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REPORT

on the Commission proposal for adoption of 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 – C5-0447/2001 – 2001/0154(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Anna Terrón i Cusí

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 24 September 2001 the Council consulted Parliament, pursuant to Article 67 of the EC Treaty, on the Commission proposal for adoption of 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 – 2001/0154(CNS)).

At the sitting of 1 October 2001 the President of Parliament announced that she had referred this proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Legal Affairs and the Internal Market, the Committee on Employment and Social Affairs and the Committee on Culture, Youth, Education, the Media and Sport for their opinions (C5-0447/2001).

At the sitting of 13 December 2001 the President of Parliament announced that she had also referred the proposal to the Committee on Petitions for its opinion.

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had appointed Anna Terrón i Cusí rapporteur at its meeting of 10 October 2001.

The committee considered the Commission proposal and the draft report at its meetings of 3 December 2001, 22 May 2002, 5 November 2002, 3 December 2002 and 21 January 2003.

At the last meeting it adopted the draft legislative resolution by 26 votes to 18, with 0 abstentions.

The following were present for the vote: Jorge Salvador Hernández Mollar, chairman; Robert J.E. Evans and Giacomo Santini, vice-chairmen; Anna Terrón i Cusí, rapporteur; Elspeth Attwooll (for Francesco Rutelli, pursuant to Rule 153(2)), Giuseppe Brienza, Kathalijne Maria Buitenweg (for Heide Rühle), Mogens N.J. Camre (for Roberta Angelilli), Marco Cappato (for Mario Borghezio), Michael Cashman, Carmen Cerdeira Morterero, Ozan Ceyhun, Carlos Coelho, Gérard M.J. Deprez, Francesco Fiori (for Marcello Dell'Utri, pursuant to Rule 153(2)), Michael Gahler (for Mary Elizabeth Banotti, pursuant to Rule 153(2)), Ewa Hedkvist Petersen (for Adeline Hazan), Roger Helmer (for Marcelino Oreja Arburúa, pursuant to Rule 153(2)), Juan de Dios Izquierdo Collado (for Gerhard Schmid, pursuant to Rule 153(2)), Anna Karamanou (for Martin Schulz), Sylvia-Yvonne Kaufmann (for Ilka Schröder), Margot Keßler, Eva Klamt, Alain Krivine (for Giuseppe Di Lello Finuoli), Jean Lambert (for Pierre Jonckheer), Baroness Sarah Ludford, Lucio Manisco (for Fodé Sylla), Eryl Margaret McNally (for Martine Roure, pursuant to Rule 153(2)), Peter Michael Mombaur (for Charlotte Cederschiöld, pursuant to Rule 153(2)), Hartmut Nassauer, Arie M. Oostlander (for Thierry Cornillet), Elena Ornella Paciotti, Paolo Pastorelli (for Timothy Kirkhope), Hubert Pirker, José Javier Pomés Ruiz (for Christian Ulrik von Boetticher, pursuant to Rule 153(2)), José Ribeiro e Castro, María Rodríguez Ramos (for Walter Veltroni, pursuant to Rule 153(2)), Olle Schmidt (for Lousewies van der Laan), Ole Sørensen (for Bill Newton Dunn), Patsy Sørensen, Sérgio Sousa Pinto, The Earl of Stockton (for Bernd Posselt), Joke Swiebel and Maurizio Turco.

The opinions of the Committee on Legal Affairs and the Internal Market, the Committee on Employment and Social Affairs and the Committee on Petitions are attached; the Committee on Culture, Youth, Education, the Media and Sport decided on 16 October 2001 not to deliver

an opinion.

The report was tabled on 23 January 2003.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the Commission proposal for adoption of 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 – C5-0447/2001 – 2001/0154(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal (COM(2001) 386)¹,
 - having regard to point 3(a) of Article 63, first paragraph, of the EC Treaty,
 - having been consulted by the Council pursuant to Article 67 of the EC Treaty (C5-0447/2001),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinions of the Committee on Legal Affairs and the Internal Market, the Committee on Employment and Social Affairs and the Committee on Petitions (A5-0010/2003),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 4. Asks to be consulted again if the Council intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 332, 27.11.2001, p. 248.

Amendment 1
Recital 4

(4) Member States have regulated access of third-country nationals to work with detailed national administrative rules. If it is to operate successfully, a Community policy in this field should be put in place progressively. ***As a first step*** the aim should be to lay down certain common definitions, criteria and procedures, which give a common legal frame to the discretion of Member States.

(4) All Member States have regulated access of third-country nationals to work with detailed national administrative rules. If it is to operate successfully, a Community policy in this field should be put in place progressively. The aim should be to lay down certain common definitions, criteria and procedures, which give a common legal frame to the discretion of Member States.

Justification

It is doubtful whether the Community is competent for so wide ranging a provision. That is even more the case as regards further steps. The phrase 'as a first step' therefore creates the wrong impression that further steps will follow.

Amendment 2
Recital 10 (concerning Article 26)

(10) Member States should be allowed to apply horizontal measures, such as ceilings or quotas, limiting the admission of third-country nationals.

deleted

Justification

Horizontal measures risk becoming an uncontrolled opt-out for more restrictive Member States' policies and may undermine the whole directive. They should therefore be excluded.

Amendment 3
Recital 13 a (new)

13a. The integration of third-country nationals who already reside in the Member States or who will reside in the

¹ OJ C 332, 27.11.2001, p. 248.

Member States by virtue of this Directive calls for effective measures, and the Member States and the European Union are encouraged to introduce or strengthen such measures.

Amendment 4
Article 1, letter (a)

(a) to determine the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities and

(a) to determine the conditions of entry and residence of third-country nationals for the purpose of paid ***legal*** employment and self-employed ***legal*** economic activities and

Justification

Clarification.

Amendment 5
Article 1, letter (b)

(b) to determine standards on procedures for the issue by a Member State of permits to third-country nationals to enter and reside in its territory and to exercise activities as an employed or self-employed person.

(b) to determine standards on procedures for the issue by a Member State of permits to third-country nationals to enter and reside in its territory and to exercise ***legal economic*** activities as an employed or self-employed person.

Justification

Clarification.

Amendment 6
Article 2, letter (b)

(b) “activity as an employed person” means any remunerated economic activity for and under the direction of another person;

(b) “activity as an employed person” means any remunerated ***legal*** economic activity for and under the direction of another person;

Justification

Clarification.

Amendment 7
Article 2, letter (c)

(c) “activity as a self-employed person” means any remunerated economic activity, which is not accomplished for and under the direction of another person;

(c) “activity as a self-employed person” means any remunerated **legal** economic activity, which is not accomplished for and under the direction of another person;

Justification

Clarification.

Amendment 8
Article 2, letter (d)

(d) “residence permit – worker” means a permit or authorisation issued by the authorities of a Member State allowing a third-country national to enter and reside in its territory and to exercise activities as an employed person;

(d) “residence permit – worker” means a permit or authorisation issued by the authorities of a Member State allowing a third-country national to enter and reside in its territory and to exercise **legal economic** activities as an employed person;

Justification

Clarification.

Amendment 9
Article 2, letter (f)

(f) “seasonal workers” means third-country nationals who retain their legal domicile in a third country but are employed in the territory of a Member State in a sector of activity dependent on the passing of the seasons, under a fixed-term contract for a specific job;

(f) “seasonal workers” means third-country nationals who retain their legal domicile in a third country but are **legally** employed in the territory of a Member State in a sector of activity dependent on the passing of the seasons, under a fixed-term contract for a specific job;

Justification

Clarification.

Amendment 10
Article 2, letter (g)

(g) “transfrontier workers” means third-country nationals resident in the frontier zone of a neighbouring country who are employed in the frontier zone of an adjacent Member State and who return to the frontier zone of the neighbouring country each day or at least once a week;

(g) “transfrontier workers” means third-country nationals resident in the frontier zone of a neighbouring country who are **legally** employed in the frontier zone of an adjacent Member State and who return to the frontier zone of the neighbouring country each day or at least once a week;

Justification

Clarification.

Amendment 11
Article 2, letter (h)

(h) “intra-corporate transferees” means third-country nationals working within a single legal entity and being temporarily transferred into the territory of a Member State, either to the principal place of business or to an establishment of that legal entity, provided that they have worked for the legal entity concerned for at least the **12-month** period immediately preceding the transfer;

(h) “intra-corporate transferees” means third-country nationals working within a single legal entity and being temporarily transferred into the territory of a Member State, either to the principal place of business or to an establishment of that legal entity, provided that they have worked for the legal entity concerned for at least the **six-month** period immediately preceding the transfer;

Justification

Companies may wish to transfer in newly trained staff, acquire new management expertise or put together specific project teams. A shorter time period would be more practical and would comply with practices used by the EU itself when sending project teams into third countries.

Amendment 12
Article 2, letter (i)

(i) “trainees” means third-country nationals whose presence in the territory of a Member State is strictly limited in duration and is closely connected with increasing their skills and qualifications in their chosen profession before returning to their own country to pursue their career.

(i) “trainees” means third-country nationals whose presence in the territory of a Member State ***for the purpose of pursuing gainful employment as part of their training*** is strictly limited in duration and is closely connected with increasing their skills and qualifications in their chosen profession before returning to their own country to pursue their career.

Justification

Only if the training for which residence is to be authorised is related to gainful employment does the authorisation fall within the scope of this Directive.

Amendment 13 Article 3, paragraph 4

4. In the absence of specific provisions of Community law, Member States may maintain or introduce more favourable provisions regarding ***the following*** categories of person:

- (a) researchers and academic specialists;
- (b) ***priests*** and members of religious orders;
- (c) sport professionals;
- (d) artists;
- (e) journalists;
- (f) representatives of non-profit making organisations.

4. In the absence of specific provisions of Community law, Member States may maintain or introduce more favourable provisions regarding the following categories of person ***such as:***

- (a) researchers and academic specialists;
- (b) ***clergymen of all faiths*** and members of religious orders;
- (c) sport professionals;
- (d) artists ***and performers***;
- (e) journalists ***and professional photographers***;
- (f) representatives of ***humanitarian and*** non-profit making organisations.

Justification

The list of categories should not be exclusive. It would be preferable to allow for additional categories not provided for in the proposal. As regards subparagraph (b), all religions and religious faiths must be taken into consideration.

Amendment 14 Article 4, paragraph 1

1. Member States shall ***only*** authorise third-country nationals to enter and reside

1. Member States shall authorise third-country nationals to enter and reside in

in their territory for the purpose of exercising activities as an employed person where a “residence permit – worker” has been issued by the competent authorities of the Member State concerned in accordance with this Directive.

their territory for the purpose of exercising activities as an employed person where a “residence permit – worker” has been issued by the competent authorities of the Member State concerned in accordance with this Directive. ***Member States may grant third-country nationals a temporary six-month entry and residence permit for the purpose of seeking employment and for the purpose of registering for and attending professional training courses targeted at obtaining employment.***

Justification

The amendment aims to provide legal channels for immigration into the Member States.

This derogation, granted to enable an academic or professional qualification to be obtained, would enable immigrants to enter the country legally, would protect them from any form of exploitation and make them more competitive and ready to enter the employment market. Attending courses would also assist in integration and in acquiring knowledge of the language and culture.

Amendment 15 Article 4, paragraph 2

2. A “residence permit – worker” shall ***only*** be issued if, after verification of the particulars and documents, it appears that the applicant fulfils the requirements for obtaining a “residence permit – worker” in accordance with Articles 5 and 6, subject to any limitations imposed by a Member State in accordance with Articles 26, 27 and 28.

