate's personal situation (e.g. admission to low-cost university accommodation, resources in kind such as accommodation or food that the candidate may enjoy free of charge from family members residing lawfully in the Member State concerned). From the time of the first renewal of the 'student' residence permit the Member States are to have regard, when assessing the student's resources, to any income from work done during the stay in the country within the limits set by Article 18.
 - (c) and (d) The last two conditions — sufficient knowledge of the language of the course and prior payment of enrolment fees for the educational establishment — are not mandatory but are left to the discretion of the Member States for the sake of flexibility.
2. In certain Member States, people attending an educational establishment are automatically eligible for health-care insurance by reason of enrolment. The purpose of this paragraph is to clarify their situation in relation to the health-care insurance requirement among the general admission conditions in Article 5(1)(b).
3. This paragraph concerns language courses, for which third-country nationals may apply. Language teaching varies widely in terms both of organisation (it is sometimes given by commercial firms) and of duration (many language courses are not full-time). It is therefore reasonable to leave the Member States free to determine both the suppliers and the types of course for which they are willing to admit third-country nationals.

Article 7

Article 7 seeks to meet the growing demand for student mobility and concerns only those who have been admitted to a Member State in that capacity and not third-country nationals residing there in some other capacity who might, if they wished to study or receive vocational training in a Member State other than the one where they are settled, be eligible for the benefit of Article 16(1)(b) of the proposal for a Directive on the status of third-country nationals who are long-term residents. The 'student' residence permit issued on the basis of this Directive entitles the holder to reside in the Member State where he wishes to continue his studies, provided, in addition to the specific conditions provided for in this provision, he meets the general and specific admission conditions laid down by Articles 5 and 6. To limit the risks of a gap between the expiry of the residence permit issued in the first Member State and the commencement of the residence permit in the second, the time allowed for issuing it has been cut to 30 days.

This right of residence is confined to cases where the student wishes either to pursue part of his studies in the other Member State for more than three months and then return to complete them in the Member State where he was first admitted, or to complete his course of studies in another Member State (which presupposes that he passes the tests required for the purpose), or add another course in another Member State. It therefore does not cover students who wish to follow a course of study not adequately related to the studies they have already completed (in particular, students wishing to change subject or branch are not covered). The Member State will in this case retain its general discretion under Article 6(1). This right of residence is also limited by the possibility for the Member State to refuse a student's application on the basis of Articles 11(2)(c) and (d), 15 and 16. To ensure in particular that a student who does not make satisfactory progress in his studies cannot attempt to circumvent Article 11(2)(d), it is provided that the student must send the State in which he wishes to pursue his studies full details of his academic record (in particular the number of years completed and the results) with the application for a residence permit and the State in which the student has already been admitted, at the request of the State applied to, must send information on the student's academic record in establishments in its territory. If the student wishes to commence a new course in another Member State, he must have documentary records showing that it complements the one taken in the Member State where he was admitted. All these conditions are intended to ensure that third-country nationals cannot abuse their right of residence by over-extending their stay in the European Union under cover of their student status.

Article 8

1. Article 8 concerns school pupils who are third-country nationals in secondary education within the meaning of the regulations or administrative practice of the Member State concerned. It covers only mobility organised in the context of exchange schemes managed by specialised organisations and not individual mobility, which will remain subject to the Member States' domestic law.
 - (a) The young people concerned tend to be between 16 and 18, but for the sake of flexibility the proposal leaves it up to each Member State to determine age limits.
 - (b) This condition has been drafted in a similar way to the one for students in higher or professional education.
 - (c) This vital condition concerns participation in a pupil exchange scheme. It must be operated by an accredited organisation in the Member State concerned in accordance with its own rules.
 - (d) The pupil must provide evidence that the organisation running the exchange scheme and not the host family referred to at point (e), must assume liability for the subsistence, study and health-care costs throughout his stay and his return travel costs so that the host State can call on it by way of guarantee. This form of liability is warranted by the fact that the pupil's resources are not verified. It is particularly significant in connection with the fast-track procedures provided for by Article 21 of the proposal.
 - (e) This condition, which relates to the pupil's accommodation in a host family, is just as essential. This is after all one of the prime objectives of the stay, as it helps the pupil learn about the host State's culture and language. The family will be selected in accordance with the rules of the scheme in which the pupil is participating and could be one of the criteria on the basis of which the Member State will decide whether to issue a permit in the light of the conditions which it may itself determine in this respect.

2. The purpose of this condition of reciprocity is to enable each Member State which so wishes to continue reserving exchanges for those countries that accept its own young people.

Article 9

Article 9 determines the specific conditions for the admission of third-country nationals for purposes of vocational training. The concept is to be interpreted strictly for the purposes of this Directive and not broadly as in Council Directive 93/96 of 29 October 1993 on the right of residence for students⁽¹⁾. The term used is 'trainee', the same term as in the Council Resolution of 20 July 1994 on limitations on admission of third-country nationals to the territory of the Member States for employment⁽²⁾ and in the Commission proposal for a Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities.

