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Committee on Employment and Social Affairs

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OPINION

of the Committee on Employment and Social Affairs

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing
(COM(2013)0151 – C7-0080/2013 – 2013/0081(COD))

Rapporteur: Antigoni Papadopoulou

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SHORT JUSTIFICATION

The Rapporteur welcomes the aims of the present Commission's proposal to respond to its mandate by providing a useful tool to support further strengthening of social, cultural and economic relationships between the EU and third countries. She believes that this proposal serves as a good basis that needs further enrichment by extensive dialogue and exchange of views. The aim is to foster in the best possible way the transfer of skills and know-how, to promote EU competitiveness, while at the same time safeguarding the fair treatment of various groups of third-country nationals. The Rapporteur believes that better management of migration flows is essential for developing a common immigration policy in the EU and for implementing the Europe 2020 Strategy more effectively.

The present Commission's proposal takes the form of a Directive amending and recasting Council Directives 2004/114/EC and 2005/71/EC. With a view to better optimise the benefits, it updates the policy context and tries to properly tackle the risks and shortcomings identified in the implementation reports of both directives.

The amended and recast Commission's proposal aims to improve the provisions of third-country national researchers, students, school pupils, unremunerated trainees and volunteers. Moreover it aims to apply common provisions to two new categories of third-country nationals: remunerated trainees and au-pairs, for whom, there is not yet a legally accepted common regulation.

The need for improvement and for a recast Directive is reinforced by the present circumstances and challenges; today, the EU is facing important structural challenges of both demographic and economic nature. The working age population is expected to start shrinking in the following years, while the observed patterns of employment growth with emphasis on skilled labour will persist. The EU is also facing a situation of '**innovation emergency**'. Europe's yearly GDP expenditure on Research and Development (R&D) is 0.8% less than that of the US and 1.5% less than that of Japan. Whilst, the EU market remains the largest in the world, it is fragmented and not enough innovation-friendly. To meet the goal of increased investment in research and innovation and the Innovation Union flagship initiative of the Europe 2020 Strategy, Europe requires an additional estimated number of one million research jobs. Immigration from outside the EU is one source of highly skilled people, with third-country national researchers being, in particular, the group most needed. EU can actively attract well-qualified potential workers and human capital to cope with the aforesaid challenges. Fostering people-to-people contacts and mobility is part of the EU's external policy, notably vis-à-vis the countries of the European Neighbourhood Policy or the EU's strategic partners. Allowing third-country nationals to acquire skills and knowledge through a period of training in Europe encourages "brain circulation" and supports cooperation with third countries, which benefits both the sending and the receiving countries. Globalization calls for enhanced relationships between EU enterprises and foreign markets, while movements of trainees and au-pairs foster the development of human capital, resulting in mutual enrichment for the migrants, their country of origin, the host country and an improved mutual familiarity between cultures.

The Rapporteur expresses her concerns that in the absence of a clear legal framework, there is a possible risk of exploitation to which remunerated trainees, researchers and au-pairs are

particularly exposed, with the subsequent risk of unfair competition, and believes that such concerns must be adequately examined and addressed.

The Rapporteur welcomes the overall goal of the Commission's proposal to offer a coherent legal framework targeted specifically at different groups coming to the Union from third countries. She fully understands the aim to simplify and streamline the existing provisions for these different groups in a single instrument. She stresses however the complexity of such a task as there are many more added differences between these various categories of 3rd country nationals, compared to their common few shared characteristics. The Rapporteur therefore recommends a number of changes that could further strengthen the proposal and support its objectives.

Amendments

The Rapporteur examined the Commission's proposal from the employment point of view. The text proposed by the Commission, is lacking clarity and favours generalisation, by mixing together various employment relationships, differently valid for remunerated trainees, researchers, au pairs and students. Moreover, it makes no clear distinctions and references so as to strengthen the employment relationship of the groups concerned, regarding, labour contracts, social security and social protection.

Hence the Rapporteur faced a twofold dilemma, either:

a) to ask for the deletion of remunerated trainees, researchers and au pairs from this Directive, by putting forward a horizontal amendment accompanied by a justification, and asking the Commission to include these categories into a different Directive or Directives. In article 2, the Rapporteur proposes therefore, to exclude for reasons of clarity, all categories of third-country nationals already covered by other existing Directives (remunerated trainees- ICTs, EU blue card holders, seasonal and posted workers).

b) the alternative dilemma was to amend the text of the recast Directive, by filling in all the possible loopholes so as to provide a minimum level of harmonization, similar and in line with Directives, either already adopted (Blue Card, Single Permit) or still under discussion (ICTs, Seasonal workers). The opinion Rapporteur chose this option.