2. A “residence permit – worker” shall be issued if, after verification of the particulars and documents, it appears that the applicant fulfils the requirements for obtaining a “residence permit – worker” in accordance with Articles 5 and 6, subject to any limitations imposed by a Member State in accordance with Articles 26, 27 and 28.

Justification

If all the conditions are fulfilled, i.e. the third-country national has a contract of employment and the post demonstrably cannot be filled from within the domestic labour market, then there are no grounds for leaving the issuing of a work and residence permit to the discretion of the authorities. In these cases their issue should be automatic.

Amendment 16
Article 5, paragraph 1

1. In order to obtain a “residence permit – worker”, a third-country national intending to exercise activities as an employed person in a Member State shall apply to the competent authority of the Member State concerned. The future employer of a third-country national shall have the right to submit an application on behalf of the third-country national applicant.

1. In order to obtain a “residence permit – worker”, a third-country national intending to exercise **legal economic** activities as an employed person in a Member State shall apply to the competent authority of the Member State concerned. The future employer of a third-country national shall have the right to submit an application on behalf of the third-country national applicant.

Justification

Clarification.

Amendment 17
Article 5, paragraph 2

2. Applications for a “residence permit – worker” shall be submitted via the representation of a Member State competent for the country of legal residence of the applicant or directly in the territory of the Member State concerned, if the applicant is **already resident or legally present there**.

2. Applications for a “residence permit – worker” shall be submitted via the representation of a Member State competent for the country of legal residence of the applicant or directly in the territory of the Member State concerned, if the applicant is **legally present or already present there and has entered legally in order to reside there**.

Justification

Individuals who are legally present on EU territory, e.g. in possession of a tourist visa, should be able to apply for a work permit. Individuals who are illegally present in the country should, however, also be offered the opportunity to regain legal status if they have the prospect of a contract of employment. This should not be made de facto impossible for them by requiring them to return to their country of origin in order to submit an application.

Amendment 18
Article 5, paragraph 3, letter (b)

a valid work contract **or a binding offer of**

a valid work contract **in accordance with**

work in the Member State concerned, covering the term of the residence permit applied for;

national provisions in the Member State concerned, covering the term of the residence permit applied for;

Justification

A binding offer of work is not sufficient, as there is no guarantee that the worker will accept it or that the ensuing contract of employment will comply fully with national law (risk of abuse). The applicant may enter the country only if he is actually going to take up the employment cited as the reason for his entry. Production of a work contract should therefore be obligatory at the application stage.

Amendment 19

Article 5, paragraph 3, letter (e)

(e) if required by the Member State concerned, **a certificate or adequate proof of good character and conduct** and a health certificate;

(e) if required by the Member State concerned, **an extract from the 'judicial record' and the register of ongoing criminal procedures**, and a health certificate;

Justification

A proof of good conduct is not explicitly defined. On the contrary, a criminal record is a matter of fact.

The reference to a certificate 'of good character and conduct' should be deleted, because otherwise immigrants could be refused entry and residence unless they produced certificates covering certain kinds of behaviour, which are a flagrant violation of the Charter of Fundamental Rights of the European Union and incompatible with Article 32 of the directive. It would be more appropriate to require an extract from the 'judicial record' and ongoing criminal procedures.

Amendment 20

Article 5, paragraph 4

4. Third-country nationals who have been legally resident in a Member State and who have legally exercised activities there as an employed person for more than three years over the preceding **five** years shall not be required to provide evidence of fulfilment

4. Third-country nationals who have been legally resident in a Member State and who have legally exercised activities there as an employed person for more than three years over the preceding **six** years shall not be required to provide evidence of fulfilment

of the requirement laid down in Article 6(1) when submitting an application for a “residence permit – worker” in that Member State.

of the requirement laid down in Article 6(1) when submitting an application for a “residence permit – worker” in that Member State.

Justification

If third-country nationals do not immediately lose their entitlement to extend their residence permit by returning to their country of origin, this is an incentive to return home. A period of five years, however, would appear to be too short to provide an incentive since they must have worked for at least three years within the Union to maintain their rights.

Amendment 21 Article 6, paragraph 2

2. The requirement laid down in paragraph 1 shall be deemed to be fulfilled if a specific job vacancy has been made public ***via the employment services of several Member States for a period of at least four weeks, and in particular, when appropriate, by means of the European Employment Services (EURES) network established by Commission Decision 93/569/EEC***, and if no acceptable job application has been received from persons listed in paragraph 1 or from third-country nationals who are citizens of countries with which accession negotiations have been started. The published job vacancy shall contain realistic, reasonable and proportionate requirements for the offered post. This shall be checked and scrutinised by the competent authorities when evaluating an application for a residence permit submitted in accordance with Article 5.

2. The requirement laid down in paragraph 1 shall be deemed to be fulfilled if a specific job vacancy has been made public ***for a period of at least three weeks***, and if no acceptable job application has been received from persons listed in paragraph 1 or from third-country nationals who are citizens of countries with which accession negotiations have been started. The published job vacancy shall contain realistic, reasonable and proportionate requirements for the offered post. This shall be checked and scrutinised by the competent authorities when evaluating an application for a residence permit submitted in accordance with Article 5.

Justification

The requirement to publish the advertisement via the employment services of several Member States is unacceptable and inefficient. Experience shows that such a procedure is time-consuming and often ineffective. Where the announcement is published depends on the group

of applicants targeted and the territorial scope of publication can also differ widely. Such a procedure would also be too dependent on the efficiency of the different national employment services.

Amendment 22
Article 6, paragraph 2 a (new)

2a. Member States are encouraged to establish a dedicated website with job vacancies, so as to provide up-to-date and publicly accessible information to applicants, as well as to make the job vacancies available on the EURES website¹.

Justification

In order to enhance transparency and make the information easily available to the applicants.

Amendment 23
Article 6, paragraph 2 b (new)

2b. Should a third country national employee leave the post within twelve months of taking up employment, the employer may fill the position with another third country national without having to fulfil the justification requirements again.

Justification

The Directive is currently silent on this issue.

Amendment 24
Article 6, paragraph 5

5. Member States may adopt national

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¹ http://europa.eu.int/comm/employment_social/elm/eures/

provisions according to which the requirement laid down in paragraph 1 is deemed to be fulfilled for a specific third-country national, if a defined amount of money has been paid by the future employer of that person to the competent authorities. The money received from the employer shall be spent for measures promoting the integration of third-country nationals **or** for vocational training purposes.

provisions according to which the requirement laid down in paragraph 1 is deemed to be fulfilled for a specific third-country national, if a defined amount of money has been paid by the future employer of that person to the competent authorities. The money received from the employer shall be spent for measures promoting the integration of third-country nationals ***in particular for housing and*** vocational training purposes.

Amendment 25
Article 6, paragraph 5 a (new)

5a. The Member States may impose national conditions for the issue of the ‘residence permit – worker’ relating to:
- consultation between the social partners;
- cooperation with the country of origin.

Justification

Cooperation with the country of origin may take the form, inter alia, of measures seeking to avoid the ‘brain drain’ phenomenon.

Amendment 26
Article 6, paragraph 5b (new)

5b. Consultation on the horizontal review referred to in this article must take place with the employers’ and employees’ organisations at national level, and – specifically as regards paragraph 3 - at sectoral level.

Justification

In the horizontal review referred to in Article 6, a role should be played by employers’ and employees’ organisations (social partners). Where sector-specific evaluations are concerned, sectoral organisations should be permitted to play this role.

Amendment 27
Article 7, paragraph 1

1. A “residence permit – worker” shall be issued for a predetermined period. The initial “residence permit – worker” granted shall be valid for a period of up to **three** years to be determined in accordance with national legislation. It shall be renewable for periods of up to three years, to be determined in accordance with national legislation, **on application by the holder**, to be submitted at least three months before the expiry date **and after consideration by the competent authority of a file containing updated information on the items enumerated in Article 5(3) and in particular detailed information on the activities exercised as an employed person.**

1. A “residence permit – worker” shall be issued for a predetermined period. The initial “residence permit – worker” granted shall be valid for a period of **at least one year and** up to **five** years to be determined in accordance with national legislation. **Where the conditions laid down in Article 5(3) are met**, it shall be renewable for periods of up to three years, to be determined in accordance with national legislation. **The holder shall be required to submit an application** at least three months before the expiry date. **A late application shall not constitute grounds for refusing a permit.**

Justification

If the conditions laid down in Article 5(3) are met, the issuing of the residence permit should be automatic. If the three-month deadline is missed, this should not constitute grounds for refusing a permit.

Amendment 28
Article 7, paragraph 2

2. Applicants for renewal who have been holding a “residence permit – worker” in the Member State concerned **for more than three years** shall not be required to provide evidence of fulfilment of the requirement laid down in Article 6(1).

2. Applicants for renewal who have been holding a “residence permit – worker” in the Member State concerned shall not be required to provide evidence of fulfilment of the requirement laid down in Article 6(1).

Justification

The Directive should stipulate that a "residence permit – worker" will always be renewed

with free access to the labour market. Renewals will not be subject to the condition of Community preference in employment.

Amendment 29
Article 8

A ‘residence permit – worker’ shall initially be restricted to the exercise of specific professional activities or fields of activities.
It may also be restricted to the exercise of activities as an employed person in a specific region. After three years, it shall not be subject to these restrictions.

A ‘residence permit – worker’ shall initially be restricted to the exercise of specific professional activities or fields of activities.
The permits of applicants for renewal shall not be subject to this restriction.

Justification

Restriction to a specific region of a country imposes too tight a limit on the freedom of movement accorded by the third country national’s residence permit and is impossible to monitor.

The restriction of the initial permit to specific professional activities or fields of activities or to specific regions should not apply to renewals.

Amendment 30
Article 9, paragraph 1

1. After a “residence permit – worker” has been issued, its holder shall notify to the competent authorities any changes to the information provided in accordance with Article 5(3). If these changes relate to points (b) or (c) of Article 5(3) they shall be subject to the approval of the competent authority of the Member State concerned.

1. After a “residence permit - worker” has been issued, its holder shall notify to the competent authorities any changes to the information provided in accordance with Article 5(3). If these changes relate to points (b) or (c) of Article 5(3) they shall be subject to the approval of the competent authority of the Member State concerned.
Approval shall be granted where the holder has a valid contract of employment and any restrictions concerning the field of activity pursuant to Article 8 are observed.

Justification

The current labour market requires maximum mobility and flexibility; often short-term rather

than long-term work is offered. If the worker wishes to change jobs within the same line of work, this should not be made unnecessarily difficult.

Amendment 31
Article 10, paragraph 2

2. The competent authorities may suspend ***or revoke*** a “residence permit – worker” where the particulars supporting the application as provided for in Article 5 are incorrect ***or have not been amended in accordance with Article 9***. The competent authorities may also suspend or revoke a “residence permit – worker” when such measure is considered necessary for reasons of public policy or public security by the Member State concerned in accordance with Article 27.

2. The competent authorities may suspend a “residence permit – worker” where the particulars supporting the application as provided for in Article 5 are incorrect. ***The authorities may revoke it if the residence permit would not have been granted had the true facts been known or the approval under Article 9 of changes relating to Article 5(3)(b) and (c) was not applied for or duly granted.*** The competent authorities may also suspend or revoke a “residence permit – worker” when such measure is considered necessary for reasons of public policy or public security by the Member State concerned in accordance with Article 27.

Justification

Incorrect particulars justify the withdrawal of the residence permit only if the permit would not have been granted had the true facts been known. Likewise, withdrawing a residence permit merely for failure duly to pass on information would seem disproportionate.