- (a) The trainees concerned by this proposal are those who are not remunerated; remunerated trainees are covered by the proposal for a Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities. Apart from the basic criterion of non-remuneration, the difference between the two categories is defined by reference to the legal instrument linking the trainee to the entity in which he is receiving his vocational training. In the case of trainees covered by this proposal, this is a training contract, whereas trainees covered by the other proposal will have an employment contract (for instance an apprenticeship contract). The training contract must be approved in all cases where the Member States so require, which basically applies to training in enterprises rather than in vocational training establishments that are themselves accredited or financed by the Member States. Benefits in kind and sums of money to cover certain costs incurred by the trainee or pocket money and gratuities are not treated by this Directive as remuneration. Checks by the Member States for compliance with these admission conditions will aim to ensure that unremunerated trainees are not employed in place of proper workers. To keep the risk to the minimum, this proposal (Article 14) places strict limits on the duration of the residence permit for unremunerated trainees.
- (b) This resources condition is drafted in the same way as for students, subject to the adjustments necessitated by the fact that trainees in vocational training are concerned. For the rest, see the commentary on Article 6(1)(b).
- (c) The condition relating to knowledge of the host Member State's language is more flexible than in the case of students. The language knowledge needed for vocational training is not the same as for studies, and experience has shown that many trainees improve their language skills as their training progresses. Initial language teaching can be given either before the trainee leaves home or at the beginning of his stay if he already has an elementary knowledge of the relevant language, as the case may be and depending on the requirements of the Member State concerned.

Article 10

This provision determines the specific conditions for the admission of third-country nationals doing voluntary service:

- (a) This condition is drafted in the same way as for school pupils in Article 8(1)(a). For example, the age limits for volunteers have been set at 18 and 25 both by the Community action programme 'European Voluntary Service for Young People' and by the Council of Europe Convention on the Promotion of a Transnational Long-term Voluntary Service for Young People.

⁽¹⁾ OJ L 317, 18.12.1993, p. 59.

⁽²⁾ OJ C 274, 19.9.1996, p. 6.

- (b) This vital condition concerns the third-country national's participation in a voluntary service scheme. The scheme must be operated in the Member State concerned by a non-profit organisation pursuing general-interest objectives. The host organisation must be accredited by the Member State concerned in accordance with its own rules. The volunteer must come under a contract between himself and the host organisation. The contract must clearly specify the volunteer's tasks and hours of work so that the Member State concerned can be sure that the voluntary service does not include activities that ought to be covered by an employment contract. It must also specify the management structure within which the volunteer will operate and to which he can look for help with any difficulties he might have, which might for example mean that the host organisation appoints a supervisor to assist him during his stay. And it will include a commitment to defray the volunteer's travel, training, liability insurance, board, lodging and transport costs and a reasonable amount of pocket money for the duration of his stay, precise figures being given. These resources do not need to come exclusively from the organisation running the voluntary service scheme but can come from other sources (such as housing supplied by a member of the volunteer's family lawfully residing in the relevant Member State). The fact that the host organisation takes full responsibility for the duration of his stay means that no condition as to resources need be imposed on the volunteer himself;
- (c) The volunteer must prove that the organisation running the scheme has subscribed to a liability insurance policy covering his activities and accepts full responsibility for his board, lodging and transport costs for the duration of his stay and can be called on as guarantor;
- (d) To ensure that the voluntary service activities proceed smoothly and that the volunteer, whose stay is supposed to be profitable above and beyond the gesture of practical solidarity, derives full benefit from it, the volunteer must be given an introduction to the host State's language, history and society. Depending on the case, this introduction may be given before he leaves home or at the beginning of his stay.

Chapter III

Period of validity and renewal of residence permits

Article 11

1. Article 11 is drafted in flexible terms so that the duration of 'student' residence permits can be adjusted in line with the duration of the particular type of studies. The basic idea, which corresponds to practice in many Member States, is that these permits should be issued for one year, unless the course is shorter than that, in which case it would be for the duration, as it would if the student is admitted to the Member States subject to obtaining a decision on the equivalence of his foreign qualification or passing an entrance test. The proposal also allows Member State which wish to do so to issue 'student' permits valid for more than a year so as to cover the full duration of a course. Permits are to be renewable from year to year unless they are for a course that lasts less than a year.
2. Paragraph 2 specifies the conditions for renewal or withdrawal of the 'student' residence permit. Some of these are additional conditions on top of those for the issue of residence permits under Articles 5 and 6.
 - (a) This provision operates where a student is admitted to an establishment subject to an entrance test but fails and is not enrolled.
 - (b) This provision operates where a student admitted subject to obtaining a decision on the equivalence of his foreign qualification fails to obtain it.