It is well known that the persisting financial crisis has enlarged the social and economic gap between the Member States of the European South and European North, leading to different economic and social policies across the EU. To this end, migration flows pose a pressing problem, creating an additional financial burden, when and if not efficiently regulated.

Given the current conditions of the labour market in many Member States (MS's) and the existing problems of social dumping in the Internal Market, the Rapporteur's aim is double: to strengthen labour markets to better match skills with labour market shortage and to guarantee equal treatment and non-discrimination to all categories of workers intra EU and from third countries. In order to do that, a minimum level of protection has to be guaranteed while at the same time the conditions for the entry of skilled labour force are ensured. The Rapporteur fully supports efforts for well managed and proactive migration policy to attract high skilled third country nationals to the EU. She believes however that proposals to include under mandatory categories the provisions for the remunerated trainees and au pairs should be based

on a broader regulatory framework guaranteeing social protection and equal treatment. Additional provisions regarding access to the labour market of family members of eligible persons or other provisions for extending the residence status of researchers after the finalization of their actual activities should take into consideration the subsidiarity principle and should be met without prejudice to the Member States' competence to regulate these matters.

After all, we cannot ignore the fact that the current levels of unemployment in many MS have created an unprecedented socio-economic crisis, forcing EU nationals to seek work outside the EU.

In the Recitals, the Rapporteur made several amendments to ensure that third country nationals enjoy equal social rights (Recital 7), that “brain circulation” is encouraged and “brain drain” is avoided (Recital 8a). Other amendments aim at clarifying the reciprocity and legal base of hosting agreements for researchers (Recital 9a), transposing the wording of existing Directives in such a way so as to ensure the unity of family members of researchers (Recital 11) and defining the conditions for including doctoral students as researchers (Recital 12). By a series of additional amendments the following issues are addressed : salary thresholds (Recital 12a); the status of au pairs (Recitals 19, 21, 22); the employment contracts (Recital 23); the financial status of applicant and related fees for processing applications for authorizations (Recital 25); the conditions for extending the period of staying in a new Member State (Recital 31); students' access to the labour market (Recital 33, 33a, 33b, 33c); the preconditions for access to the labour market for students/researchers (Recital 34).

The EMPL Opinion Rapporteur, focused mainly on key issues included in Articles 3, 7, 12, 14, 21, 23, 24, 25, 26, 27, 28 and 31 (as there was a very tight deadline for submission of this opinion).

In Article 3 emphasis is given to clarify definitions concerning “remunerated trainees”, “au pairs”, “remuneration”, “employment”, “employer”, “family members” “higher education qualifications”, “unremunerated” trainee and “host family”.

In Article 7, the reasoning of a strict employment relationship between the researcher and the academic establishment is introduced, in order to protect both parties in question, by endorsing provisions included in existing Directives on Researchers and Blue Card.

In Article 12 the specific conditions are clarified under which an unremunerated or remunerated trainee third country national, can be granted a visa for staying in a Member State, paying special attention to the training agreement or employment contract and previous higher education qualifications.

In Article 14 emphasis is given on the distinctive status of au pairs, and the importance of a legally binding agreement with a host family, in order to safeguard their working conditions and social cover on EU ground, avoiding their exploitation. The Rapporteur stresses the need to issue specific guidelines and a special Directive to regulate the au pair industry. She deletes “maternity” in order to avoid situations of abuse of the regulation and extends the host family's responsibility to provide emergency help to au pairs.

In Article 21, the rights to equal treatment of third-country national researchers are

safeguarded as regards branches of social security.

In Article 23, underlines that the maximum allowed working hours per week or days or months per year for working students shall not be less than 10h per week.

In Article 24, the Rapporteur supports the view that issues such as extending the residence status of researchers and students to other MS should be optional and remain at the Member State's absolute competency. At the same time, there should be an adequate minimum level of harmonization in terms of volume of admissions-quotas.

In Article 25, the Rapporteur supports that the derogations to the right to family reunification, introduced, should not contradict to the idea of "brain drain" in the 3rd countries of origin and should always be in line with the values and principles recognised by the Member States.

Gender-neutral terminology is introduced in Articles 27 and 28 concerning on the rights for researchers and students covered by Union programmes to mobility and residence in a second Member State.

In Article 31, The Rapporteur reinforces the idea of equal treatment as regards the fees that the applicants should pay for their applications; these fees should be proportionate to their financial status or capacity, with special focus paid on the unremunerated categories such as the unpaid trainees and au pairs.