Amendment 32
Article 10, paragraph 3, letter (b a) (new)

(ba) a "residence permit – worker" may not be revoked before the end of the period of entitlement to unemployment benefit.

Justification

Employees generally pay unemployment benefit contributions while they are working. Should they become unemployed, they are fully entitled to unemployment benefits.

Amendment 33

Article 11, paragraph 1, letter f, indent (i)

(i) working conditions, including conditions regarding dismissals and remuneration;

(i) ***pay and*** working conditions, including conditions regarding dismissals and remuneration;

Justification

Restriction to a specific region of a country imposes too tight a limit on the freedom of movement accorded by the permit and is impossible to monitor.

Amendment 34

Article 11, paragraph 1, letter f, indent (ii)

(ii) access to ***vocational*** training necessary to complement the activities authorised under the residence permit;

(ii) access to training necessary to complement the activities authorised under the residence permit;

Justification

Vocational training alone is sometimes not enough to complement and improve the worker's qualifications for the authorised activity.

Amendment 35

Article 11, paragraph 1, letter f, indent (iii)

(iii) recognition of diplomas, certificates and other qualifications issued by a competent authority;

(iii) recognition of diplomas, certificates and other qualifications issued by a competent authority, ***where these are comparable with the knowledge and skills required under national law;***

Justification

It needs to be ensured that diplomas, certificates and other qualifications from third countries correspond to those of the Member States, in order to ensure equal treatment with EU citizens.

Amendment 36

Article 11, paragraph 1, letter (f), indents (vii), (viii) and (viii a) (new)

(vii) access to education and study grants;

(viii) access to social assistance for access to housing;

(viii a) right to free legal aid for people in need.

Justification

The rights granted to holders of a "residence permit – worker" should be supplemented by access to education, teaching, social assistance for housing and free legal aid, insofar as these conditions also apply to nationals.

Amendment 37

Article 11, paragraph 2, subparagraph 1

Member States may restrict the rights conferred under paragraph 1(f)(ii) to third-country nationals who have been staying or who have the right to stay in their territory for at least one year. ***deleted***

Justification

It is not desirable to restrict possible access to vocational training necessary for carrying out the work concerned. The possibility of engaging in, or being sent on, vocational training is important to both employer and employee alike. It is incomprehensible that a Member State should be able to restrict such opportunities.

Amendment 38

Article 11, paragraph 3 a (new)

3a. The trailing spouse or recognised partner of a holder of a 'residence permit - worker' shall be entitled to such a permit,

which shall be valid for the same period of time as the worker's permit.

Justification

The applicant's personal circumstances must be taken into consideration. The Community will be less attractive to talented workers and specialised third-country nationals if their spouses or recognised partners are unable to take up work.

Amendment 39
Article 12, paragraph 2

**2. Member States may ask applicants or ~~deleted~~
their future employers to deposit a security,
which shall be repayable on the return of
the seasonal worker to a third country.**

Justification

It is not reasonable to ask employers to make a deposit, as they are not in a legal position to ensure the return of the applicant. Moreover, this would not encourage employers to employ a legal work-force.

Amendment 40
Article 14, paragraph 3 a (new)

3a. A “residence permit – intra-corporate transferee” shall entitle the holder of the permit to perform his or her duties in all Member States without being required to obtain a “residence permit – intra-corporate transferee” for these Member States. This is provided the holder at all times continues to perform his duties for the same legal entity.

Justification

Enterprises use the internal market and operate on a cross-border basis. Customers and consumers expect to be provided with a service in any Member State in which an enterprise has its offices. To do that, they have to be able to transfer workers internally without much

red tape.

Amendment 41
Article 14 a (new)

Article 14a

1. Employees of a contractual service supplier may be granted a "residence permit - contractual service supplier".

The provisions of Section 1 shall apply mutatis mutandis to such permits.

However, applicants for a "residence permit - contractual service supplier" shall not be required to provide evidence of fulfilment of the requirement laid down in Article 6.1. Instead, applicants shall demonstrate that they fulfil the criteria set out in paragraph 2 of this Article.

2. To obtain a "residence permit – contractual service supplier, employees of the contractual service supplier will have to

(a) demonstrate that they are specialists as defined in Article 14(2)(b);

(b) provide evidence of the existence and terms of the service contract between the contractual service supplier and the entity based in the Member State.

3. The period of validity of the “residence permit - contractual service supplier” shall be equal to the duration applied for, subject to a maximum period of one year. The permit is renewable for two further periods of one year.

Justification

The employees of contractual service suppliers should be exempted from fulfilling the requirements laid down in Article 6(1).

Amendment 42
Article 15, paragraph 2

2. The overall validity of a “residence permit – trainee” shall not exceed one year. This period may be extended ***exclusively*** for the time needed to obtain a professional qualification recognised by the Member State concerned in the sphere of activity of the trainee.

2. The overall validity of a “residence permit – trainee” shall not exceed one year. This period may be extended for the time needed to obtain a professional qualification recognised by the Member State concerned in the sphere of activity of the trainee.

Justification

Unnecessary.

Amendment 43
Article 16, paragraph 1

1. Third-country nationals pursuing activities as an employed person in the context of youth exchange or youth mobility schemes, including “au pairs”, may be granted a “residence permit – youth exchange/au pair”.

The provisions of Section 1 shall apply *mutatis mutandis* to such permit. However, applicants for a “residence permit – youth exchange/au pair” shall not be required to provide evidence of fulfilment of the requirement laid down in Article 6(1). Instead, applicants shall demonstrate that the envisaged activity is strictly limited in duration and connected with a youth exchange or youth mobility scheme officially recognised by the Member State concerned.

1. Third-country nationals pursuing activities as an employed person in the context of youth exchange or youth mobility schemes, including “au pairs”, may be granted a “residence permit – youth exchange/au pair”.

The provisions of Section 1 shall apply *mutatis mutandis* to such permit. However, applicants for a “residence permit – youth exchange/au pair” shall not be required to provide evidence of fulfilment of the requirement laid down in Article 6(1). Instead, applicants shall demonstrate that the envisaged activity is strictly limited in duration and ***directly*** connected with a youth exchange or youth mobility scheme officially recognised by the Member State concerned.

Justification

This makes it clear that there must be a direct, rather than simply an unspecified, connection between a recognised programme and the activity.

Amendment 44
Article 17, paragraph 1

1. Member States shall only authorise third-country nationals to enter and reside in their territory for the purpose of exercising activities as self-employed persons where a “residence permit – self-employed person” has been issued by the competent authorities of the Member State concerned in accordance with this Directive.

1. Member States shall only authorise third-country nationals to enter and reside in their territory for the purpose of exercising **legal economic** activities as self-employed persons where a “residence permit – self-employed person” has been issued by the competent authorities of the Member State concerned in accordance with this Directive.

Justification

Clarification.

Amendment 45
Article 17, paragraph 2

2. A “residence permit – self-employed person” shall **only** be issued **if**, after verification of the particulars and documents, **it appears** that the applicant fulfils the requirements for obtaining a “residence permit – self-employed person” in accordance with Articles 18 and 19, subject to any limitations imposed by a Member State in accordance with Articles 26, 27 and 28.

2. A “residence permit – self-employed person” shall be issued after verification of the particulars and documents, **provided** that the applicant fulfils the requirements for obtaining a “residence permit – self-employed person” in accordance with Articles 18 and 19, subject to any limitations imposed by a Member State in accordance with Articles 26, 27 and 28.

Justification

See justification for amendment to Article 4(2).

Amendment 46
Article 18, paragraph 2

Applications for a “residence permit – self-employed person” shall be submitted via the

Applications for a “residence permit – self-employed person” shall be submitted via the

representation of a Member State competent for the country of legal residence of the applicant or directly in the territory of the Member State concerned, if the applicant is already resident or legally present **there**.

representation of a Member State competent for the country of legal residence of the applicant or directly in the territory of the Member State concerned, if the applicant is already **legally** resident or legally present **or has legally entered the Member State**.

Justification

Clarification.

Amendment 47 Article 18, paragraph 3, letter (e)

(e) if required by the Member State concerned, **a certificate or adequate proof of good character and conduct** and a health certificate;

(e) if required by the Member State concerned, **a disclosure of a criminal record** and a health certificate;

Justification

A proof of good conduct is not explicitly defined. On the contrary, a criminal record is a matter of fact.

Amendment 48 Article 18, paragraph 4

4. Third-country nationals who have been legally resident in a Member State and who have legally exercised activities there as a self-employed person for more than three years over the preceding **five** years shall not be required to provide evidence of fulfilment of the requirement laid down in Article 19(1) when submitting an application for a “residence permit – self-employed person” in that Member State.

4. Third-country nationals who have been legally resident in a Member State and who have legally exercised activities there as a self-employed person for more than three years over the preceding **six** years shall not be required to provide evidence of fulfilment of the requirement laid down in Article 19(1) when submitting an application for a “residence permit – self-employed person” in that Member State.

Justification

See justification for amendment to Article 5(4).

Amendment 49
Article 19, paragraph 3a (new)

3a. Consultation on the horizontal review referred to in this article must take place with the employers' and employees' associations.

Justification

Employers' and employees' associations (social partners) must also be able to play a role in the horizontal review referred to in Article 19.

Amendment 50
Article 20, paragraph 1

1. A “residence permit – self-employed person” shall be issued for a predetermined period. The initial “residence permit – self-employed person” granted shall be valid for a period of up to ***three*** years to be determined in accordance with national legislation. It shall be renewable for periods of up to three years, to be determined in accordance with national legislation, ***on application by the holder, to be submitted*** at least three months before the expiry date ***and after consideration by the competent authority of a file containing updated information on the items enumerated in Article 18(3), and in particular detailed information on the activities exercised as a self-employed person.***

1. A “residence permit – self-employed person” shall be issued for a predetermined period. The initial “residence permit – self-employed person” granted shall be valid for a period of ***at least one year and*** up to ***five*** years to be determined in accordance with national legislation. ***Where the conditions laid down in Article 18(3) are met,*** it shall be renewable for periods of up to three years, to be determined in accordance with national legislation. ***The holder shall be required to submit an application*** at least three months before the expiry date. ***A late application shall not constitute grounds for refusing a permit.***

Justification

See justification for amendment to Article 7(1).

Amendment 51

Article 21

A “residence permit – self-employed person” shall initially be restricted to the exercise of specific activities as a self-employed person or to specific fields of activities. ***It may also be restricted to the exercise of activities as a self-employed person in a specific region. After three years it shall not be subject to these restrictions.***

A “residence permit – self-employed person” shall initially be restricted to the exercise of specific activities as a self-employed person or to specific fields of activities. ***The initial restriction shall not apply to renewals.***

Justification

The restriction of the initial permit to specific professional activities or fields of activities or to specific regions should not apply to renewals.

It needs to be ensured that third country nationals can obtain the same payment as an EU citizen for the same work.

Amendment 52

Article 22, paragraph 1

1. After a “residence permit – self-employed person” has been issued, its holder shall notify to the competent authorities any changes to the information provided in accordance with Article 18(3). ***If these changes relate to points (b) or (c) of Article 18(3) they shall be subject to the approval of the competent authority of the Member State concerned.***

1. After a “residence permit – self-employed person” has been issued, its holder shall notify to the competent authorities any changes to the information provided in accordance with Article 18(3).

Justification

See justification for Amendment 63. A registration requirement ought to be sufficient.