- (c) This provision allows the Member States to prevent student status being abused by third-country nationals who work instead of studying.
- (d) This provision operates where a student does not make sufficient progress in his studies. For a sound understanding of its scope, it should be remembered that educational establishments are a filter upstream of checks performed by the authorities responsible for residence matters since, if they do not re-enrol the student, he automatically loses the possibility of renewing his residence permit as he no longer satisfies Article 6(1)(a). It has been formulated in general terms as it is impossible to lay down more specific provisions when there is such a variety of methods for assessing students at European educational establishments. This condition gives the Member States extensive discretion to pass judgement on students' academic records where they have been re-enrolled in their establishment, so mandatory prior consultation of the student's educational establishment is provided for to be sure that the authority issuing the residence permit takes a properly informed decision. The educational establishment's opinion, which will not bind the authority, will concern both the student's detailed results and the probable reasons for them. If the establishment does not respond within a reasonable period of time, the authority may proceed without its opinion.

Article 12

This provision concerns the 'pupil exchange' residence permit, valid for one year and not renewable.

Article 13

This provision concerns the 'unremunerated trainee' residence permit, valid for one year and renewable once only on an exceptional basis where this is necessary to enable the trainee to complete his vocational training. As in the case of students, it can be withdrawn if the holder does not comply with the limits imposed by Article 18 on the right to work, where the right is actually given in the Member State.

Article 14

This provision concerns the 'volunteer' residence permit, valid for one year and not renewable.

Article 15

This provision concerns situations where a residence permit or visa to which this Directive applies may be refused or withdrawn. The first paragraph applies where the holder does not meet or no longer meets the conditions for entry and residence in the territory of the Member States. The second concerns public policy, public security and public health considerations, which must relate exclusively to the personal conduct of the third-country national concerned. These decisions must be taken case by case in the light of the individual's specific situation and of the proportionality principle. And a person may never be penalised for suffering from a disease contracted after entering the territory.

Article 16

Article 15(2) relating to public policy, public security and public health considerations leaves the Member States with considerable discretion, but Article 16 provides for the mandatory withdrawal of residence permits or visas issued on the basis of this Directive where fraud has been perpetrated.

*Chapter IV**Rights of third-country nationals**Article 17*

This provision logically enough gives the holder of a residence permit the right to enter and reside in the Member State that issued it, without prejudice to the provisions concerning their right to travel for three months in the Schengen countries. Since many Member States issue residence permits only when the third-country national is in the country and therefore impose a visa requirement for initial entry, it is provided that they must facilitate its issuance.

The proposal for a directive contains no provisions resembling Article 3 of Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students, whereby 'This Directive shall not establish any entitlement to the payment of maintenance grants by the host Member State on the part of students benefiting from the right of residence' ⁽¹⁾. A provision such as this is superfluous as third-country nationals are not entitled to the principle outlawing nationality discrimination on the basis of Article 12 of the EC Treaty.

Article 18

This provision governing access to the employment market applies only to students and unremunerated trainees, and all other categories of third-country nationals to whom this Directive applies (school pupils and volunteers) do not have it.

The first subparagraph gives students the right to work within certain limits designed to preserve the prime objective of their stay, which is to study. It is provided in general terms that students may work only outside normal class hours, which vary according to the type of course. A maximum number of weekly working hours will be imposed: to take the fullest possible account of the wide variety of rules currently applied in the Member States, the proposal for a directive does not actually determine the number but leaves the individual Member States to do so within a 10 to 20 hours range. The lower figure is calculated to give the student the possibility of adding significantly to his resources, bearing in mind that the Member States are encouraged to have regard, when first renewing the residence permit, to the student's earned income for assessing his resources (see commentary on Article 6(1)(b)); the upper figure, which roughly corresponds to a half-time job, is regarded as the limit of what is compatible with full-time studies (Article 6(1)(a)). These limits, logically enough, will not apply during holiday periods.

The aim of the second subparagraph is to allow the Member States that so wish not to give students a general right to work in the first year of their stay. This provision is to discourage those who might wish to work in the European Union by abusing their student status and because the first year of the stay can often be a difficult transition year during which they are best advised to concentrate on their studies and make progress in them. It is also provided that the Member States may withdraw a student's right to work if he does not make progress in his studies, the aim being to preserve the objective of his stay, which is to study and not to work. It should be borne in mind that a student's failure to respect the limits imposed on the right to work is a ground for refusing to renew his residence permit or for withdrawing it.

The third subparagraph concerns unremunerated trainees, to whom the proposal for a directive does not give the right to work, though it allows the Member States that so wish to give that right within the same limits as for students. This provision would allow those concerned to add to their resources even though their stay may be shorter than a student's stay (see Article 13). To protect the unremunerated status of their training, it is provided that trainees may work neither directly nor indirectly for the firm in which they are receiving their training.