AMENDMENTS

The Committee on Employment and Social Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive

Recital 4

Text proposed by the Commission

(4) The shortcomings highlighted in the implementation reports of the two Directives concern mainly admission conditions, rights, procedural safeguards, students' access to the labour market during studies, intra-Union mobility provisions as

Amendment

(4) The shortcomings highlighted in the implementation reports of the two Directives ***on third-country nationals*** concern mainly admission conditions, rights, procedural safeguards, students' access to the labour market during studies,

well as a lack of harmonization, as coverage of some groups, such as volunteers, school pupils and unremunerated trainees was left optional to Member States. Subsequent wider consultations have also pointed to the need for better job-seeking possibilities for researchers and students and better protection of au-pairs and remunerated trainees which are not covered by the current instruments.

intra-Union mobility provisions as well as a lack of *a minimum level of* harmonization, as coverage of some groups, such as volunteers, school pupils and unremunerated trainees was left optional to Member States. Subsequent wider consultations have also pointed to the need for better job-seeking possibilities for researchers and students and better protection of au-pairs and remunerated trainees which are not covered by the current instruments.

Amendment 2

Proposal for a directive Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) Implementation of this Directive should not encourage a brain drain from emerging or developing countries; back-up measures should therefore be adopted and mechanisms established to support researchers' reintegration into their countries of origin. Allowing third-country nationals to acquire skills and knowledge through a period of training in the Union should encourage a mutually beneficial "brain circulation" rather than a brain drain from third-countries of origin.

Justification

Allowing third-country nationals to acquire skills and knowledge through a period of training in Europe should encourage "brain circulation" for mutual benefits and not for brain drain against third-countries of origin.

Amendment 3

Proposal for a directive Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a)The admission procedure for researchers should be based on a valid hosting agreement between the third country national researcher and the host research organisation and be defined where appropriate by an employment relationship in accordance with the law in force in the Member State concerned and/or governed by the law in force in that Member State. A work permit might therefore be required in addition to the residence permit.

Amendment 4

Proposal for a directive

Recital 11

Text proposed by the Commission

Amendment

(11) In order to make the Union more attractive for third-country national researchers, family members of researchers, as defined in Council Directive 2003/86/EC of 22 September 2003 on the right *to* family reunification, ***should be admitted with them. They should benefit from*** intra- Union mobility provisions ***and they should also have*** access to the labour market.

(11) In order to make the Union more attractive for ***highly educated and qualified*** third-country national researchers, ***it is essential to support the family unity of the members of the researchers' family;*** family members of researchers ***should be able to enjoy*** as defined in Council Directive 2003/86/EC of 22 September 2003, the right ***of*** family reunification ***and*** intra-Union mobility provisions. Access to the labour market ***granted to the family members of eligible third-country nationals should be without prejudice to the Member States' competence to regulate such access, taking into account the situation of their labour markets. Member States are encouraged to introduce integration conditions and measures, such as language learning. However, the right to family reunification should not be granted as an extra incentive encouraging a brain drain from the third countries of origin.***

Justification

Wording mirrors the one used in the Blue Card Directive

Amendment 5

Proposal for a directive Recital 12

Text proposed by the Commission

(12) *Where appropriate, Member States should be encouraged to treat PhD candidates* as researchers.

Amendment

(12) *Traditional avenues of admission, such as employment and traineeship, should be maintained for doctoral students carrying out research as students; under special circumstances, these doctoral students could be treated by Member States as researchers. Moreover, where needed and appropriate, Member States may also consider other educational degrees or practical experience as relevant and adequate for specific research purposes.*

Amendment 6

Proposal for a directive Recital 23

Text proposed by the Commission

(23) Authorisations should mention the status of the third-country national concerned, *and* the respective Union programmes including mobility measures. Member States may indicate additional information in paper format or electronically, provided this does not amount to additional conditions.

Amendment

(23) Authorisations should mention the *legal and marital* status of the third-country national concerned, *possible employment contracts, unremunerated traineeship offers, the nature of the studies and voluntary work agreed as well as* the respective Union *research or other* programmes including mobility measures. Member States may indicate additional information in paper format or electronically, provided this does not amount to additional conditions.

Justification

The abovementioned legal and marital status refers to the citizenship of the person and his/her marital position directly related to the right to family reunification.

Amendment 7

Proposal for a directive Recital 25

Text proposed by the Commission

(25) Member States may charge applicants for processing applications for authorisations. The fees should be proportionate to the purpose of the stay.