Amendment 53
Article 23, paragraph 2

2. The competent authorities may suspend **or revoke** a “residence permit – self-employed person” where the particulars supporting the application as provided for in Article 18 are incorrect **or have not been amended in accordance with Article 22**. The competent authorities may also suspend or revoke a “residence permit – self-employed person” when such measure is considered necessary for reasons of public policy or public security by the Member State concerned in accordance with Article 27.

2. The competent authorities may suspend a “residence permit – self-employed person” where the particulars supporting the application as provided for in Article 18 are incorrect **The authorities may revoke it if the residence permit would not have been granted had the true facts been known or the approval under Article 22 of changes relating to Article 18(3) (b) and (c) was not applied for or duly granted**. The competent authorities may also suspend or revoke a “residence permit – self-employed person” when such measure is considered necessary for reasons of public policy or public security by the Member State concerned in accordance with Article 27.

Justification

See justification for amendment to Article 10(2).

Amendment 54
Article 25

Member States may request applicants to pay fees for handling applications in accordance with this Directive. The level of fees shall **be proportionate and may be based on the service actually provided**.

Member States may request applicants to pay fees for handling applications in accordance with this Directive. The level of fees shall **not exceed the real costs incurred by the national administration**.

Justification

National administrations should not make a profit on providing the service.

Amendment 55
Article 26

Member States may decide to adopt national provisions limiting the issuing of permits in accordance with this Directive to a set ceiling or suspending or halting the issuing of these permits for a defined period, taking into account the overall capacity to receive and to integrate third-country nationals on their territory or in specific regions thereof. These national provisions shall state in detail which groups of persons are covered by, or exempted from, the measure. If these national provisions impose ceilings, they shall lay down in detail the criteria according to which applications for permits in accordance with this Directive shall be ranked when the number of applications received exceeds the set ceilings. *deleted*

Justification

As a residence permit is only issued if demand on the labour market cannot be otherwise satisfied, there is no need for any additional quotas.

Amendment 56
Article 29, paragraph 1

1. Member States shall ensure that a decision to grant, modify or renew a permit in accordance with this Directive, is adopted and communicated to the applicant at the latest within **180 days** after receipt of the application. Decisions on an application submitted in accordance with Articles 14, 15 and 16 shall be adopted and

1. Member States shall ensure that a decision to grant, modify or renew a permit in accordance with this Directive, is adopted and communicated to the applicant at the latest within **three months** after receipt of the application. Decisions on an application submitted in accordance with Articles 14, 15 and 16 shall be adopted and

communicated to the applicant within 45 days after its receipt.

communicated to the applicant within 45 days after its receipt.

Justification

To bring the article into line with Article 7(1), which requires applications to extend a residence permit to be submitted three months before their expiry. A prompt decision is in the interest of the labour market.

Amendment 57 Article 29, paragraph 2

2. Every Member State shall make public the average time necessary for its authorities to issue, modify or renew permits in accordance with this Directive and inform applicants thereof upon receipt of an application.

2. Every Member State shall make public the average time necessary for its authorities to issue, modify or renew permits in accordance with this Directive and inform applicants thereof upon receipt of an application. ***Applicants will be entitled to receive information on the progress of their application once 15 working days past the indicative time period has passed. Any applicant should be immediately informed if the processing has stopped.***

Justification

This puts a duty on the authorities processing the request to keep individuals informed and will help to prevent situations where applications are mislaid or lie dormant or are stopped altogether.

Amendment 58 Article 29, paragraph 3

3. If the information supporting the application is ***inadequate***, the competent authorities shall notify the applicant of the additional detailed information that is required. The period referred to in paragraph 1 shall be suspended until the authorities have received the additional information required.

3. If the information supporting the application is ***incomplete according to the publicly specified criteria***, the competent authorities shall notify the applicant of the additional detailed information that is required. The period referred to in paragraph 1 shall be suspended until the authorities have received the additional information required.

Justification

Clarification. Need to define what supporting information is required in advance of the applications being filed so that there are clear rules in place. Excessive discretion given to individual administrators may lead to discrimination and could hinder the aims of the legislation.

Amendment 59 Article 30, letter (e)

(e) the Member State shall notify the national provisions to the Commission and they shall submit to the Commission an annual report on the application of those national provisions.

(e) the Member State shall notify the national provisions to the Commission and they shall submit to the Commission an annual report on the application of those national provisions. ***Member States are encouraged to publish these provisions on a dedicated website that also includes job vacancies, so as to provide up-to-date and publicly accessible information to applicants, as well as to make these provisions available on the EURES website¹.***

Justification

In order to enhance transparency and make the information easily available to the applicants.

Amendment 60 Article 33

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

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

¹ http://europa.eu.int/comm/employment_social/elm/eures/

date specified in Article 35 at the latest and shall notify it without delay of any subsequent amendment affecting them.

date specified in Article 35 at the latest and shall notify it without delay of any subsequent amendment affecting them. *A gradual harmonisation or alignment of national penalties with Community standards may be envisaged at this point.*

Amendment 61
Article 35 a (new)

Article 35a

The provisions of this Directive shall be without prejudice to the application of national provisions more favourable to third-country nationals than those laid down in the Directive.

Justification

The proposed directive should not prevent Member States from applying more favourable rules than the minimum requirements provided for in the directive.

EXPLANATORY STATEMENT

General remarks

There is no doubt that the hitherto predominant practice of halting immigration must be superseded by a new common immigration policy. The urgency derives not only from the Treaty of Amsterdam, which confers competence on the Community in the areas of asylum and immigration and requires the Council to decide on specific measures within five years after its entry into force, but also from actual necessity.

Firstly, the needs of the labour market and the economy must be taken into account. Owing to a slowdown in the growth of the population, the average age is steadily climbing so that the economically active percentage of the population is decreasing at a faster rate. This problem can only be resolved by carefully controlled immigration.

Secondly, individuals who are present in the EU without being authorised to work, must be given the opportunity to engage legally in economic activity provided there is the demand on the EU labour market. This is the only way to achieve integration into the social system with all its advantages and disadvantages, which is a matter of urgency if the resident population is to accept immigrants to a greater degree.

The European Union therefore requires its own immigration policy, not only on humanitarian grounds but also for the sake of its own basic interests – to maintain social security and economic stability.

The proposal for a directive

The aim of the proposal for a directive is to create a uniform framework in respect of the conditions of entry and residence of migrant workers. This principle should be approved insofar as implementation of the proposal would entail four important improvements compared with the current situation.

- The proposal would produce greater transparency. Member States will be compelled to commit themselves to the specific policy and to make that public. It would obviate a situation in which third-country nationals are denied access to the European labour market simply through a lack of information.
- Implementation of the proposal would bring about significant procedural simplifications for third country nationals. Applications for work and residence permits would be processed together.
- It also takes account of the interests of third countries. The possible negative impact of a 'brain-drain' would be offset by efforts to maintain the mobility of third country labour between the EU and the country of origin; pension entitlements would be maintained and/or paid out and third-country nationals would be entitled for a certain period, after returning to their country of origin, to seek work again in the EU.

- A further advantage is the standardisation of terms, which facilitates future work on a common immigration policy.

Your rapporteur is aware of the practical problems involved in a common immigration policy and appreciates that the Commission wishes to submit a proposal which will achieve the greatest possible consensus. However, the proposal does not go far enough in two respects.

- The first major problem is that the proposal compels applicants de facto to remain as long as possible in one and the same job since, within a period of three years, any change in activity or job requires authorisation and even where all the conditions are fulfilled (contract of employment, position cannot otherwise be filled) there is no legal entitlement to such authorisation. The current labour market, however, requires maximum mobility and flexibility; often short-term rather than long-term work is offered. The policy on admitting economic migrants must be such that it facilitates a quick and effective response to the needs of the labour market. This calls for greater mobility for immigrants between the Member States and greater flexibility in the choice of work and its duration. If economic migrants are deprived of the opportunity to meet demand from the labour market through legal restrictions and conditions which are irrelevant to the needs of the labour market, then a European immigration policy is condemned to failure.
- The second obvious sticking point in the directive is that it only partly takes account of the problem of the black economy. The directive improves the current situation in the Member States to the extent that individuals legally present on EU territory, e.g. with a tourist visa, are offered the opportunity to apply for a work permit in the EU. However, the situation of individuals present within the EU illegally is not taken into consideration. Illegal workers put pressure on the labour market since they can be more easily subjected to pressure and exploited because of their illegal status and can offer cheaper rates while paying neither tax nor social security contributions. This situation results in a form of unfair competition in the EU which not only has a negative impact on the social system but also bolsters anti-foreigner attitudes. The only solution is to give individuals who are illegally resident in the EU the opportunity to regain legal status. As long as this is not possible, they will also only be hired illegally. They must be enabled to seek work legally in order to regularise their situation.

The directive does not fulfil this task as it only allows application for a work and residence permit to be made on EU territory if the person concerned is legally in the country. Illegal residents must leave the country in order to make an application. This is obviously unrealistic. The solution would be to allow an individual who has an opportunity to obtain a contract of employment and who fulfils all other conditions to submit the application from within the EU. Likewise, it is irresponsible to create illegal immigrants by laying down very restrictive conditions for extending permits or by taking an inordinate amount of time to grant them.

Your rapporteur has endeavoured to find solutions to these two problems by proposing various amendments and, provided those amendments are taken into account, recommends that the proposal for a directive be adopted.

6 June 2002

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the Commission proposal for adoption of 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 – C5-0447/2001 – 2001/0154(CNS))

Draftsman: Joachim Wuermeling

PROCEDURE

The Committee on Legal Affairs and the Internal Market appointed Joachim Wuermeling draftsman at its meeting of 6 November 2001.

It considered the draft opinion at its meetings of 26 March, 27 March, 23 April, 22 May and 28 May 2002.

At the last meeting it adopted the following amendments by 15 votes to 13 with 0 abstentions.

The following were present for the vote: Giuseppe Gargani, chairman; Rothley, Ioannis Koukiadis and Bill Miller, vice-chairmen; Joachim Wuermeling, draftsman; Paolo Bartolozzi, Maria Berger, Philip Charles Bradbourn (for Lord Inglewood), Carlos Carnero González (for François Zimeray, pursuant to Rule 153(2)), Bert Doorn, Janelly Fourtou, Evelyne Gebhardt, Fiorella Ghilardotti, José María Gil-Robles Gil-Delgado, Kurt Lechner, Klaus-Heiner Lehne, Neil McCormick, Toine Manders, Helmuth Markov (for Alain Krivine, pursuant to Rule 153(2)), Arlene McCarthy, Manuel Medina Ortega, Emilia Franziska Müller (for Stefano Zappalà, pursuant to Rule 153(2)), Elena Ornella Paciotti (for Carlos Candal), Renate Sommer (for Malcolm Harbour, pursuant to Rule 153(2)), Astrid Thors (for Diana Wallis), Marianne L.P. Thyssen, Rijk van Dam (for Ole Krarup) and Rainer Wieland.

SHORT JUSTIFICATION

1. Substance of the Commission proposal

The Commission proposal seeks to harmonise the Member States' law on third-country nationals with regard to migration for reasons of work. It encompasses common criteria and procedures regarding the entry and residence of third-country nationals for the purpose of employed or self-employed activities.

The basic approach is to establish uniform, Europe-wide standards. However, the combined entry and residence permit will be valid only for the Member State to which the relevant application has been made. The Directive lays down the conditions for obtaining a residence permit. Third-country nationals are entitled to a residence permit if they fulfil the conditions.

Before entry and residence permits are issued for the first time, a needs test must be carried out to see whether the post to be filled by the potential immigrant cannot be filled within the European Union. A needs test need not be carried out in the case of highly-paid activities performed by 'key personnel' and by other highly-qualified managerial staff. After five years the residence permit must be extended, even without this proviso.