⁽¹⁾ OJ L 317, 18.12.1993, p. 59.

The fourth subparagraph concerns the formalities that may be required of students who work. Generally speaking, both during and outside vacation periods, they do not need a work permit. But the first subparagraph provides that students wishing to work in a self-employed capacity must abide by the specific rules of their chosen trade for verification that they have the requisite qualifications. To facilitate verification of students' compliance with the limits on their working hours, the Member States may require them to declare their employed or self-employed activity at an authority designated for the purpose. The declaration may be imposed before or after taking up work. The same declaration may be required of students' employers. This declaration system is not mandatory, to avoid encumbering the formalities in Member States that do not feel the need for it.

Chapter V

Procedure and transparency

Article 19

This provision concerns the presentation of applications for residence permits. The normal procedure is for applications to be presented while the third-country national is still outside the country, as a rule in the country where he officially resides. Third-country nationals covered by this proposal for a directive are to be allowed to present an application locally when already in the Member State concerned. But this possibility is confined to persons residing there lawfully for a period of more than three months, which excludes holders of visas for three months or less. A general derogation allowing the Member States to examine an application from a person not meeting the conditions imposed by this Article is provided for, both for the sake of flexibility and to leave the Member States the possibility of regularising situations where necessary.

Article 20

This provision concerns the guarantees given to third-country nationals in the procedures for issuing residence permits and visas covered by this proposal for a directive — the time allowed to issue them, reasons to be given for decisions refusing to issue them, or amending them, or not renewing them or withdrawing them — and the right to judicial review of such decisions.

Without prejudice to Article 21, the maximum time allowed for a residence permit to be issued in normal circumstances is three months, which should enable students applying at the end of their secondary schooling to receive a permit in time for the beginning of the next academic year.

Article 21

This provision concerns fast-track procedures for issuing 'student' and 'pupil exchange' residence permits to facilitate the admission of these two categories of third-country nationals. It provides a legal basis for the successful experiences of certain Member States which can be spread throughout the Union. The mechanism is based on the conclusion of an agreement between the authority issuing residence permits and educational establishments or pupil exchange organisations under which permits or visas will be issued in a period shorter than the three months provided for by Article 20(1). Applications will be made by the establishment or organisation, and the permit will be in the name of the student or pupil. This provision is no more than a possibility both for the Member States and for the establishments and organisations potentially concerned.

The agreement must govern at least the following points:

(a) and (b)

The manner in which the establishment or exchange organisation will verify compliance with the conditions for entry and residence on behalf of the residence permits authority. This is a fundamental factor in speeding up the procedure and avoids making it more complicated than the normal procedure. The point is not that powers should be delegated by that authority to establishments or organisations, as it would retain full power to check for compliance, but it can examine applications more quickly on account of the relationship of trust that flows from the agreement. It goes without saying that public policy, public security and public health considerations will be enforced only by the competent authority.

(c) For the sake of flexibility, the time-limit to be set by the agreement is not determined by the directive itself, but it must obviously be shorter than the normal three months provided for by Article 20(1).

(d) To ensure that the establishments and organisations concerned act with proper responsibility in selecting and handling the cases they decide to process by the fast-track procedure, the agreement must contain a denunciation clause for cases where it is found that third-country nationals admitted in this way no longer meet the conditions for residence.

(e) This clause concerns only agreements with pupil exchange organisations. As Article 8(1)(d) requires them to assume responsibility in relation to the Member State concerned for the subsistence, study, health-care and return travel costs of the pupil throughout the period of his exchange visit to the Member State concerned, it is normal that the agreement should specify the terms, including the financial terms, on which it will be liable.

It is quite possible for an establishment in a third country which sends its students to an establishment in the Community to be a party to such an agreement, especially in cases where there is a specific agreement for cooperation between universities (e.g. under the new Erasmus World Programme). Obviously, establishments in third countries cannot be involved in verifying compliance with conditions for admission to the Member States, but the agreement could govern procedures for transmitting files on students between establishments and prior checking of conditions for admission to the European educational establishment.

Article 22

This provision concerns the fees that Member States may charge residence permit applicants. It is proposed that the fees be set by the individual Member States up to a maximum level depending on the actual administrative costs incurred in handling applications.

Article 23

This provision aims to encourage the world-wide dissemination of information on the possibilities for studies in the European Union for third-country nationals so as to promote in turn the Member States' educational and vocational training establishments. This information, which must be regularly updated, relates both to the conditions and procedures for entry and residence in the territory of the Member States (notably the minimum monthly financial resources that the Member State requires students to have for the purposes of Article 6(1)(b)) and, wherever possible, given the large numbers and wide variety, the courses and establishments accessible to third-country nationals. The Member States do not necessarily have to distribute the information themselves, as they can leave this, for example, to the actual educational establishments, but they must ensure in particular that it is available on the Internet.