Amendment

(25) Member States may charge applicants for processing applications for authorisations. ***However, in order to underline the welcoming nature of this Directive and at the same time, avoid any deterrent effect, the fees should be proportionate to the purpose of the stay, and there should be the possibility of reimbursement by the host entity or family, in the case of unremunerated trainees and au pairs.***

Amendment 8

Proposal for a directive Recital 30

Text proposed by the Commission

(30) National authorities should inform third-country nationals who apply for admission to the Member States under this Directive of a decision on the application. They should do so in writing as soon as possible and, at the latest within **60** days, or, as soon as possible and at the latest within **30** days in the case of researchers and students covered by Union programmes including mobility measures, starting from the date of the application.

Amendment

(30) National authorities should inform third-country nationals who apply for admission to the Member States under this Directive of a decision on the application. They should do so in writing as soon as possible and, at the latest within **90** days, or, as soon as possible and at the latest within **45** days in the case of researchers and students covered by Union programmes including mobility measures, starting from the date of the application.

Amendment 9

Proposal for a directive Recital 31

Text proposed by the Commission

(31) ***The intra-Union mobility of third-country national researchers, students and remunerated trainees should be facilitated.*** For researchers, this Directive should improve the rules ***relating to the*** period for which the authorisation granted by the first Member State ***should*** cover stays in a second Member State without requiring a new hosting agreement. Improvements should be made regarding the situation of students, and the new group of remunerated trainees, by allowing them to stay in a second Member State for periods lasting between three and six months, provided that they fulfil the general conditions laid down in this Directive. For third-country national trainees coming to the Union as intra-corporate transferees, specific intra-Union mobility provisions designed according to the nature of their transfer should apply in accordance with [Directive 2013/xx/EU on intra-corporate transfers].

Amendment

(31) For researchers, this Directive should improve the rules ***on the possibility of extending the explicitly defined*** period for which the authorisation granted by the first Member State ***could*** cover stays in a second Member State without requiring a new hosting agreement; ***this would however require the consent of the second Member State, provided that such an extension was included in the original employment contract as part of the specific needs of the research programme followed.*** Improvements should be made regarding the situation of students, and the new group of remunerated trainees, by allowing them to stay in a second Member State for ***clearly defined*** periods lasting between three and six months, provided that they fulfil the general conditions laid down in this Directive ***and that adequate measures are in place to avoid possible risks of abuse.*** For third-country national trainees coming to the Union as intra-corporate transferees, specific intra-Union mobility provisions designed according to the nature of their transfer should apply in accordance with [Directive 2013/xx/EU on intra-corporate transfers].

Amendment 10

Proposal for a directive Recital 33 b (new)

Text proposed by the Commission

Amendment

(33b) The possibility of employment for a minimum of 10 hours per week could be permitted in accordance with the rules

applicable in each Member's State law to equally qualified unemployed persons.

Amendment 11

Proposal for a directive

Recital 34

Text proposed by the Commission

(34) As part of the drive to ensure a well-qualified workforce for the future, Member States should allow students who graduate in the Union to remain on their territory with the intention to identify work opportunities or to set up a business for 12 months after expiry of the initial authorisation. They should also allow researchers to do so upon completion of their research project *as defined in* the hosting agreement. This should not *amount* an automatic right of access to the labour market or to set up a business. *They may be requested* to provide evidence in accordance with Article 24.

Amendment

(34) *In order to enhance the attractiveness of the Member States as a study destination, and as* part of the drive to ensure a well-qualified workforce for the future, Member States should *have a discretion to* allow students who graduate in the Union to remain on their territory with the intention to identify work opportunities or to set up a business for *a minimum of six or a maximum of twelve* months after expiry of the initial authorisation. They should also *be free to* allow researchers to do so upon completion of their research project, *depending on* the hosting agreement, *the employment contract and the conditions of the labour market in the Member State concerned.* This should not *mean* an automatic right of access to the labour market or to set up a business, *but a decision for the Member States to take under certain conditions, and the request* to provide evidence in accordance with Article 24.

Amendment 12

Proposal for a directive

Recital 36

Text proposed by the Commission

(36) To make the Union more attractive for third-country national researchers, students, pupils, trainees, volunteers and au

Amendment

(36) To make the Union more attractive for third-country national researchers, students, pupils, *remunerated or*

pairs, it is important to ensure their fair treatment in accordance with Article 79 of the Treaty. ***These groups are entitled to equal treatment with nationals of the host Member State under*** Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State. More favourable rights to equal treatment with nationals of the host Member State as regards branches of social security as defined in Regulation No 883/2004 on the coordination of social security schemes should be maintained for third-country national researchers, in addition to the rights granted under Directive 2011/98/EU. Currently the latter foresees a possibility for Member States to limit equal treatment with regard to branches of social security, including family benefits, and this possibility of limitation could affect researchers. In addition, independently on whether Union or national law of the host Member State gives third-country national school pupils, volunteers, unremunerated trainees and au-pairs access to the labour market, they should enjoy equal treatment rights with nationals of the host Member State as regards access to goods and services and the supply of goods and services made available to the public.