Finally, the Directive includes provisions concerning the revocation of residence permits for reasons of public policy and public security, publication of the way in which the procedure will be dealt with by the Member States and a review clause in Article 34.

2. Legal basis

The Commission has chosen Article 63(3)(a) of the EC Treaty as the legal basis for the proposed measure. This provides for 'measures on immigration policy within the [area of] (a) conditions of entry and residence ...' The measures enacted hitherto pursuant to the powers laid down in Article 63(3)(a) of the EC Treaty concern purely 'individual' areas of regulation, such as the mutual recognition of decisions on the expulsion of third country nationals¹, freedom of movement with a long-stay visa² and the right to family reunification³. 'Immigration policy measure' should therefore be understood as provisions concerning immigration targeted at a practical problem with the application or implementation of national legislation within the common legal area. The Commission proposal, however, brings together the entire regulatory subject-matter. This is not covered by the concept 'immigration policy measure'. The Tampere European Council of 15 and 16 October 1999 actually called only for an 'approximation' of national legislation in this area, but not for the replacement of national rules by EU rules.

¹ Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals (based on Article 63(3) of the Treaty establishing the European Community), OJ L 149, 2.6.2001, p. 34.

² Council Regulation (EC) No 1091/2001 of 28 May 2001 on freedom of movement with a long-stay visa (based on Article 62(2)(b)(ii) and Article 63(3)(a) of the Treaty establishing the European Community), OJ L 150, 6.6.2001, p. 4.

³ Proposal for a Council Directive on the right to family reunification (based on Article 63 of the EC Treaty) (COM(1999) 638 – CNS 1999/0258), OJ C 116, 26.4.2000, p. 66.

Community harmonisation is also contrary to the principle of subsidiarity. The differences noted by the Commission between the Member States' rules in this area do not in themselves prove any need for harmonisation. The different rules spring from different needs and traditions in the Member States and in nationally heterogeneous labour markets. Only the Member States can guarantee the flexibility geared to the national, regional and sectoral requirements of the labour market.

Such an approximation of legislation would be necessary only if any third-country national admitted to a Member State were permitted to work in any Member State. However, there is no intention of doing this, nor would it make any sense, because it would make an immigration policy relating specifically to the labour market impossible.

3. Reservations concerning content

There are also considerable doubts as to whether the stated aims of improving the Community's competitiveness can be achieved with this measure. There will be no general shortage of labour in Europe until well into the next decade. Even in the IT field, there is currently no need for an influx of labour into the European Union: in this situation, immigration for the purposes of work would thus primarily be at the expense of the unemployed here, and above all third-country nationals already living in Europe. Well over half of non-EU nationals who are registered as being unemployed have no vocational qualifications.

AMENDMENTS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission ¹	Amendments by Parliament
<p style="text-align: center;">Amendment 1 Recital 4</p>	
(4) All Member States have regulated access of third-country nationals to work with detailed national administrative rules. If it is to operate successfully, a Community policy in this field should be put in place progressively. <i>As a first step</i>	(4) All Member States have regulated access of third-country nationals to work with detailed national administrative rules. If it is to operate successfully, a Community policy in this field should be put in place progressively. The aim should

¹ OJ C 332 of 27.11.2001, p. 248.

the aim should be to lay down certain common definitions, criteria and procedures, which give a common legal frame to the discretion of Member States.

be to lay down certain common definitions, criteria and procedures, which give a common legal frame to the discretion of Member States.

Justification

It is doubtful anyway whether the Community may act at all on this scale. Further steps do not fall within Community competence, and this should be made clear.

Amendment 2 Recital 6

(6) In an increasingly global labour market and faced with shortage of skilled labour in certain sectors of the labour market the Community should reinforce its competitiveness to recruit and attract third-country workers, when needed. This should be facilitated by administrative simplification and by facilitating access to relevant information. Transparent **and harmonised** rules on the conditions under which third-country nationals may enter and stay in **the** Community to pursue economic activities, and their rights, should be laid down.

(6) In an increasingly global labour market and faced with shortage of skilled labour in certain sectors of the labour market the Community should reinforce its competitiveness to recruit and attract third-country workers, when needed. This should be facilitated by administrative simplification and by facilitating access to relevant information. Transparent rules on the conditions under which third-country nationals may enter and stay in **a** Community **Member State** to pursue economic activities, and their rights, should be laid down.

Justification

This is intended to clarify the issue of Community competence and the restriction to one Member State of a third-country national's right of residence and right to employment.

Amendment 3 Recital 8

(8) The chief criterion for admitting third-

(8) The chief criterion for admitting third-

country nationals to activities as an employed person should be a test demonstrating that a post cannot be filled from within the domestic labour market. The chief criterion for admitting third-country nationals to activities as a self-employed person should be a test demonstrating an added value for employment or the economic development of the host Member State.

country nationals to activities as an employed person should be a test demonstrating that a post cannot be filled from within the domestic labour market ***or by other EU nationals***. The chief criterion for admitting third-country nationals to activities as a self-employed person should be a test demonstrating an added value for employment or the economic development of the host Member State. ***Each Member State remains free to decide, on the basis of additional criteria relating to integration policy, public policy and social policy, whether third-country nationals may be granted residence for the purpose of taking up any kind of economic activity.***

Justification

This is intended to clarify the issue of Community competence and the restriction to one Member State of a third-country national's right of residence and right to employment.

Amendment 4 Article 3, paragraph 4

4. In the absence of specific provisions of Community law, Member States may maintain ***or introduce more favourable provisions regarding the following categories of person:***

- (a) researchers and academic specialists;
- (b) priests and members of religious orders;
- (c) sport professionals;
- (d) artists;
- (e) journalists;
- (f) representatives of non-profit making

4. Member States may maintain more favourable provisions regarding the following categories of person:

- (a) researchers and academic specialists;
- (b) priests and members of religious orders;
- (c) sport professionals;
- (d) artists;
- (e) journalists;
- (f) representatives of non-profit making

organisations.

organisations.

Justification

At present there are no specific Community provisions for privileged groups, and no national provisions in addition to the existing provisions should be introduced.

Amendment 5 Article 4, paragraph 3, letter (b)

3. The application shall be accompanied by the following particulars and documents:

- (a) name and address of the applicant and the employer;
- (b) a valid work contract ***or a binding offer of work*** in the Member State concerned, covering the term of the residence permit applied for;

3. The application shall be accompanied by the following particulars and documents:

- (a) name and address of the applicant and the employer;
- (b) a valid work contract ***in accordance with national provisions*** in the Member State concerned, covering the term of the residence permit applied for;

Justification

A binding offer of work is not sufficient, as there is no guarantee that the worker will accept it or that the ensuing contract of employment will comply fully with national law. The applicant may enter the country only if he is actually going to take up the employment cited as the reason for his entry. So the production of a work contract should be obligatory at the application stage. It would be acceptable for the contract to be conditional on the application being granted.

Amendment 6 Article 5, paragraph 3, letter (g)

(g) documents proving the skills which are necessary for the performance of the envisaged activities and evidence of fulfilment of all the conditions applicable to nationals of the Member State concerned for the exercise of the relevant activity as an employed person;

(g) documents proving the skills which are necessary for the performance of the envisaged activities, ***including adequate knowledge of the language***, and evidence of fulfilment of all the conditions applicable to nationals of the Member State concerned for the exercise of the relevant

activity as an employed person;

Justification

This amendment seeks to introduce an objective criterion which would serve both to limit abuse and assist workers' subsequent integration into the society of the host State.

Amendment 7
Article 6, paragraph 4

4. Member States may adopt national provisions according to which the requirement laid down in paragraph 1 is deemed to be fulfilled if the annual income offered to a third-country national exceeds a defined threshold. *deleted*

Justification

The criteria taken into account should be the objective requirements set out in paragraph 1. There is no justification for exemption from those requirements for higher income brackets.

Amendment 8
Article 6, paragraph 5

5. Member States may adopt national provisions according to which the requirement laid down in paragraph 1 is deemed to be fulfilled for a specific third-country national, if a defined amount of money has been paid by the future employer of that person to the competent authorities. The money received from the employer shall be spent for measures promoting the integration of third-country nationals or for vocational training purposes. *deleted*

Justification

The criteria taken into account should be the objective requirements set out in paragraph 1. It should not be possible to purchase exemption from those requirements.

Amendment 9
Article 7, paragraph 2

2. Applicants for renewal who have ~~been holding a “residence permit – worker” in the Member State concerned for more than three years shall not be required to provide evidence of fulfilment of the requirement laid down in Article 6(1).~~ deleted

Justification

The legal basis, Article 63(3)(a), does not cover the creation of an independent residence permit. So, whenever a work and residence permit comes up for renewal, a 'needs test' must be carried out in accordance with the provisions of Article 6(1).

Amendment 10
Article 8

A “residence permit – worker” shall initially be restricted to the exercise of specific professional activities or fields of activities. It may also be restricted to the exercise of activities as an employed person in a specific region. ***After three years, it shall not be subject to these restrictions.***

A “residence permit – worker” shall initially be restricted to the exercise of specific professional activities or fields of activities. It may also be restricted to the exercise of activities as an employed person in a specific region.

Justification

The legal basis, Article 63(3)(a), does not cover the creation of an independent residence permit. So, whenever a work and residence permit comes up for renewal, a 'needs test' must be carried out in accordance with the provisions of Article 6(1).

Amendment 11 Article 16, paragraph 1

1. Third-country nationals pursuing activities as an employed person in the context of youth exchange or youth mobility schemes, including “au pairs”, may be granted a “residence permit – youth exchange/au pair”.

The provisions of Section 1 shall apply *mutatis mutandis* to such permit. However, applicants for a “residence permit – youth exchange/au pair” shall not be required to provide evidence of fulfilment of the requirement laid down in Article 6(1). Instead, applicants shall demonstrate that the envisaged activity is strictly limited in duration and connected with a youth exchange or youth mobility scheme officially recognised by the Member State concerned.

1. Third-country nationals pursuing activities as an employed person in the context of youth exchange or youth mobility schemes, including “au pairs”, may be granted a “residence permit – youth exchange/au pair”.

The provisions of Section 1 shall apply *mutatis mutandis* to such permit. However, applicants for a “residence permit – youth exchange/au pair” shall not be required to provide evidence of fulfilment of the requirement laid down in Article 6(1). Instead, applicants shall demonstrate that the envisaged activity is strictly limited in duration and **directly** connected with a youth exchange or youth mobility scheme officially recognised by the Member State concerned.

Justification

Clarification

Amendment 12 Article 17, paragraph 2

2. A “residence permit – self-employed person” **shall only** be issued if, after verification of the particulars and documents, it appears that the applicant

2. A “residence permit – self-employed person” **may** be issued if, after verification of the particulars and documents, it appears that the applicant

fulfils the requirements for obtaining a “residence permit – self-employed person” in accordance with Articles 18 and 19, subject to any limitations imposed by a Member State in accordance with Articles 26, 27 and 28.

fulfils the requirements for obtaining a “residence permit – self-employed person” in accordance with Articles 18 and 19, subject to any limitations imposed by a Member State in accordance with Articles 26, 27 and 28.

Justification

No legal entitlement should be created.

Amendment 13 Article 21

A “residence permit – self-employed person” shall initially be restricted to the exercise of specific activities as a self-employed person or to specific fields of activities. It may also be restricted to the exercise of activities as a self-employed person in a specific region. ***After three years it shall not be subject to these restrictions.***

A “residence permit – self-employed person” shall initially be restricted to the exercise of specific activities as a self-employed person or to specific fields of activities. It may also be restricted to the exercise of activities as a self-employed person in a specific region.