*Chapter VI**Final provisions**Article 24*

A standard non-discrimination clause based on Article 13 of the EC Treaty and Article 21 of the Charter of Fundamental Rights of the European Union. This provision does not violate the obligations flowing from other international instruments such as the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Article 25

A standard provision in Community law leaving it up to the Member States to determine the penalties applicable for violation of national provisions implementing the directive, provided they are effective, proportionate and dissuasive.

Article 26

The Commission is required to report to the Council and Parliament on the application of this Directive by the Member States, and in particular on any amendments or additions that may be found useful. The first report must be presented three years after the transposal deadline in Article 27; reporting intervals thereafter remain to be determined.

Article 27

The provision sets the deadline for transposal of the Directive in the Member States' domestic law at 31 December 2004. The Member States must forthwith inform the Commission of all changes to their legislation, regulations and administrative practices and insert in them a reference to this Directive.

Article 28

This provision sets the date of entry into force on the basis of the date of publication in the Official Journal.

Article 29

This article provides that the Directive is addressed to the Member States with the exception of Denmark, under Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Union and EC Treaties and the United Kingdom or Ireland by virtue of Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, unless they decide otherwise in accordance with the procedure determined by that Protocol.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular points 3(a) and 4 of the first subparagraph of Article 63 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

Having regard to the Opinion of the Economic and Social Committee,

Having regard to the Opinion of the Committee of the Regions,

Whereas:

- (1) For the gradual establishment of an area of freedom, security and justice, the Treaty establishing the European Community provides for measures to be adopted in the fields of asylum, immigration and the protection of the rights of third-country nationals.
- (2) Point 3(a) of the first subparagraph of Article 63 of the Treaty provides that the Council is to adopt measures on immigration policy relating to conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits.
- (3) At its special meeting at Tampere on 15 and 16 October 1999, the European Council acknowledged the need for approximation of national legislation on the conditions for admission and residence of third country nationals and asked the Council to rapidly adopt decisions on the basis of proposals by the Commission.
- (4) One of the objectives of European Community action in education is to promote Europe as a whole as a world centre of excellence for studies and vocational training. Promoting the mobility of third-country nationals to Europe for the purpose of studies, vocational training or voluntary service is a key factor in that strategy. The approximation of the Member States' national legislation on conditions of entry and residence is part of this.
- (5) Migration for the purpose of studies, vocational training or voluntary service, which is by definition temporary and does not depend on the employment-market situation in the host country, constitutes a form of mutual enrichment for the migrants concerned, their country of origin and the host country and helps to promote better familiarity between cultures.
- (6) The new Community rules are based on definitions of student, trainee, educational establishment, vocational training scheme and volunteer already in use in European law, in particular in the various Community programmes to promote the mobility of the relevant persons (Socrates, European Voluntary Service etc.).
- (7) The mobility of students who are third-country nationals studying in several Member States must be facilitated, as must the admission of third-country nationals participating in Community programmes to promote mobility within and towards Europe for the purpose of studies, vocational training or voluntary service.
- (8) To reflect the cost of training and the fact that more and more people have to work to help pay for it, third-country nationals admitted for study purposes should be given limited access to the employment market.
- (9) Provision should be made for fast-track admission procedures for study purposes, in particular in cases involving mobility in the context of partnerships organised between European and third-country educational establishments or of pupil exchange schemes managed by accredited organisations in the Member States.
- (10) Efforts must be made to secure transparency to ensure that third-country nationals have access to information on educational or vocational training establishments and courses that are open to them in the European Community.
- (11) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union.
- (12) The objectives of the proposed action, namely the establishment of a harmonised Community legal framework for the conditions for entry and residence of third-country nationals in the territory of the Member States for a period exceeding three months for the purposes of studies, vocational training or voluntary service, and for the procedures for issuing residence permits allowing them to enter and reside in the Member States for those purposes, cannot be sufficiently achieved by the Member States and can, by reason of the scale or effects of the proposed action, be better achieved by the Community in accordance with the subsidiarity principle declared by Article 5 of the Treaty. In accordance with the proportionality principle declared by Article 5, this Directive does not go beyond what is necessary to achieve these objectives.

(13) Under Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark does not participate in the adoption of this Directive. The Directive will therefore not be binding in Denmark nor applicable there,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject-matter

The purpose of this Directive is to determine:

- (a) the conditions for entry and residence of third-country nationals in the territory of the Member States for a period exceeding three months for the purpose of studies, vocational training or voluntary service;
- (b) rules concerning the procedures for issuing residence permits allowing third-country nationals to enter and reside in the Member States for those purposes.