unremunerated trainees, volunteers and au pairs, it is important to ensure their fair treatment in accordance with Article 79 of the Treaty. ***Students should continue to be covered by*** Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State ***with the possible exceptions that apply under that Directive.*** More favourable rights to equal treatment with nationals of the host Member State as regards branches of social security as defined in Regulation No 883/2004 on the coordination of social security schemes should be maintained for third-country national researchers ***in employment***, in addition to the rights granted under Directive 2011/98/EU. Currently the latter foresees a possibility for Member States to limit equal treatment with regard to branches of social security, including family benefits, and this possibility of limitation could affect researchers. ***Equal treatment under Directive 2011/98/EU should also apply to other categories of third-country nationals falling within the scope of this Directive only if they are considered by the Member States to be workers in employment.*** In addition, independently on whether Union or national law of the host Member State gives third-country national school pupils, volunteers, ***remunerated and*** unremunerated trainees and au-pairs access to the labour market, they should enjoy equal treatment rights with nationals of the host Member State as regards access to goods and services and the supply of goods and services made available to the public.

Amendment 13

Proposal for a directive Article 3 – point f

Text proposed by the Commission

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

Amendment

(f) ‘remunerated trainee’ means a third-country national ***with previous relevant education or qualifications, who is an employee in training for career development purposes or as a part of his/her education, working under an employment contract and*** who has been admitted to the territory of a Member State for a training period in return for which he/she receives remuneration in accordance with the national legislation of the Member State concerned ***and/or applicable collective agreement;***

Amendment 14

Proposal for a directive Article 3 – point i

Text proposed by the Commission

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

Amendment

(i) ‘au pair’ means a third-country ***adult aged 18 to 30 years***, who is received by a ***host*** family in the territory of a Member State, ***for a defined period of time during which he/she improves his/her education, linguistic skills and cultural knowledge of the host country, in exchange for minor housework and/or child minding;***

Amendment 15

Proposal for a directive Article 3 – point m

Text proposed by the Commission

(m) ‘remuneration’ means the ***payment***,

Amendment

(m) ‘remuneration’ means the ***wage or***

whatever form it takes, received in consideration for the services performed and being considered under national legislation or established practice as a constituent element of an employment relationship;

salary and any other consideration, whether in cash or in kind, which a worker receives directly in respect of his/her employment from his/her employer and which is equivalent to the services performed and being considered under national legislation *and/or applicable collective agreement* or established practice as a constituent element of an employment relationship;

Amendment 16

Proposal for a directive Article 3 – point n

Text proposed by the Commission

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

Amendment

(n) 'employment' means the exercise of activities covering *a* form of labour or work regulated under national law or *applicable collective agreement or* established practice for and under the direction and supervision of an employer; *it signifies a legal contract between two parties, the employer and the employee, through which reciprocal rights and obligations are created between the employee and the employer;*

Amendment 17

Proposal for a directive Article 3 – point n a (new)

Text proposed by the Commission

Amendment

(na) 'employer' means any natural person or any legal entity, for or under the direction and/or supervision of whom or which the employment is undertaken;

Amendment 18

Proposal for a directive Article 3 – point n b (new)

Text proposed by the Commission

Amendment

(nb) 'family members' means third-country nationals as defined in Article 4 of Directive 2003/86/EC;

Amendment 19

Proposal for a directive Article 4 – paragraph 2

Text proposed by the Commission

Amendment

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

2. This Directive shall be without prejudice to the right of Member States to adopt or maintain provisions that are more favourable to the persons to whom it applies.

Amendment 20

Proposal for a directive Article 6 – point c

Text proposed by the Commission

Amendment

(c) have sickness insurance for ***all*** risks normally covered for nationals of the Member State concerned;

(c) have sickness insurance for ***the*** risks normally covered for nationals of the Member State concerned;

Amendment 21

Proposal for a directive Article 6 – point f a (new)

Text proposed by the Commission

Amendment

(fa) provide his/her address in the territory of the Member State concerned;

Justification

Mirrors wording used in other Directives on third-countries nationals

Amendment 22

Proposal for a directive Article 7 – paragraph 1 – point a

Text proposed by the Commission

(a) present a hosting agreement signed with a research organisation in accordance with Article 9(1) and Article 9(2);

Amendment

(a) present a **valid** hosting agreement, **including a valid employment contract or a binding job offer or a certificate of scholarship as a researcher, as provided for in national law**, and signed with a research organization in accordance with Article 9(1) and Article 9(2);

Amendment 23

Proposal for a directive Article 7 – paragraph 5

Text proposed by the Commission

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

Amendment

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

Amendment 24

Proposal for a directive Article 7 – paragraph 6

Text proposed by the Commission

6. **Member States shall determine whether** applications for authorisations are to be made by the **researcher or by the research organisation concerned**.