Justification

To allow flexibility in exploiting the full potential of the domestic employment market and ensure preference is given to job-seekers from EU States, the possibility of imposing restrictions should continue to exist.

Amendment 14 Article 27

Member States may refuse to grant or to renew, or may revoke, permits in accordance with this Directive ***on grounds of public policy, public security or public***

Member States may refuse to grant or to renew, or may revoke, permits in accordance with this Directive ***if public safety and public order are endangered.***

health. The grounds of public policy or public security 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 solely on the ground of illness or disability suffered after the issue of the residence permit.

Justification

Danger to public safety and public order is a sufficiently definite legal concept and does not require any further elaboration, which would only make it less clear.

Amendment 15
Article 29, paragraph 2

2. Every Member State shall make public the average time necessary for its authorities to issue, modify or renew permits in accordance with this Directive and inform applicants thereof upon receipt of an application. *deleted*

Justification

Too complicated.

Amendment 16
Article 30

Article 30 *deleted*
When Member States choose to adopt national measures in accordance with Article 6(3), (4) or (5); Article 19(2) and

(3), or Article 26, the following rules shall apply:

(a) the Member State shall base its national provisions on the criteria listed in the relevant provisions of this Directive;

(b) the national provisions shall include a statement of reasons based upon objective and verifiable criteria;

(c) the national provisions shall be subject to regular review at national level to ascertain whether it is justifiable under this Directive that the national provisions be maintained unchanged;

Justification

Superfluous. If the Member States' national provisions do not comply with Community law, the Commission is at liberty to open Treaty infringement proceedings.

Amendment 17 Article 32

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. *deleted*

Justification

Superfluous, as this provision is taken verbatim from the EU Charter of Fundamental Rights and it goes without saying that discrimination is prohibited in the Member States, which all comply with the fundamental principles of law-based states.

Amendment 18

Article 34

By 31 December 2007 at the latest, 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.***

By 31 December 2007 at the latest, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States.

Justification

This goes without saying: the Commission may submit proposals at any time by virtue of the right of initiative conferred on it by the Treaty.

28 May 2002

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the Commission proposal for adoption of 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 – C5-0447/2001 – 2001/0154 (CNS))

Draftsperson: Jean Lambert

PROCEDURE

The Committee on Employment and Social Affairs appointed Jean Lambert draftsperson at its meeting of 4 October 2001.

It considered the draft opinion at its meetings of 16 April and 27–28 May 2002.

At the latter meeting it adopted the following amendments by 21 votes to 16.

The following were present for the vote: Theodorus J.J. Bouwman, chairman; Marie-Hélène Gillig, Winfried Menrad and Marie-Thérèse Hermange, vice-chairpersons; Jean Lambert, draftsperson; Jan Andersson, Elspeth Attwooll, María Antonia Avilés Perea (for Carlo Fatuzzo), Regina Bastos, André Brie (for Sylviane H. Ainardi), Philip Bushill-Matthews, Alejandro Cercas, Luigi Cocilovo, Proinsias De Rossa, Jillian Evans, Ilda Figueiredo, Fiorella Ghilardotti (for Elisa Maria Damião), Anne-Karin Glase, Koldo Gorostiaga Atxalandabaso, Stephen Hughes, Dieter-Lebrecht Koch (for Thomas Mann), Ioannis Koukiadis (for Harald Ettl), Rodi Kratsa-Tsagaropoulou, Elizabeth Lynne, Mario Mantovani, Juan Andrés Naranjo Escobar (for Mario Clemente Mastella), Ria G.H.C. Oomen-Ruijten (for Roger Helmer), Manuel Pérez Álvarez, Bartho Pronk, Herman Schmid, Miet Smet, Helle Thorning-Schmidt, Claude Turmes (for Hélène Flautre), Ieke van den Burg, Anne E.M. Van Lancker, Barbara Weiler and Sabine Zissener (for Enrico Ferri).

SHORT JUSTIFICATION

The Commission's proposal responds to the need to regulate an important aspect of the Community immigration policy, the entry and residence of third-country nationals for the purpose of paid employment or self-employed economic activities in the Member States.

According to the Commission Communication on a Community immigration policy¹, the lack of proper legal channels for labour migration is one of the reasons of illegal immigration. The Communication also points out that the European Union's demographic and economic needs call for a more open immigration policy and, as a consequence, more accessible legal entry channels for workers.

Existing conditions of entry in the Member States are so restrictive that it is very difficult for migrants to enter legally. Many third-country nationals therefore enter and work illegally, even though they make a significant contribution to the European economy. According to the Commission Communication, the European Union must recognise the positive contribution of immigrant labour and accept that immigration is likely to increase in the future. Significant changes to immigration legislation are needed in order to make it easier for immigrants to enter legally. The proposed Directive should respond to this need for a new legislation.

The proposal for a Directive regulates the entry and residence of third-country nationals for the purpose of paid employment or self-employed economic activities with the objective to facilitate legal immigration and simplify entry and residence procedures. An important element is that it provides for a single national application procedure leading to a combined title including both residence and work permit within one administrative act in order to harmonise and simplify the existing national rules.

According to the proposed Directive, the only legal channel for labour migration is prior possession of an offer of employment. However, it should be stressed that while this is clearly the main channel, it cannot be the only one. Possession of an offer of employment while still in the country of origin may be an appropriate condition for temporary and specialised workers and workers recruited by large and medium-sized companies. Other avenues need to be developed in order to meet the needs of small businesses and a range of other activities, such as specialised crafts or unskilled work.

Immigration legislation that aims to provide legal channels for immigration into the Member States of the European Union should provide for two different entry channels: the first is discussed in the proposed Directive, the second could be to enter a Member State temporarily in order to seek employment. If legislation only allows for the first channel, some workers will enter the Union legally, but others might continue to enter illegally and work in the shadow economy. For this reason, your rapporteur supports the Economic and Social Committee proposal² to foresee the introduction of a temporary six-month entry and residence permit for purpose of seeking work, which would be monitored by each Member State in cooperation with the social partners. Applicants for these permits would have to provide proof of sufficient resources and sickness insurance as well as information on their professional expertise.

¹ COM(2000) 757 final

² ECOSOC opinion of 16 January 2002, SOC/084

The amendments proposed in this opinion try to simplify the procedure of application and to avoid arbitrariness or discrimination.

The European Council, in accordance with the Laeken Summit conclusions, should demonstrate greater commitment and alacrity in drawing up a genuine common asylum and immigration policy, in so doing it should support the Commission's initiatives and take into account the EP's positions.

In this direction, the EU and the Member States should ratify the International Convention on the Protection of the right of all migrant workers and members of their families¹, as approved by the UN General Assembly in 1990.

AMENDMENTS

The Committee on Employment and Social Affairs calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission ²	Amendments by Parliament
Amendment 1 Article 2, point h	
(h) “intra-corporate transferees” means third-country nationals working within a single legal entity and being temporarily transferred into the territory of a Member State, either to the principal place of business or to an establishment of that legal entity, provided that they have worked for the legal entity concerned for at least the 12-month period immediately preceding the transfer;	(h) “intra-corporate transferees” means third-country nationals working within a single legal entity and being temporarily transferred into the territory of a Member State, either to the principal place of business or to an establishment of that legal entity, provided that they have worked for the legal entity concerned for at least the 6-month period immediately preceding the transfer;

Justification

Companies may wish to transfer in newly trained staff, acquire new management expertise or put together specific project teams. A shorter time period would be more practical and would comply with practices used by the EU itself when sending project teams into third countries.

¹ A/Res/45/158, 18 December 1990

² OJ C (not yet published).

Amendment 2
Article 4, paragraph 1

1. Member States shall **only** authorise third-country nationals to enter and reside in their territory for the purpose of exercising activities as an employed person where a “residence permit – worker” has been issued by the competent authorities of the Member State concerned in accordance with this Directive.

1. Member States shall authorise third-country nationals to enter and reside in their territory for the purpose of exercising activities as an employed person where a “residence permit – worker” has been issued by the competent authorities of the Member State concerned in accordance with this Directive. ***Member States may grant third-country nationals a temporary six-month entry and residence permit for the purpose of seeking employment and for the purpose of registering for and attending professional training courses targeted at obtaining employment.***

Justification

The amendment aims to provide legal channels for immigration into the Member States.

This derogation, granted to enable an academic or professional qualification to be obtained, would enable immigrants to enter the country legally, would protect them from any form of exploitation and make them more competitive and ready to enter the employment market. Attending courses would also assist in integration and in acquiring knowledge of the language and culture.

Amendment 3
Article 5, paragraph 1

1. In order to obtain a “residence permit – worker”, a third-country national intending to exercise activities as an employed person in a Member State shall apply to the competent authority of the Member State concerned. ***The*** future employer of a third-country national shall have the right to submit an application on behalf of the third-country national applicant.

1. In order to obtain a “residence permit – worker”, a third-country national intending to exercise activities as an employed person in a Member State shall apply to the competent authority of the Member State concerned. ***A*** future employer of a third-country national shall have the right to submit an application on behalf of the third-country national applicant.

Justification

The amendment aims to simplify the procedure.

Amendment 4
Article 5, paragraph 2

2. Applications for a “residence permit – worker” shall be submitted via the representation of a Member State competent for the country of legal residence of the applicant or directly in the territory of the Member State concerned, if the applicant is already resident or legally present there.

2. Applications for a “residence permit – worker” shall be submitted via the representation of a Member State competent for the country of legal residence of the applicant or directly in the territory of the Member State concerned, if the applicant is already resident or legally present there. ***Legal residence shall not be requested when the Member States take national regularisation measures.***

Justification

The condition laid down in this article may prevent existing illegal immigrants from regularising their situation: only by giving them the option of submitting their application for residence in the Member State itself can they obtain legal status. Although this Directive does not address illegal immigrant, it should remain neutral on this point so as not to shut the door on possible national regularisation measures.

Amendment 5
Article 5, paragraph 3, point (e)

(e) if required by the Member State concerned, ***a certificate or adequate proof of good character and conduct*** and a health certificate;

(e) if required by the Member State concerned, ***a disclosure of a criminal record*** and a health certificate;

Justification

A proof of good conduct is not explicitly defined. On the contrary, a criminal record is a matter of fact.

Amendment 6
Article 5, paragraph 3, point g

(g) documents proving the skills which are necessary for the performance of the envisaged activities and evidence of fulfilment of all the conditions applicable to nationals of the Member State concerned for the exercise of the relevant activity as an employed person;

deleted

Justification

Evidence of the skills necessary for the performance of the envisaged activities should only concern the future employer, as is the case with any other employee.

Amendment 7

Article 5, paragraph 3, point h

<i>(h) evidence of having sufficient resources to support the applicant and his/her family members so as to avoid becoming a burden on the social assistance system of the host Member State for the duration of their stay and of having a sickness insurance covering all risks in the host Member State. Those resources shall be deemed sufficient where they are at, or above, the threshold below which the host Member State may grant social assistance to its nationals. Where this criterion is not applicable, the applicant's resources shall be deemed sufficient where they are no less than the amount of the minimum social security pension paid by the host Member State;</i>	<i>deleted</i>
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Justification

The requirement of sufficient resources to support the applicant is irrelevant if the applicant has submitted proof of an offer of work. Neither should sickness insurance be required, as applicants will be eligible through their employment.

