



Churches' Commission for Migrants in Europe

Commission des Eglises auprès des Migrants en Europe

Kommission der Kirchen für Migranten in Europa

Joint Comments on the Proposal for a Council directive on the conditions of entry and residence of third-country nationals for the purpose of studies, vocational training or voluntary service (COM (2002) 548 final)

Our organisations represent Churches throughout Europe and Christian agencies particularly concerned with migrants and refugees. As Christian organisations, we are deeply committed to the dignity of the human individual and the concept of global solidarity. Through their world-wide-community churches have over centuries been active in the cross-border exchange of persons for non-remunerated activities, such as studies, social assistance, peace building and mediation missions or intercultural exchange.

We thus very much welcome the intention of the European Commission to complement the proposals for directives on immigration, which were tabled earlier (namely those on entry and residence of third-country nationals for the purposes of paid employment and self-employed economic activity [COM (2001) 0386]), for family reunification [COM (1999) 638, COM (2000) 624 final and COM (2002) 225 final] as well on the status of third country nationals who are long term residents [COM (2001) 127 final] with a directive covering those persons who are by definition entering and residing in EU territory for a non-remunerated activity and on a temporary basis.

In this context we would strongly recommend to adopt a directive, which acknowledges the diverse realities of persons coming to the EU for the various purposes of non-remunerated activities. We welcome that earlier comments have been taken into account to explicitly recognise voluntary service as a reason for entry and residence in the EU. It is important that main areas of non-remunerated activities such as study, vocational training or voluntary service are mentioned, but we would appreciate if other forms of non-remunerated activities could be recognised in both title and scope of the directive as well. From a churches' perspective, clergy sent for exchange, mission or diaconal purposes, or personnel exchange as seconded staff e.g. for social assistance or reconciliation work come to mind. This could also apply to researchers, teachers and trainers. In addition, specific medical or health treatment may well be a reason for applying for entry and a temporary residence permit, and, if the scope of this directive does not provide for this, there may be a need to think of an additional instrument at some stage to provide for such needs.

We agree with the European Commission' s assessment that these non-remunerated activities are mutually enriching, beneficial for the quality and vitality of Europe's training and educational systems, providing direct assistance and solidarity for persons in need in an EU Member State. They directly or indirectly create a huge benefit for the EU and its Member States. It is also important to underline that education "to the full development of the human personality" which "shall promote understanding, tolerance and friendship among all nations, racial or religious groups" is a universally recognised human right (Universal Declaration of Human Rights, Article 26). With regard to volunteering we would like to recall the broad recognition of the importance of volunteering for civic participation, economic and social

development and society at large - as for example expressed in resolution 56/38 of the 76th plenary meeting of the General Assembly of the United Nations (5th December 2001).

In this light we would generally plea for provisions which are comprehensive and as far-reaching as possible in enabling entry and residence of third-country nationals for temporary non-remunerated activities.

We therefore put forward the following comments for the considerations of the European Commission, the Council of the European Union and the European Parliament.

Conditions of entry

We in general welcome that the draft directive gives importance to the fact that the institutions, through which a placement of a third country national is arranged, should be accredited or in other ways show that they are bona fide organisations. Such provisions will help to avoid the abuse of placement schemes for illicit activities. In view of this, it however would seem logical that the concrete prerequisites and preconditions for entry and residence of third country nationals would be more or less the same for all categories of temporary, non-remunerated activities. It is not understandable why for example the possibility to take up work or the prerequisite regarding knowledge of language or even history of the host country differs between students, trainees and volunteers.

Concerning the security aspect, which is mentioned in article 5.1.c), we would strongly support the idea that a person is not regarded as a threat to public order, public security or public health unless proved otherwise. We regard it as unacceptable to ask for documentary evidence that a person does not constitute a threat for public policy, security or health. On the contrary, we hold the opinion that only where documentary prove substantiates that a person may be a threat to public policy, public security or public health, admission should be denied.

We highly appreciate the programmes financed from the EU budget (such as Socrates, Leonardo, EVS), which allocate grants to - among others - third country nationals in order to allow them to undertake their studies or vocational training in an EU Member State or engage in a voluntary activity. In the context of article 5.2., concerning the issue of visa/residence permits we would however wish to underline that EU programmes are not the only schemes enabling the residence of third country nationals in the EU for the purposes of study, vocational training, volunteering or other non-remunerated activities. We would therefore welcome if the considerations expressed in Art. 5.2. and the explanatory memorandum that Member States must issue residence permits and visa "in good time for the holder to be able to take part in the activities" would not only extend to community programmes but to any programme of international exchange, if the criteria for entry set out in the following articles are met.

Regarding **Article 6 b)** we are concerned that the need to provide evidence of having sufficient resources will mean that following higher education programmes is, with a few exceptions, limited to third country nationals with a wealthy background. We would suggest that the need to prove in advance that the material conditions applies only to the initial period (including a lump sum needed to guarantee return travel costs) – especially in view of Article 18 allowing students to take up work. We would appreciate if proof of 60 % of the total subsistence costs could be regarded as meeting the criteria to be set out in article 6. If deemed necessary, the provision of Article 11 to renew the residence permit could be designed to give sufficient basis of withdrawing a residence permit if the holder does not manage to meet the material conditions for his or her residence and studies.

In the spirit of academic freedom, we would suggest to leave it to the establishment of higher or professional education if it considers any specific language skills necessary

in order to be admitted and thus qualify for a visa/residence permit (art. 6.1.c on language skills).