Amendment

6. Applications for authorisations are to be made by the **research organisation and/or the prospective researcher concerned, in full cooperation and agreement**.

Amendment 25

Proposal for a directive Article 7 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. Where the conditions for family reunification are relevant and fulfilled, the third-country national researcher shall make a declaration to that effect and submit legal documentation for his/her family members in parallel with the application for authorisation.

Justification

Wording similar to Directives on Researchers, Blue Card, Family reunification and on sanctions against employers of illegally staying third-country nationals

Amendment 26

Proposal for a directive Article 9 – paragraph 1 – subparagraph 2 – point e

Text proposed by the Commission

Amendment

(e) information ***on*** the legal relationship between the research organisation and the researcher;

(e) information ***and specification of*** the legal ***and/or employment*** relationship between the research organisation and the researcher;

Amendment 27

Proposal for a directive Article 12 – title

Text proposed by the Commission

Amendment

Specific conditions for trainees

Specific conditions for ***unremunerated and remunerated*** trainees

Amendment 28

Proposal for a directive

Article 12 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

(a) **have** signed **a** training agreement, approved if need be by the relevant authority in the Member State concerned in accordance with its national legislation or administrative practice, for a placement with a public- or private-sector enterprise or vocational training establishment recognised by the Member State in accordance with its national legislation or administrative practice.

Amendment

(a) **as a part of his/her education, provide evidence of a** signed training agreement **or employment contract**, approved if need be by the relevant authority in the Member State concerned in accordance with its national legislation or administrative practice, for a placement with a public- or private-sector enterprise or vocational training establishment recognized by the Member State in accordance with its national legislation or administrative practice.

Amendment 29

Proposal for a directive

Article 12 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

(b) prove, if the Member State so requires, that they have previous relevant education **or** qualifications or professional **experience** to benefit from the work experience.

Amendment

(b) prove, if the Member State so requires, that they have previous relevant **higher** education qualifications or professional **qualifications** to benefit from the work experience **and/or that the training period is a part of his/her education in an educational establishment in the country of his/her origin.**

Amendment 30

Proposal for a directive

Article 12 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The agreement referred to in point (a) shall describe the training programme, specify its duration, the conditions under

Amendment

The agreement referred to in point (a) shall describe the training programme, specify its duration, the conditions under which the

which the trainee is supervised in the performance of this programme, his/her working hours, the legal relationship with the host entity and, where the trainee is remunerated, the remuneration granted to him/her.

trainee is supervised in the performance of this programme, his/her working hours, the legal relationship with the host entity and, where the trainee is remunerated, the remuneration granted to him/her ***and the employment contract.***

Amendment 31

Proposal for a directive Article 12 – paragraph 2

Text proposed by the Commission

2. Member States may require the host entity to ***declare*** that the third country national is not filling a job.

Amendment

2. Member States may ***consider the actual need for labour or whether there are enough training posts for host-country nationals and*** require the host entity to ***ensure*** that the third country national is not filling a job, ***so as to avoid exploitation or social dumping.***

Amendment 32

Proposal for a directive Article 13 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

A Member State may consider whether the volunteer work is genuine or whether it has negative effects on the labour market.

Amendment 33

Proposal for a directive Article 14 – point a

Text proposed by the Commission

Amendment

(a) be at least ***17*** but not more than 30 ***or, except in individually justified cases, more***

(a) be at least ***18*** but not ***in any event*** more than 30, ***and may not be relative of the***

than 30 years of age;

host family;

Amendment 34

Proposal for a directive Article 14 – point c

Text proposed by the Commission

(c) ***produce an*** agreement between the au-pair and the host family defining his/her rights and obligations, including specifications about the pocket money to be received ***and*** adequate arrangements allowing him/her to attend courses, and participation in day-to-day family duties.

Amendment

(c) ***present a contract which states the rights and contractual obligations of the au pair and the host family, on the basis that the au pair receives board and lodging in exchange of services such as light housework and/or childcare in the host family and*** agreement between the au-pair and the host family ***clearly*** defining his/her rights and obligations, including specifications about the pocket money ***allowance*** to be received, adequate arrangements allowing ***or requiring*** him/her to attend courses, ***including the right to at least one whole free day per week***, and participation in day-to-day family duties, ***indicating the maximum hours per day which may be dedicated to participation in such duties.***

Amendment 35

Proposal for a directive Article 14 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

A Member State may take other issues into consideration when deciding whether the host family is able to provide a good home for the au-pair for the duration of his/her stay.