Amendment 8

Article 5, paragraph 4

4. Third-country nationals who have been legally resident in a Member State ***and who have legally exercised activities there as an employed person for more than three years over the preceding five years*** shall not be required to provide evidence of fulfilment of the requirement laid down in Article 6(1) ***when submitting an application for a "residence permit – worker" in that Member State.***

4. Third-country nationals who have been legally resident in a Member State ***with a "resident permit – worker" or who, making use of the derogation set out in Article 4(1), have received an attendance certificate from a professional training course targeted at obtaining employment*** shall not be required to provide evidence of fulfilment of the requirement laid down in Article 6(1).

Justification

The amendment seeks to enforce equal treatment. Obtaining a professional qualification should be equivalent to exercising activities. Immigrants should be helped and encouraged to acquire qualifications and skills in order to protect them from 'black employment' (without regard to the law or union rules) and exploitation.

Amendment 9

Article 6, paragraph 2 a (new)

2a. Should a third country national employee leave the post within twelve months of taking up employment, the employer may fill the position with another third country national without having to fulfil the justification requirements again.

Justification

The Directive is currently silent on this issue.

Amendment 10

Article 6, paragraph 5 a (new)

The Member States may impose national conditions for the issue of the 'residence permit – worker' relating to:

- consultation between the social partners;***
- cooperation with the country of origin.***

Justification

Cooperation with the country of origin may take the form, inter alia, of measures seeking to avoid the 'brain drain' phenomenon.

Amendment 11

Article 6, paragraph 6 (new)

6. Consultation on the horizontal review referred to in this article must take place with the employers' and employees' organisations at national level, and – specifically as regards paragraph 3 – at sectoral level.

Justification

In the horizontal review referred to in Article 6, a role should be played by employers' and employees' organisations (social partners). Where sector-specific evaluations are concerned, sectoral organisations should be permitted to play this role.

Amendment 12 Article 7, paragraph 2

2. Applicants for renewal who have been holding a “residence permit – worker” in the Member State concerned ***for more than three years*** shall not be required to provide evidence of fulfilment of the requirement laid down in Article 6(1).

2. Applicants for renewal who have been holding a “residence permit – worker” in the Member State concerned shall not be required to provide evidence of fulfilment of the requirement laid down in Article 6(1).

Justification

The Directive should stipulate that a "residence permit – worker" will always be renewed with free access to the labour market. Renewals will not be subject to the condition of Community preference in employment.

Amendment 13 Article 8

A ‘residence permit – worker’ shall initially be restricted to the exercise of specific professional activities or fields of activities. ***It may also be restricted to the exercise of activities as an employed person in a specific region. After three years, it shall not be subject to these restrictions.***

A ‘residence permit – worker’ shall initially be restricted to the exercise of specific professional activities or fields of activities. ***The permits of applicants for renewal shall not be subject to this restriction.***

Justification

Restriction to a specific region of a country imposes too tight a limit on the freedom of movement accorded by the third country national's residence permit and is impossible to monitor.

The restriction of the initial permit to specific professional activities or fields of activities or to specific regions should not apply to renewals.

Amendment 14
Article 10, paragraph 2

2. The competent authorities may suspend or revoke a ‘residence permit – worker’ where the particulars supporting the application as provided for in Article 5 are incorrect or have not been amended in accordance with Article 9.

2. The competent authorities may suspend or revoke a ‘residence permit – worker’ where the particulars supporting the application as provided for in Article 5 are incorrect or have not been amended in accordance with Article 9.

In order to help avoid acts of ‘fraud’ from being committed through ignorance, the authority processing the administrative act must provide information in simple, comprehensible language, in particular concerning what counts, for example, as incomplete or complete data, or as a substantial or a minor change; express reference must be made to the rights and duties attached to the ‘residence permit – worker’.

The competent authorities may also suspend or revoke a ‘residence permit – worker’ when such measure is considered necessary for reasons of public policy or public security by the Member State concerned in accordance with Article 27.

The competent authorities may also suspend or revoke a ‘residence permit – worker’ when such measure is considered necessary for reasons of public policy or public security by the Member State concerned in accordance with Article 27.

Justification

The applicant is entitled to comprehensive information so that he does not commit ‘fraud’ unknowingly. As the lawfully acting authority, the administration also has an interest in ensuring that the potential new citizen is sent the right signal through adhering to the tradition of fairness and condemning arbitrary and unfair actions. It is not in the interest of the Member States and their taxpayers to provoke further administrative procedures (whether for additional information, re-application or penalties) where these can be avoided.

Amendment 15
Article 10, paragraph 3

3. Unemployment in itself shall not constitute a sufficient reason for revoking a “residence permit – worker” unless the period of unemployment exceeds the following duration:

deleted

(a) three months within a 12-month period, for holders of a “residence permit

– worker” who have legally exercised activities as employed or self-employed persons in the Member State concerned for less than two years;

(b) six months within a 12-month period, for holders of a “residence permit – worker” who have legally exercised activities as employed or self-employed persons in the Member State concerned for two years or more.

Justification

The clause allowing a residence permit to be revoked due to a period of unemployment exceeding three months within a 12-month period, during the first two years, or six months after two years should be deleted because it is a very restrictive measure and represents an additional administrative burden. ILO Convention 143 concerning migrant workers also makes this point.

Amendment 16

Article 11, paragraph 1, point f (i)

(i) working conditions, including conditions regarding dismissals and remuneration;

(i) **pay and** working conditions, including conditions regarding dismissals and remuneration;

Justification

Restriction to a specific region of a country imposes too tight a limit on the freedom of movement accorded by the permit and is impossible to monitor.

Amendment 17

Article 11, paragraph 1, point f (ii)

(ii) access to **vocational** training necessary to complement the activities authorised under the residence permit;

(ii) access to training necessary to complement the activities authorised under the residence permit;

Justification

Vocational training alone is sometimes not enough to complement and improve the worker’s qualifications for the authorised activity.

Amendment 18
Article 11, paragraph 1, point f (iii)

(iii) recognition of diplomas, certificates and other qualifications issued by a competent authority;

(iii) recognition of diplomas, certificates and other qualifications issued by a competent authority, ***where these are comparable with the knowledge and skills required under national law***;

Justification

It needs to be ensured that diplomas, certificates and other qualifications from third countries correspond to those of the Member States, in order to ensure equal treatment with EU citizens.

Amendment 19
Article 11, paragraph 1, point f (vii), (viii) and (ix) (new)

(vii) access to education and study grants;

(viii) access to social assistance for access to housing;

(ix) right to free legal aid for people in need.

Justification

The rights granted to holders of a "residence permit – worker" should be supplemented by access to education, teach, social assistance for housing and free legal aid, insofar as these conditions also apply to nationals.

Amendment 20
Article 14, paragraph 3

3. The initial period of validity of the ‘residence permit – intra-corporate transferee’ shall be equal to the duration applied for, subject to a ***maximum*** period of validity of five years.

3. The initial period of validity of the ‘residence permit – intra-corporate transferee’ shall be equal to the duration applied for, subject to a period of validity of five years ***with the possibility of extension.***

Justification

The undertaking must be permitted to allow its specialists to work within the firm at its branch location in the host country for more than 5 years.

Amendment 21
Article 14, paragraph 4 (new)

4. Member States should agree to the mutual recognition of "residence permit – intra-corporate transferee".

Justification

Certain projects may require company staff to move from one Member State to another. Mutual recognition would assist this process.

Amendment 22
Article 18, paragraph 2

2. Applications for a “residence permit – self-employed person” shall be submitted via the representation of a Member State competent for the country of legal residence of the applicant or directly in the territory of the Member State concerned, if the applicant is already resident or legally present there.

2. Applications for a “residence permit – self-employed person” shall be submitted via the representation of a Member State competent for the country of legal residence of the applicant or directly in the territory of the Member State concerned, if the applicant is already resident or legally present there. ***Legal residence shall not be requested when the Member States concerned take national regularisation measures.***

Justification

Applications for a "residence permit – self-employed person" may also be submitted in the territory of the Member States concerned, providing the applicant is legally present there. In this instance, too, the Directive must not shut the door on possible national regularisation measures.

Amendment 23
Article 18, paragraph 3, point b

(b) detailed business plan covering the time-period for which a “residence permit – self-employed person” is requested;

(b) detailed business plan covering the time-period for which a “residence permit – self-employed person” is requested ***where this is applicable to the trade or profession to be pursued;***

Justification

Some of the liberal professions, for example, require self-employed status, even when the individual is joining an established company.

Amendment 24
Article 18, paragraph 3, point e

(e) if required by the Member State concerned, ***a certificate or adequate proof of good character and conduct*** and a health certificate;

(e) if required by the Member State concerned, ***a disclosure of a criminal record*** and a health certificate;

Justification

A proof of good conduct is not explicitly defined. On the contrary, a criminal record is a matter of fact.

Amendment 25
Article 19, paragraph 4 (new)

4. Consultation on the horizontal review referred to in this article must take place with the employers' and employees' associations.

Justification

Employers' and employees' associations (social partners) must also be able to play a role in the horizontal review referred to in Article 19.

Amendment 26
Article 21

A “residence permit – self-employed person” shall initially be restricted to the exercise of specific activities as a self-employed person or to specific fields of activities. ***It may also be restricted to the exercise of activities as a self-employed person in a specific region. After three years it shall not be subject to these restrictions.***

A “residence permit – self-employed person” shall initially be restricted to the exercise of specific activities as a self-employed person or to specific fields of activities. ***The initial restriction shall not apply to renewals.***

Justification

The restriction of the initial permit to specific professional activities or fields of activities or to specific regions should not apply to renewals.

It needs to be ensured that third country nationals can obtain the same payment as an EU citizen for the same work.

Amendment 27 Article 23, paragraph 3

3. Commercial difficulties shall not ~~constitute a sufficient reason for revoking a “residence permit – self-employed person” unless the period during which the holder is not able to meet the costs of living in accordance with Article 18(3)(h) exceeds the following period:~~ **deleted**

(a) three months within a 12-month period, for holders of a “residence permit – self-employed person” who have legally exercised activities as employed or self-employed persons in the Member State concerned for less than two years;

(b) six months within a 12-month period, for holders of a “residence permit – self-employed person” who have legally exercised activities as employed or self-employed persons in the Member State concerned for two years or more.

Justification

As in the case of workers, the possibility to revoke the "residence permit – self-employed person" due to a period of unemployment exceeding three months within a 12-months period, during the first two years, or six months after two years is a very radical measure and represents an additional administrative burden.

Amendment 28 Article 29, paragraph 1

1. Member States shall ensure that a decision to grant, modify or renew a permit in accordance with this Directive, is adopted and communicated to the applicant at the latest within **180 days** after receipt of the

1. Member States shall ensure that a decision to grant, modify or renew a permit in accordance with this Directive, is adopted and communicated to the applicant at the latest within **90 days** after receipt of the

application. Decisions on an application submitted in accordance with Articles 14, 15 and 16 shall be adopted and communicated to the applicant within 45 days after its receipt.

application. Decisions on an application submitted in accordance with Articles 14, 15 and 16 shall be adopted and communicated to the applicant within 45 days after its receipt.

Justification

The time limit of 180 days stated in the Commission document is unrealistic and is intended to discourage applications for the 'residence permit – worker'. A national employer who has decided to make an application cannot allow for a lead time of half a year. In the interests of flexibility of the domestic economy, therefore, it is imperative that the time limit be shortened. There is no reason why four times more time should be needed than for an application under Articles 14, 15 and 16.

Amendment 29 Article 29, paragraph 2

2. Every Member State shall make public the average time necessary for its authorities to issue, modify or renew permits in accordance with this Directive and inform applicants thereof upon receipt of an application.

