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to The Members of the LIBE Committee
c/o Secretariat
European Parliament
By e-mail

Meijers Committee
Standing committee of experts
on international immigration,
refugee and criminal law

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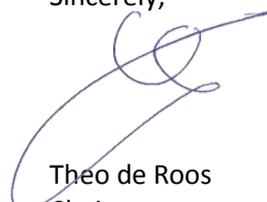
Dear Members of the LIBE Committee,

In view of the presidency compromise of 29 September 2014 on the proposal for the recast of the Students Directive and Researchers Directive the Meijers Committee prepared attached note.

As always, we remain at your disposal for questions and comments.

Identical letters were sent to the Commission and the General Secretariat of the Council.

Sincerely,



Theo de Roos
Chairman

Note on the state of negotiations on the proposal for the recast of the Students and Researchers Directive (CM1411)

Introduction

In 2013 the European Commission presented a proposal for a Directive on the conditions of entry and residence of third-country nationals for the purposes of research, study, pupil exchange, remunerated and unremunerated training, voluntary service, and au pairing (COM(2013) 151 final) as a recast of both the Students Directive (2004/114) and the Researchers Directive (2005/71). The reports on the implementation of the two Directives pointed out certain inadequacies in the two instruments, mainly concerning the admission conditions, rights, procedural safeguards, students' access to the labor market, and intra-Union mobility. Specific improvements were also considered necessary in regard to the optional categories of third-country nationals in the Students Directive (school pupils, unremunerated trainees, and volunteers). Consultations have also pointed out the need for better job-seeking options for researchers and students, and better protection of au-pairs and remunerated trainees by extending the scope of the new instrument to these categories. In view of the latest Presidency compromise that the Meijers Committee has read, the Committee would like to share the following remarks with the co-legislators.¹

Scope of the proposal

In a previous letter the Meijers Committee supported the inclusion of the former optional categories and some other vulnerable groups as mandatory.² However, the Committee noted that the European Commission could have been clearer on why these groups should be included and why they are of added value to the knowledge economy of the Member States. The Member States would thus be inclined towards an easy rejection of the mandatory inclusion and extension. This, regrettably, is precisely what happened in the latest Presidency compromise proposal concerning school pupils, remunerated or unremunerated trainees, and volunteers, while at the same time leaving au-pairs excluded from the scope (recital 19 and Article 2).

The Meijers Committee maintains that the legal position of au-pairs should be included in the Directive.

More favourable provisions

The Meijers Committee still wonders why the latest compromise proposal still allows more favorable national provisions only in respect of a limited number of provisions in the proposal (Article 4(2)). The Committee cannot see how more favorable provisions would undermine either the Directive's scope or its purpose.

The Meijers Committee suggests to delete the limitation of the articles on which Member States may adopt more favourable provisions.

¹ Council document 13600/14 of 29 September 2014.

² CM1310, Note Meijers Committee on the Proposal for a Directive 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) 151 final) (3 June 2013).

Mandatory granting of visa

The Committee is pleased that in the latest compromise proposal it is still mandatory to grant visa and a residence permit once the applicant fulfills the necessary conditions (Article 5). As such, the Recast codifies the Judgment of the Court of Justice of the EU of 10 September 2014 in the case of Ben Alaya (C-491/13).

Pre-approval procedure for educational institutions

In previous comments the Meijers Committee noted that it is necessary to extend the pre-approval procedure for research organizations to educational institutions. This would allow the quality of the organizations to be guaranteed beforehand. It would also diminish the risk of abuse by the institutions, and accordingly reduce the chance that authorizations will be rejected or withdrawn on the basis of the host entities' behaviour, as proposed in Articles 18 and 19 of the proposal. The Committee is pleased to see this notion partly reflected in the compromise proposal, but does not understand why in the latest compromise proposal the previous mandatory pre-approval procedure for research organizations ("shall" be approved) is replaced by a "may" clause (article 8). **On the contrary, for the above reason (the quality of the host entity is guaranteed beforehand), the Committee favours a mandatory pre-approval procedure with respect to all host entities, rather than the present optional one. The committee thus recommends that "may" in Articles 6a and 10a is replaced by "shall".**