Amendment 36

Proposal for a directive

Article 18 – paragraph 1 – introductory part

Text proposed by the Commission

Member States **shall** reject an application in the following cases :

Amendment

Member States **may** reject an application in the following cases :

Amendment 37

Proposal for a directive

Article 18 – paragraph 1 – point c

Text proposed by the Commission

(c) where the host entity or educational establishment **was established** in the sole purpose of facilitating entry;

Amendment

(c) where the host entity or educational establishment **is acting** in the sole purpose of facilitating entry;

Amendment 38

Proposal for a directive

Article 18 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) where there are other serious reasons to suspect that the host entity or educational establishment is acting fraudulently;

Amendment 39

Proposal for a directive

Article 19 – paragraph 1 – introductory part

Text proposed by the Commission

Member States **shall** withdraw an authorisation in the following cases :

Amendment

Member States **may** withdraw an authorisation in the following cases :

Amendment 40

Proposal for a directive

Article 19 – paragraph 1 – point c

Text proposed by the Commission

(c) where the host entity *was established* for the sole purpose of facilitating entry;

Amendment

(c) where the host entity *is acting* for the sole purpose of facilitating entry;

Amendment 41

Proposal for a directive

Article 19 – paragraph 1 – point d

Text proposed by the Commission

(d) where the host entity does not meet the legal obligations regarding social security and/or taxation set out in national law or has filed for bankruptcy or is otherwise insolvent;

Amendment

(d) where the host entity does not meet the legal obligations regarding social security and/or taxation set out in national law or has filed for bankruptcy or is otherwise insolvent. *Where this happens in a course of study, reasonable time should be given for the student to find an equivalent course to enable the completion of his/her studies;*

Amendment 42

Proposal for a directive

Article 19 – paragraph 1 – point f

Text proposed by the Commission

(f) for students, where the time limits imposed on access to economic activities under Article 23 are not respected or if the respective student does not make acceptable progress in the relevant studies in accordance with national legislation or administrative practice.

Amendment

(f) for students, where the time limits imposed on access to economic activities under Article 23 are not respected or if the respective student does not make acceptable progress in the relevant studies in accordance with national legislation or administrative practice *and there is no compelling mitigating factor to explain this situation.*

Amendment 43

Proposal for a directive Article 20 – paragraph 1 – point c

Text proposed by the Commission

(c) for students, where the time limits imposed on access to economic activities under Article 23 are not respected or where the student does not make acceptable progress in the relevant studies in accordance with national legislation or administrative practice.

Amendment

(c) for students, where the time limits imposed on access to economic activities under Article 23 are not respected or where the student does not make acceptable progress in the relevant studies in accordance with national legislation or administrative practice ***and there is no compelling mitigating factor to explain this situation.***

Amendment 44

Proposal for a directive Article 21– paragraph 1

Text proposed by the Commission

1. By way of derogation from Article 12(2)(b) of Directive 2011/98/EU, third-country national researchers shall be entitled to equal treatment with nationals of the host Member State as regards branches of social security, including family benefits, as defined in Regulation No 883/2004 on the coordination of social security schemes.

Amendment

1. Third-country national researchers, students, pupils, trainees, volunteers and au pairs shall be entitled to equal treatment with nationals of the host Member State under Directive 2011/98/EU only and if they are considered by that Member State to be workers in employment.

Amendment 45

Proposal for a directive Article 23 – paragraph 3

Text proposed by the Commission

3. Each Member State shall determine the maximum number of hours per week or

Amendment

3. Each Member State shall determine the maximum number of hours per week or

days or months per year allowed for such an activity, which shall not be less than **20** hours per week, or the equivalent in days or months per year.

days or months per year allowed for such an activity, which shall not be less than **10** hours per week or the equivalent in days or months per year.

Amendment 46

Proposal for a directive Article 24

Text proposed by the Commission

After finalisation of research or studies in the Member State, third-country nationals shall be entitled to stay ***on the territory of the*** Member State for a period of 12 months in order to look for work or set up a business, if the conditions laid down in points (a) and (c) to (f) of Article 6 are still fulfilled. In a period of more than 3 and less than 6 months, third-country nationals may be requested to provide evidence that they continue to seek employment or are in the process of setting up a business. After a period of 6 months, third-country nationals may additionally be requested to provide evidence that they have a genuine chance of being engaged or of launching a business.