Article 2

Definitions

For the purposes of this Directive:

- (a) 'third-country national' means any person who is not a citizen of the European Union within the meaning of Article 17(1) of the Treaty, including stateless persons;
- (b) 'student' means a third-country national admitted to reside in the territory of a Member State to pursue a course of study in an establishment of higher or professional education;
- (c) 'course of study' means a full-time course leading to a diploma, certificate or other qualification, up to and including a doctoral degree, or a preparatory year prior to higher education;
- (d) 'school pupil' means a third-country national admitted to reside in the territory of a Member State to follow courses at an accredited establishment of secondary education in the context of an exchange scheme operated by an organisation accredited for the purpose by the Member State in accordance with its regulations or administrative practice;
- (e) 'unremunerated trainee' means a third-country national who has been admitted to reside in the territory of a Member State for training without remuneration;
- (f) 'vocational training' means a full-time course of training for the acquisition or enhancement of vocational skills at a public- or private-sector body accredited or financed by the Member State in accordance with its regulations or administrative practice or at a public- or private-sector enterprise, culminating in an occupational qualification recognised by a Member State in accordance with its regulations or administrative practice;
- (g) 'establishment' means a public or private establishment of higher, vocational or secondary education accredited or financed by a Member State in accordance with its regulations or administrative practice;
- (h) 'voluntary service scheme' means a programme of activities of practical solidarity operated by a non-profit organisation pursuing objectives of general interest and accredited for the purpose by the Member State in accordance with its regulations or administrative practice.

Article 3

Scope

1. The provisions of this Directive apply to third-country nationals, subject to more favourable provisions of:
 - (a) bilateral or multilateral agreements between the Community or the Community and its Member States and one or more third countries; or
 - (b) bilateral or multilateral agreements between one or more Member States and one or more third countries.
2. This Directive is without prejudice to the right of Member States to adopt or maintain provisions that are more favourable to the persons to whom it applies.
3. The provisions of this Directive do not apply to:
 - (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 members of the family of Union citizens who have exercised their right to free movement in the Community;

(d) third-country nationals who enjoy long-term resident status in a Member State in accordance with Council Directive [...] of [...] on [...] and exercise their right to reside in another Member State in order to study or receive vocational training.

(d) provides proof, if the Member State so requests, that he has paid the fee for handling the application on the basis of Article 22 of this Directive.

CHAPTER II

CONDITIONS OF ENTRY AND RESIDENCE

Article 4

Principle

1. Member States may authorise third-country nationals in the categories determined by Articles 6 to 10 to enter and reside in their territory only if a residence permit has been issued by their authorities in accordance with this Directive.

2. A residence permit may be issued under this Directive only if verification of documentary evidence shows that the applicant meets the conditions laid down for issue in Article 5 and whichever of Article 6, 7, 8, 9 or 10 applies to the relevant category.

Article 5

General conditions

1. Member States may issue a residence permit to a third-country national under this Directive only if, in addition to the specific conditions for the category of persons defined in Articles 6, 7, 8, 9 or 10 to which he belongs, he:

(a) presents a valid passport or equivalent travel documents and, if he is a minor under the domestic law of the host Member State, a parental authorisation for the planned stay;

(b) has health-care insurance cover for all risks in the host Member State;

(c) is not regarded as a threat to public policy, public security or public health, and provides the documentary evidence required by the Member State. Public policy or public security grounds shall be based exclusively on the personal conduct of the third-country national concerned;

Article 6

Specific conditions for students

1. Member States may issue a 'student' residence permit to a third-country national only if, in addition to the general conditions stipulated in Article 5, he:

(a) is admitted to an establishment of higher or professional education to follow a full-time course of study. The student may prove that he meets this condition by presenting, among other possibilities, a letter or certificate confirming his definite enrolment, or evidence that he is enrolled subject to a decision on the equivalence of his foreign qualification or passing an entrance test;

(b) provides evidence by any lawful means that during his stay he will have sufficient resources to cover his subsistence, study and return travel costs. The Member States shall publish the minimum monthly resources required in terms of the resources which a person pursuing studies on their territory must generally have, without prejudice to individual examination of each case;

(c) has, if the Member State so requires, sufficient knowledge of the language of the course followed by the student;

(d) provides evidence, if the Member State so requires, that he has paid the fees charged by the establishment.

2. Students who automatically qualify for health-care insurance as a result of enrolment at an establishment shall be presumed to meet the condition of Article 5(1)(b).

3. The Member States shall determine the entities and types of course for which a third-country national meeting the conditions of paragraph 1(b) and, where applicable, paragraph 1(d) may obtain a 'student' residence permit in order to learn a language.

*Article 7***Mobility of students**

Without prejudice to Articles 11(2)(c) and (d), 15, 16 and 20(2), a third-country national who already holds a 'student' residence permit issued by a Member State and wishes to follow part of the studies already commenced, or add another course of study, in another Member State shall obtain a 'student' residence permit from the latter Member State within 30 days of applying for it, if he:

- (a) meets the conditions laid down by Articles 5 and 6 in relation to that Member State; and
- (b) has sent, with his application for a residence permit, full documentary evidence of his academic record and evidence that the course he wishes to follow genuinely complements the one he has completed.