Art. 7 b): Given the complexity of educational and professional education systems, we are convinced that the establishments of higher or professional education in the Member State concerned (by the new application for residence permit) are best equipped to determine if the course s/he wishes to follow complements the one he or she has completed.

Regarding 8 d) we welcome the fact that an exchange organisation is supposed to take responsibility for the pupil. We however would like to see clarified that in particular cases subsistence, health-care and return cost might be covered from other sources than those of the exchange organisation – e.g. from parents or relatives. Concerning 8 e) it is unclear to us why accommodation can only be provided by a family. Other forms of accommodation such as accommodation in dormitories with pupils from the host country might in fact be a rather usual form of accommodation for a pupils' exchange.

Regarding Article 9 b) we are concerned that the need to provide evidence of having sufficient resources will mean that becoming an unremunerated trainee is with a few exceptions limited to third country nationals with a wealthy background. We would suggest that the need to prove in advance that the materials conditions are met applies only to the initial period (including a lump sum needed to guarantee return travel costs) – especially in view of Article 18 allowing unremunerated trainees to take up work. We would appreciate if proof of 60 % of the total subsistence costs could be regarded as meeting the criteria to be set out in article 6.

Regarding Art. 9 c) we would in the spirit of entrepreneurial freedom suggest to leave it to the establishment of vocational training or enterprise in question to determine if it considers any specific language skills necessary in order to accept a person as an unremunerated trainee and thus qualify for a visa/residence permit. In fact, in some Member States specific training institutes are available for third country nationals offering courses in other languages.

In view of Article 10 on specific conditions for volunteers we would like to underline that volunteering is a broad phenomenon, which is neither limited to a certain age group nor the EU's EVS programme. We can thus not understand why it should be necessary to determine a maximum age for a volunteer. In a number of Member States, and given the demographic development throughout Europe, senior expert services are extremely involved in volunteer services of all sorts of social, professional and cultural activities. It would be appropriate to increase the possibilities of aged persons and pensioners to participate in volunteers' programmes, therefore we strongly urge not to introduce an age limit.

Regarding 10 b) we welcome the fact that an organisation running a voluntary service scheme is supposed to take a comprehensive responsibility for the volunteer. We however would like to see clarified that in a number of cases, subsistence, health-care and return cost might be covered from other sources than those of the exchange organisation – e.g. from a sending organisation or from a group of individuals (a system used by the peace volunteer organisation EIRENE). This is the case for a number of reconciliation placements facilitated by churches, some of which have been running successfully for several decades.

In addition we have to express our surprise concerning provision 10 d) requesting a "basic introduction to the language, history and political and social structures" of the host Member State. From our experience, we are convinced that getting to know language, history, culture and political structures of the host country is at the very heart of the volunteering experience. The learning experience will be successful through the process of non-formal education (assisted by appropriate supervision, see 10 b) rather than through a formal introduction. Thus a formal introduction should not be a prerequisite for a residence permit.

Concerning the provision for a student's residence permit (outlined in 11 d) that a renewal of a permit may be refused or the residence permit withdrawn if the student does not make acceptable progress in his/her studies, we would strongly recommend to apply a generous understanding of what is an "acceptable progress". Factors such as a general cultural shock, or difficulties to adapt to a different system of higher education might severely disturb the learning success of a student, who is not a native to the specific EU Member State, especially in the initial phase of taking up his/her studies.

We cannot see any logic in the provision in Article 12 and 14 that residence permits for participants in a pupil exchange and volunteer scheme are non renewable and shall not extend the duration of one year. While most pupils' exchange and volunteering schemes, including those financed by the EU, do indeed not exceed one year, a number of well-established and recognised programmes extending to EU member or candidate countries (e.g. pupils exchange between the US and Europe, volunteering with Aktion Sühnezeichen or the US Peace Corps) do last a longer time. In fact, some Member States have a legal provision that recognised volunteers' service abroad is only recognised and eligible for funding if it lasts at least for three years. In order to safeguard the principle of reciprocity, the same should apply for personnel exchange programmes. Therefore we wish to urge that this time limit is dropped or at least an extension is made possible.

As we have outlined above the possibility to study in the EU should not be limited to the small number of third country citizens with a wealthy background or those enjoying a scholarship. Indeed for many third country nationals studying in the EU will provide a chance for upward mobility in their country and development potential for their home country. In line with Article 18 we also think that the need for a student to work in order to finance her/his study might have repercussions on the progress s/he makes in his studies. We would in view of social considerations however be extremely careful if it comes to either refusing an authorisation to work or even revoke the residence permit/refuse its prolongation on the grounds of insufficient progress in studies. Many students, also nationals, have to take up jobs to sustain themselves. Still they are able to complete their studies, sometimes taking a bit longer, but gaining work experience at the same time. While we do not regard this as an ideal situation, we would however not wish to exclude third country nationals from similar chances and experience. This requires that their progress in studies is measured against their personal situation. We would therefore urge for flexibility and no strict rule about the maximum of working hours.

Concerning the procedural provisions for the issue of visas we welcome the procedural guarantees and transparency foreseen in article 20 and 23 as well as the provision of article 22 that fees for handling an application shall not exceed the actual administrative costs. We would also encourage to issue visas and residence permits free of charge for volunteers.

While we generally welcome fast track-procedures for the issue of visa as foreseen in article 21 we would appreciate if all visas for third country nationals be examined and handled in the most timely manner.

In conclusion, we would like to congratulate the European Commission for these steps into the right direction concerning entry and residence of third-country nationals for non-remunerated activities. As we strongly recognise the value of these activities for EU Member States, the persons participating in such an activity and their countries of origin, we would however recommend a review of some provisions as mentioned above.

Brussels, May 2003