Amendment

Members States may decide that after finalisation of research ***and/or*** studies in the Member State, third country nationals shall be entitled to stay for a period ***lasting from six to*** 12 months in order to look for work or set up a business, if the conditions laid down in points (a) and (c) to (f) of Article 6 are still fulfilled ***and if they are able to provide for themselves and, if applicable, for their family.*** In a period of more than 3 and less than 6 months, third-country nationals may be requested to provide evidence that they continue to seek employment or are in the process of setting up a business. After a period of 6 months, third-country nationals may additionally be requested to provide evidence that they have a genuine chance of being engaged or of launching a business.

Amendment 47

Proposal for a directive Article 24 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Member States may require the business founded by the third-country national to fulfil certain conditions in order to ascertain that it is a genuine enterprise.

Amendment 48

Proposal for a directive Article 26 – title

Text proposed by the Commission

Right to mobility between Member States for researchers, students **and** remunerated trainees

Amendment

Right to mobility between Member States for researchers, students, remunerated **and unremunerated** trainees

Amendment 49

Proposal for a directive Article 26 – paragraph 2 – introductory part

Text proposed by the Commission

For periods exceeding three months, but not exceeding six months, a third-country national who has been admitted as a student **or** as a remunerated trainee under this Directive **shall** be allowed to carry out part of his/her studies/traineeship in another Member State provided that before his or her transfer to that Member State, he/she has submitted the following to the competent authority of the second Member State:

Amendment

For periods exceeding three months, but not exceeding six months, a third-country national who has been admitted as a student, as a remunerated **or unremunerated** trainee **or as a researcher** under this Directive **may** be allowed to carry out part of his/her studies/traineeship in another Member State provided that before his or her transfer to that Member State, he/she has submitted the following to the competent authority of the second Member State **for validation and approval**:

Amendment 50

Proposal for a directive Article 28 – paragraph 1

Text proposed by the Commission

1. When a researcher moves to a second Member State in accordance with Articles 26 and 27, and when the family was already constituted in the first Member State, the members of his family shall be authorised to accompany or join him.

Amendment

1. When a researcher moves to a second Member State in accordance with Articles 26 and 27, and when the family was already constituted in the first Member State, the members of his/**her** family shall be authorised to accompany or join him/**her**, **on the basis of a case-by-case analysis**.

Justification

Gender-neutral terminology should be used

Amendment 51

Proposal for a directive

Article 31

Text proposed by the Commission

Member States may require applicants to pay fees for the processing of applications in accordance with this Directive. ***The amount*** of such fees shall not ***endanger the fulfilment of its objectives***.

Amendment

Member States may require applicants to pay fees for the processing of applications in accordance with this Directive. ***The level*** of such fees shall not ***be excessive or disproportionate to their financial status/capacity, especially for the unremunerated categories, such as trainees and au pairs***.

Justification

Court of Justice judgement in the case C-508/10 Commission v Netherlands stated that the level of fees shall not be excessive or disproportionate. For categories of unremunerated persons there should be a kind of state facilitation; this is the essence of a European welfare state.

Amendment 52

Proposal for a directive

Article 35 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [***two*** years after the entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

Amendment

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [***three*** years after the entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

PROCEDURE

Title	Conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training , voluntary service and au pairing [Recast]		
References	COM(2013)0151 – C7-0080/2013 – 2013/0081(COD)		
Committee responsible Date announced in plenary	LIBE 16.4.2013		
Opinion by Date announced in plenary	EMPL 13.6.2013		
Rapporteur Date appointed	Antigoni Papadopoulou 27.5.2013		
Discussed in committee	5.9.2013	18.9.2013	25.9.2013
Date adopted	26.9.2013		
Result of final vote	+: -: 0:	30 8 0	
Members present for the final vote	Edit Bauer, Heinz K. Becker, Jean-Luc Bennahmias, Pervenche Berès, Vilija Blinkevičiūtė, Philippe Boulland, David Casa, Alejandro Cercas, Ole Christensen, Derek Roland Clark, Minodora Cliveti, Emer Costello, Frédéric Daerden, Sari Essayah, Richard Falbr, Danuta Jazłowiecka, Ádám Kósa, Jean Lambert, Verónica Lope Fontagné, Olle Ludvigsson, Thomas Mann, Csaba Óry, Sylvana Rapti, Licia Ronzulli, Elisabeth Schroedter, Joanna Katarzyna Skrzydlewska, Jutta Steinruck, Ruža Tomašić, Traian Ungureanu		
Substitute(s) present for the final vote	Françoise Castex, Philippe De Backer, Anthea McIntyre, Ria Oomen-Ruijten, Antigoni Papadopoulou, Birgit Sippel, Csaba Sógor, Tatjana Ždanoka		
Substitute(s) under Rule 187(2) present for the final vote	Cecilia Wikström		