The Member State in which the student is admitted shall, at the request of the Member State in which a residence permit is applied for, send information relating to the student's academic record in establishments that are located in its territory.

*Article 8***Specific conditions for school pupils participating in an exchange scheme**

1. Member States may issue a 'pupil exchange' 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;
- (b) provides evidence of admission to a secondary education establishment;
- (c) provides evidence of participation in a pupil exchange scheme programme operated by an organisation accredited for that purpose by the Member State concerned in accordance with its regulations or administrative practice;
- (d) provides evidence that the pupil exchange organisation accepts responsibility for him throughout his period of presence in the territory of the Member State concerned, in particular as regards subsistence, study, health-care and return travel costs;
- (e) is accommodated throughout his stay in a family meeting the conditions set by the Member State concerned and selected in accordance with the rules of the pupil exchange scheme in which he is participating.

2. Member States may confine the issuance of 'pupil exchange' residence permits to nationals of third countries that offer the same possibility for their own nationals.

*Article 9***Specific conditions for unremunerated trainees**

Member States may issue an 'unremunerated trainee' residence permit to a third-country national only if, in addition to the general conditions stipulated in Article 5, he:

- (a) has signed a training agreement, approved if need be by the relevant authority in the Member State concerned in accordance with its regulations or administrative practice, for an unremunerated placement with a public- or private-sector enterprise or vocational training establishment accredited or financed by the Member State in accordance with its regulations or administrative practice;
- (b) provides evidence by any lawful means that during his stay he will have sufficient resources to cover his subsistence, training and return travel costs. The Member States shall publish the minimum monthly financial resources which they generally require an unremunerated trainee to have, without prejudice to individual examination of each applicant's situation;
- (c) receives, if the Member State so requires, basic language training so as to acquire the knowledge needed for the purposes of the placement.

*Article 10***Specific conditions for volunteers**

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;
- (b) produces an agreement with the organisation responsible in the Member State concerned for the voluntary service scheme in which he is participating, giving a description of tasks, the conditions in which he is supervised in the performance of those tasks, his working hours, the resources available to cover his travel, subsistence, accommodation costs and pocket money throughout his stay and, if appropriate, the training he will receive to help him perform his service;

- (c) provides evidence that the organisation responsible for the voluntary service scheme in which he is participating has subscribed a third-party insurance policy and accepts full responsibility for him throughout his stay, in particular as regards his subsistence, health-care and return travel costs;
- (d) receives a basic introduction to the language, history and political and social structures of the host Member State.

CHAPTER III

RESIDENCE PERMITS

Article 11

Student residence permit

1. Except where the student is admitted subject to a decision on the equivalence of his foreign qualification or to passing an entrance test, a 'student' residence permit shall be issued for a period of no less than one year and renewed from year to year if the holder continues to meet the conditions of Articles 5 and 6. Where the duration of the course of study or vocational training is less than one year, the permit shall be valid for the duration of the course.
2. Without prejudice to Articles 15 and 16, renewal of a 'student' residence permit may be refused or the permit may be withdrawn if the holder:
 - (a) has been admitted subject to passing an entrance test at the establishment where he wishes to study and fails to produce a certificate of enrolment;
 - (b) has been admitted subject to a decision on the equivalence of his foreign qualification and has failed to obtain a decision;
 - (c) does not respect the limits imposed on the exercise of his right to work under Article 18 of this Directive;
 - (d) does not make acceptable progress in his studies. The Member State may refuse to renew a residence permit on this ground only by a decision stating specific reasons based on the opinion of the educational establishment, which must be consulted on the student's progress, save when the establishment fails to respond to a request for an opinion within a reasonable period of time.

Article 12

Pupil exchange residence permit

A 'pupil exchange' residence permit shall be issued only for a non-renewable period of no more than one year.

Article 13

Unremunerated trainee residence permit

1. The period of validity of an 'unremunerated trainee' residence permit shall correspond to the duration of the placement or to one year, whichever is the shorter. In exceptional cases, it may be renewed, once only and exclusively for such time as is needed to acquire a vocational qualification recognised by a Member State in accordance with its regulations or administrative practice, provided the holder still meets the conditions laid down in Articles 5 and 9.

2. An 'unremunerated trainee' residence permit may be withdrawn if the holder does not comply with the limits imposed by Article 18 on the right to work.

Article 14

Volunteer residence permit

A 'volunteer' residence permit shall be issued only for a non-renewable period of no more than one year.

Article 15

Withdrawal of permits

1. Member States may withdraw residence permits or visas issued on the basis of this Directive wherever it appears that the holder did not meet or no longer meets the conditions for entry and residence provided for by Article 5 and whichever of Articles 6 to 10 applies to the relevant category.
2. Member States may withdraw residence permits or visas on grounds of public policy, public security or public health. Public policy or 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.