Mandatory withdrawal

The Committee is still concerned about the obligation of Member States to withdraw authorization on the basis of actions by the host entity, as laid down in Article 19(1), (d) and (dbis) of the compromise. At that stage the third-country national is already legally residing in the host country, but his authorization for continued residence can be withdrawn at any time on the basis of developments outside his or her influence, in practice actions by the host entity. It is the opinion of the Meijers Committee that this is not in conformity with the Union law principle of legal certainty. **Therefore, the Committee considers that the withdrawal of authorization on the grounds set out in Article 19(1) should not be made mandatory and that the word "shall" must be replaced by "may". Moreover, the Meijers Committee advises that there should be a stipulation to the effect that, if the authorization is withdrawn on the basis of Article 19(1), (d) and (dbis) of the compromise, the affected person shall be afforded the opportunity to find another host entity in order to finish his or her studies or research, or for any other purpose for which the authorization has been granted.**

The same should apply in cases where a Member State decides to withdraw its approval of a host entity. For reasons of legal certainty, the third-country national should be given the opportunity to find another comparable host entity. This is envisioned in cases of the withdrawal of approval from a higher educational institution (Article 10a(4)), but this rule should also be extended to other host entities.

Consultation of educational institution

Although the Meijers Committee is pleased that the assessment of whether a student has made “acceptable progress” in Article 19(2) of the compromise makes reference to the opinion of the educational establishment; this consultation should be made mandatory. **Hence, the wording “may consult” should be changed into “shall consult”.**

Inconsistency between refusal and withdrawal grounds

There is an inconsistency between Recital 28 and Article 6(1)(d) on the one hand and Article 19(2) on the other. According to Recital 28 and Article 6(1)(d), for an authorization the applicant should not be regarded as a “threat” to public policy, public security or public health. According to Article 19(2), Member States may withdraw or refuse to renew an authorization for simple “reasons” of public policy. **The standard should be at least the same (“threat” to public policy) or even higher in case of a withdrawal or a refusal to renew, since the third-country national is lawfully residing in the Member State.**

Number of weekly working hours

The Meijers Committee notes that the provision of Article 23 on minimum weekly working hours for students is still undecided. The compromise introduces 15 hours instead of the originally proposed 20. According to research by the Dutch Social Economic Council, work experience is extremely important in attracting third-country national students to join the Member States’ labour market. **This would justify a minimum of 20 working hours a week.**

Mandatory search year

In the European Commission’s original proposal, the most significant innovation was the introduction of an extended right of residence for students and researchers to seek paid work in his/her Member State of residence. It is regrettable that Article 24 of the compromise reduces the original mandatory search year for students to “at least 6 months”, while at the same time the search period for researchers is still “at least 12 months”. **The Meijers Committee suggests to put the mandatory search year for students on 12 months.** What is also regrettable is the introduction of the optional clause that employment or setting up a business should relate to the “area or level of research or the field of studies”. The Meijers Committee is concerned that such a condition cannot be operationalized and therefore will lead to arbitrariness in practice.

Alignment of the position of students’ and researchers’ families

The Meijers Committee still wonders whether the scope of Article 25 on family members should not be extended to students’ family members as well. It is more than likely that students will also have their own families, especially when pursuing more advanced degrees. **In accordance with the provisions concerning EU citizens, the position of the families of students and researchers should be aligned.**

Fast track procedure

The Meijers Committee is pleased that, in accordance with recital 9, a fast-track procedure is re-introduced in Article 29 for approved host entities, although a maximum of 60 days is still rather long. **A maximum of 30 days seems more appropriate for reasons of speedy and uninterrupted access to the research or educational institution.**

Fees

Finally, the Meijers Committee is also pleased that, according to Article 31 in accordance with the CoJEU judgment of 26 April 2012 (C-508/10, Commission vs. The Netherlands), fees shall not be “disproportionate or excessive”.

About

The Meijers Committee is an independent group of legal scholars, judges and lawyers that advises on European and International Migration, Refugee, Criminal, Privacy, Anti-discrimination and Institutional Law. The Committee aims to promote the protection of fundamental rights, access to judicial remedies and democratic decision-making in EU legislation.

The Meijers Committee is funded by the Dutch Bar Association (NOvA), the Dutch Refugee Council (VWN), Forum Institute on Multicultural Affairs, the Dutch Section of the International Commission of Jurists (NJCM), Art. 1 Anti-Discrimination Office, and the Dutch Foundation for Refugee Students UAF.

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