2. Every Member State shall make public the average time necessary for its authorities to issue, modify or renew permits in accordance with this Directive and inform applicants thereof upon receipt of an application. ***Applicants will be entitled to receive information on the progress of their application once 15 working days past the indicative time period has passed. Any applicant should be immediately informed if the processing has stopped.***

Justification

This puts a duty on the authorities processing the request to keep individuals informed and will help to prevent situations where applications are mislaid or lie dormant or are stopped altogether.

22 April 2002

OPINION OF THE COMMITTEE ON PETITIONS

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the Commission proposal for adoption of 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 – C5-0447/2001 – 2001/0154(CNS))

Draftsman: Tokia Saïfi

PROCEDURE

The Committee on Petitions appointed Tokia Saïfi draftsman at its meeting of 20 February 2002.

It considered the draft opinion at its meeting of 18 April 2002.

At the meeting it adopted the following amendments unanimously.

The following were present for the vote: Vitaliano Gemelli, chairman; Roy Perry, vice-chairman; Janelly Fourtou, Laura González Álvarez, Ioannis Koukiadis, Ioannis Marinos, Guido Sacconi and María Sornosa Martínez.

SHORT JUSTIFICATION

I. Introductory considerations. Reciprocal rights and obligations: a legal status

Your draftsman welcomes the fact that the directive bestows on men and women established in the EU rights and obligations which, integrate them in our society not only as workers, but also as 'citizens' of Europe which for centuries has been seen as a magnet absorbing immigrant workers. We would like in particular to stress the need to strengthen facilities for receiving and integrating immigrants and to provide accompanying measures when these rules are introduced.

• Scope of the directive

1. The reason why the Committee on Petitions has been requested to draw up an opinion on this directive is that it has received many petitions raising problems faced by citizens from third countries involving matters such as residence and work permits, conditions of reception and integration, in particular housing and access to vocational training, and finally recognition of their diplomas and professional qualifications: all these matters are carefully regulated in this important directive.

2. We will deal neither with the problem of asylum seekers (who are not covered by the present rules), nor the problem of illegal immigrants in the European Union.

While the European Community must prevent the unregulated entry of these illegal immigrants, it has a duty to give workers who arrive in the Union legally a precise judicial status, namely a set of reciprocal rights and obligations which protect them and their families and give them security.

3. A number of Member States have traditionally welcomed immigrants – in some cases, this tradition goes back a very long time -, while others face problems caused by a shortage of manpower in a declining population and have thus been confronted with this phenomenon only recently.

Immigration policies and administrative rules and provisions thus differ, as do reception and integration policies, which in some countries do not exist as such. This is why Community rules which complement with national rules are necessary.

Legal certainty

4. The directive provides:

- (a) provides rules which establish legal certainty couched in clear and transparent terms,
- (b) bestows reciprocal rights and obligations,
- (c) grants a genuine legal status which is both stable and forward-looking,
- (d) provides a mechanism for monitoring the genuine and equitable implementation of its provisions.

5. The reference to the Charter of Fundamental Rights of the European Union and the specific ban on all forms of discrimination are to be welcomed.

While we are unable to comment on all the positive provisions of the directive, we would nevertheless point out that Articles 5.1. and 6.2 allow the employer to submit an application for a 'residence permit - worker' and give small and medium-sized enterprises a flexible, practical and effective instrument to address real shortages in the labour market – which often occur in some economic sectors – without too much red tape.

- **Equal rights and obligations and the recognition of diplomas and qualifications**

6. It is important to note that workers with a work and residence permit are granted some of the principal rights enjoyed by EU citizens, without discrimination. These include:

- (a) the right to equal pay,
- (b) rights concerning conditions of work and dismissal,.
- (c) the right to social services and medical care,
- (d) access to goods and services available to the public such as trade union rights.

7. Diplomas and qualifications, whether obtained in the Union or in a third country, are finally recognised in this directive. This is a step towards overcoming obstacles to the integration of immigrants in host countries, obstacles which have so often been the subject of Parliament petitions.

- **Housing and the vocational training: erosion of rights which should be fully restored**

8. The directive allows Member States in some cases to suspend without any Community control the fundamental right of migrant workers to housing and vocational training which are important instruments of integration and social recognition.

We do not wish to see these rights eroded and have therefore tabled amendments restricting cases in which they may be suspected.

II. A set of amendments

9. Bearing in mind the Commission's document on Community immigration policy on which the Committee on Petitions has already given its opinion, we have thus tabled a number of amendments seeking to improve certain provisions in this directive which we consider too weak in order to ensure that migrants from third countries are properly received.

A more forward-looking and humane view of phenomena linked to immigration¹ should make us pause for a minute and consider that we are here **receiving men and women** to whom we are giving work and security and **not a workforce** which we are free to exploit purely for our own benefit.

For these amendments, please see the next section.

¹ A convenient recent general overview is given by : '*Histoire(s) d'immigration*' – Le Monde diplomatique – Maniere de voir.

III. Final remarks: integration.

10. Finally, your draftsman would like to draw your attention to the question of the integration of workers from third countries, by tabling an amendment strengthening the very timid reference contained in the text of the directive (Article 6, paragraph 5).

11. We should bear in mind that, unless we take existing EU legislation further and adopt a set of strengthened national and European measures to integrate migrant workers, the Union and its Member States will have failed to tackle the most difficult and also the most important part of their task.

12. This is why before any policy is adopted to tackle racism and xenophobia, we must genuinely strive to see our immigrant workers as human beings.

13. By embarking on a **successful integration** policy, Europe should contribute to strengthening **an area of security, justice, freedom and tolerance**, as called for by the European Council in Tampere.

AMENDMENTS

The Committee on Petitions calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission ¹	Amendments by Parliament
<p>Amendment 1 Recital 10</p>	
Member States should be allowed to apply horizontal measures, such as ceilings or quotas, limiting the admission of third-country nationals.	Member States should be allowed <i>in advance</i> to apply horizontal measures, such as ceilings or quotas, limiting the admission of third-country nationals.
<p>Amendment 2 Recital 13a (new)</p>	
	<i>13a. The integration of third-country nationals who already reside in the Member States or who will reside in the Member States by virtue of this directive, calls for effective measures, and the Member States and the European Union are encouraged to introduce or strengthen such measures.</i>
<p>Amendment 3 Article 3, paragraph 4</p>	
In the absence of specific provisions of Community law, Member States may maintain or introduce more favourable provisions regarding the following categories of person: (a) researchers and academic specialists;	In the absence of specific provisions of Community law, Member States may maintain or introduce more favourable provisions regarding the following categories of person: (a) researchers and academic specialists;

¹ OJ C 332, 27.11.2001, p. 248.

- (b) **priests** and members of religious orders;
- (c) sport professionals;
- (d) artists;
- (e) journalists;
- (f) representatives of non-profit making organisations.

- (b) **clergymen of all faiths** and members of religious orders;
- (c) sport professionals;
- (d) artists and performers;
- (e) journalists; **and professional photographers**
- (f) representatives of **humanitarian and** non-profit making organisations.

Justification

As regards subparagraph (b), all religions and religious faiths must be taken into consideration.

Amendment 4 Article 5, paragraph 3, point (e)

- (e) if required by the Member State concerned, **a certificate or adequate proof of good character and conduct** and a health certificate;

- (e) if required by the Member State concerned, **an extract from the 'judicial record' and the register of ongoing criminal procedures**, and a health certificate;

Justification

The reference to a certificate 'of good character and conduct' should be deleted, because otherwise immigrants could be refused entry and residence unless they produced certificates covering certain kinds of behaviour, which are a flagrant violation of the Charter of Fundamental Rights of the European Union and incompatible with Article 32 of the directive. It would be more appropriate to require an extract from the 'judicial record' and ongoing criminal procedures.

Amendment 5 Article 6, paragraph 5

Member States may adopt national provisions according to which the requirement laid down in paragraph 1 is deemed to be fulfilled for a specific third-country national, if a defined amount of money has been paid by the future

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employer of that person to the competent authorities. The money received from the employer shall be spent for measures promoting the integration of third-country nationals *or* for vocational training purposes.

employer of that person to the competent authorities. The money received from the employer shall be spent for measures promoting the integration of third-country nationals *in particular for housing and* vocational training purposes.

Amendment 6
Article 10, paragraph 2

The competent authorities may suspend *or revoke* a ‘residence permit – worker’ where the particulars supporting the application as provided for in Article 5 are incorrect or have not been amended in accordance with Article 9. The competent authorities may also suspend or revoke a ‘residence permit – worker’ when such measure is considered necessary for reasons of public policy or public security by the Member State concerned in accordance with Article 27.

The competent authorities may suspend a ‘residence permit – worker’ where the particulars supporting the application as provided for in Article 5 are incorrect or have not been amended in accordance with Article 9. *In more serious cases, the competent authorities may revoke the ‘residence permit – worker’.* The competent authorities may also suspend or revoke a ‘residence permit – worker’ when such measure is considered necessary for reasons of public policy or public security by the Member State concerned in accordance with Article 27.

Amendment 7
Article 11, paragraph 2

Member States may restrict the rights conferred under paragraph 1(f)(ii) to third-country nationals who have been staying or who have the right to stay in their territory for at least one year.

They may restrict the rights conferred under paragraph 1(f)(v) with respect to public housing to third-country nationals who have been staying or who have the right to stay in their territory for at least three years.

Deleted.

Member States may not, except in exceptional and justified cases, restrict the rights conferred under paragraph 1(f)(v) with respect to public housing to third-country nationals who have been staying or who have the right to stay in their territory for at least three years.

Justification

Third-country nationals must be given vocational training under all circumstances because it helps them become integrated in the world of work. The right to housing should only be restricted in exceptional circumstances, given that all too frequently immigrant workers have nowhere to live or are exploited by rent sharks.

Amendment 8 Article 23, paragraph 2

The competent authorities may suspend **or revoke** a ‘residence permit – worker’ where the particulars supporting the application as provided for in Article 5 are incorrect or have not been amended in accordance with Article 9. The competent authorities may also suspend or revoke a ‘residence permit – worker’ when such measure is considered necessary for reasons of public policy or public security by the Member State concerned in accordance with Article 27.

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Amendment 9 Article 26

Member States may decide to adopt national provisions limiting the issuing of permits in accordance with this Directive to a set ceiling or suspending or halting the issuing of these permits for a defined period, taking into account ***the*** overall capacity to receive ***and to integrate*** third-country nationals on their territory or in specific regions thereof. These national provisions shall state in detail which groups of persons are covered by, or exempted from, the measure. If these national provisions impose ceilings, they

Member States may, ***after consultations in the Council of the European Union,*** decide to adopt national provisions limiting ***for a defined period*** the issuing of permits in accordance with this Directive to a set ceiling or suspending or halting the issuing of these permits for a defined period, taking into account ***the real problems that restrict its*** overall capacity to receive third-country nationals on their territory or in specific regions thereof. These national provisions shall state in detail which groups of persons are covered by, or

shall lay down in detail the criteria according to which applications for permits in accordance with this Directive shall be ranked when the number of applications received exceeds the set ceilings.

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Amendment 10
Article 30, subparagraph (c)

(c) the national provisions shall be subject to regular review at national level to ascertain whether it is justifiable under this Directive that the national provisions be maintained unchanged;

(c) the national **and Community** provisions shall be subject to regular review at national level to ascertain whether it is justifiable under his Directive that the national provisions be maintained unchanged;

Amendment 11
Article 33

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 35 at the latest and shall notify it without delay of any subsequent amendment affecting them.

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