Article 16

Fraud

The competent authorities shall revoke a residence permit issued on the basis of this Directive which has been fraudulently acquired.

CHAPTER IV

RIGHTS OF THIRD-COUNTRY NATIONALS*Article 17***Rights conferred on all categories of third-country nationals to whom this Directive applies**

During its period of validity, the holder of a residence permit issued on the basis of this Directive shall be entitled to enter and reside in the territory of the Member State which issued it; Member States shall give third-country nationals every facility for obtaining the requisite visas if they issue residence permits exclusively within the country and demand a visa for the initial entry.

*Article 18***Work by students and unremunerated trainees**

Outside their study time, students may exercise an activity in an employed or self-employed capacity, subject to the rules applicable to the relevant trade. Each Member State shall determine the maximum number of hours of work allowed, between 10 and 20 hours per week. This limitation shall not apply during holiday periods.

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 authorise unremunerated trainees to work under the same limits as those imposed on students, but they may not be employed, directly or indirectly, by the firm with which they have signed a training contract in accordance with Article 9(a).

Member States may require students and unremunerated trainees to report, in advance or otherwise, to an authority designated by them, that they are engaging in an employed or self-employed activity. Their employers may also be subject to a reporting obligation, in advance or otherwise.

CHAPTER V

PROCEDURE AND TRANSPARENCY*Article 19***Applications for residence permits**

Applications for residence permits shall be presented via the representation of the Member State competent for the country where the applicant officially resides or directly in the territory of the Member State concerned if the applicant has been authorised to reside there for a period in excess of three months. By

way of derogation, a Member State may examine an application which has not been presented in accordance with this Article.

*Article 20***Procedural guarantees and transparency**

1. Without prejudice to Article 7, decisions on applications for admission or renewal shall be adopted and the applicant shall be notified of them no later than 90 days after the date of the application.

2. If the information supplied in support of the application is inadequate, the competent authorities shall inform the applicant what further information they need. The period of time allowed by paragraph 1 shall be suspended until the authorities have received the requisite information.

3. A third-country national shall be entitled to apply to the courts of the Member State concerned against any decision refusing, amending, refusing to renew or withdrawing a residence permit or a visa. Such decision must give reasons based on objective and verifiable criteria and specify the redress procedures available and the time limits applicable to them.

*Article 21***Fast-track procedure for issuing 'student' and 'pupil exchange' residence permits**

An agreement on the establishment of a fast-track admission procedure allowing residence permits or visas to be issued in the name of the third-country national concerned may be concluded between the authority of a Member State with responsibility for the entry and residence of students or school pupils who are third-country nationals and an establishment of higher or professional education or an organisation operating pupil exchange schemes which has been accredited for this purpose by the Member State concerned in accordance with its regulations or administrative practice.

Such agreement shall apply in particular to:

- (a) the manner in which compliance with the conditions for entry and residence in the territory are to be verified by the establishment or exchange organisation on behalf of the Member State, without prejudice to the Member State's prerogatives under this Directive;
- (b) the details of the procedure whereby the establishment or exchange organisation will submit applications for residence permits and the procedure whereby residence permits will be issued by the competent authority in this context;

- (c) the period for issuing permits, which shall be shorter than that provided for by Article 20(1). The starting point shall be the date when the application is presented by the establishment or the exchange organisation;
- (d) the possibility of denouncing the agreement if it is found that third-country nationals admitted under this procedure do not meet the conditions for residence; and
- (e) in the event of an agreement concluded with an exchange organisation, the conditions, in particular the financial conditions, to be met by the organisation in the context of this procedure and the rules governing its responsibility for the pupil throughout his stay in the territory of the Member State concerned.

Article 22

Fees

Member States may request applicants to pay fees for handling applications in accordance with this Directive. The level of fees shall not exceed the actual administrative costs incurred.

Article 23

Transparency

Each Member State shall ensure that the fullest possible set of regularly updated information is made available to the general public, notably on the Internet, as regards establishments within the meaning of Article 2(g), courses of study to which third-country nationals may be admitted and the conditions and procedures for entry and residence in its territory for these purposes.

CHAPTER VI

FINAL PROVISIONS

Article 24

Non-discrimination

The Member States shall give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation.

Article 25

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the date specified in Article 27 at the latest and shall notify it without delay of any subsequent amendment affecting them.

Article 26

Reporting

From time to time, and for the first time no later than three years after the period determined by Article 27, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and propose amendments if appropriate.

Article 27

Transposal

Member States shall bring into force the provisions necessary to comply with this Directive no later than 31 December 2004. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 28

Entry into force

This Directive shall enter into force on the twentieth day following its publication in the *Official Journal of the European Communities*.

Article 29

Addressees

This Directive is addressed to the Member States.